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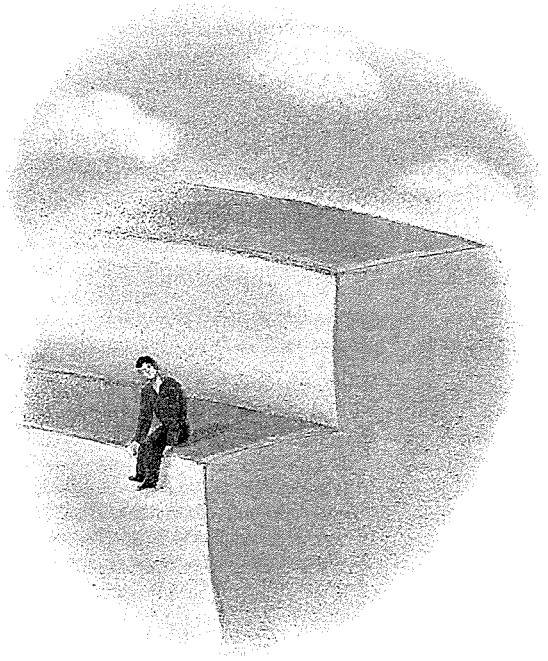
Heirs UNAPPARENT

An anomalous rule of intestate succession triggers a standoff in the courts of appeal



Probate litigators have long had to cope with the fact that their most important witnesses have passed beyond the ability to testify. But more recently, they also have faced increased litigation from an unlikely source: parties seeking to be treated the same as a decedent's natural children, despite the absence of any blood tie or formal adoptive relationship.

The problem began with a murky statute—Probate Code Section 6454[1]—and was complicated by a pair of recent decisions that reached diametrically opposite results on the meaning of a key portion of the statute. The California Supreme Court has never reviewed the issue: in one case there was no petition for review, and in the other the court declined to review or depublish the decision. As a result, estate planning and probate litigation must follow different rules for people who may live as close together as opposite sides of the border between two counties.

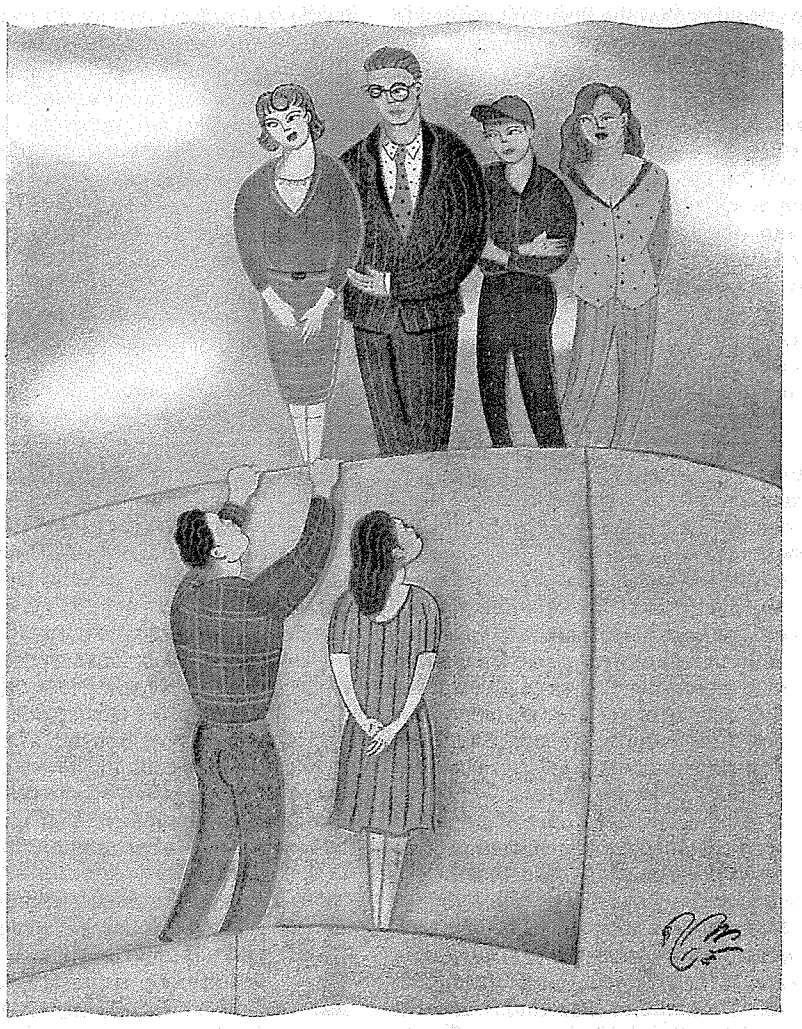
The legislature's creation of intestate succession rights for unadopted foster and stepchildren has injected uncertainty into an area where predictability is essential. The legislature needs to respond to the many problems created by this vague statute by repealing it.

Probate Code Section 6454 creates rules of intestate succession for stepchildren and foster children. It provides:

For the purposes of determining intestate succession by a person or the person's issue from or through a foster parent or stepparent, the relationship of parent and child exists between that person and the person's foster parent or stepparent if both of the following requirements were satisfied:

(a) The relationship began during the person's minority and continued throughout the joint lifetimes of the person and the person's foster parent or stepparent;

(b) It is established by clear and convincing evidence that the foster parent or stepparent would have adopted the person but for a legal barrier.



Probate Code Section 6454 carelessly defines the phrase "relationship of parent and child" with the word "relationship."

This statute was enacted to address the fact that a foster child or stepchild, regardless of the depth and longevity of his or her relationship with foster or stepparents, is not a "child" for purposes of intestate succession under Probate Code Section 26. Section 6454 recognized that it was appropriate in some cases to give this kind of relationship the status of a formal adoption, so that the stepchild would have a natural child's right to inherit by intestate succession.[2]

Unfortunately, this worthy goal was not translated into an intelligible statute.

Section 6454 lists a series of requirements for the establishment of an intestate succession parent-child relationship. It starts off on the wrong foot before even listing the requirements by using a circular definition. The section states that "... the relationship of parent and child exists ... if both of the following requirements are satisfied: [¶] (a) The relationship began during the person's minority ...." The obvious problem is the careless juxtaposition of the phrase "relationship of parent and child" with the word "relationship": the former means the legal relationship that gives rise to intestate succession, but the latter necessarily means some other kind of relationship that, when it exists with other elements, can qualify as the legal—that is, the intestate succession—relationship of parent and child. Unfortunately, the statute never describes what makes up the latter relationship.[3]

Setting this basic definitional problem aside, there are four other distinct requirements that must be met:

- The parent-child relationship—whatever that means—must have begun during the stepchild's minority.
- The parent-child relationship must have "continued throughout the joint lifetimes" of the stepchild and stepparent.
- It must be established by "clear and convincing evidence" that the stepparent "would have adopted" the stepchild.
- It must be established by clear and convincing evidence that the adoption would have occurred "but for a legal barrier."

In both of the appellate decisions construing Probate Code Section 6454, there was no dispute over whether the stepparents and stepchildren had developed the statutorily undefined, but nevertheless required, parent-child relationship. Both appellate courts also concluded (or the parties agreed) that the first three of the above four requirements had been met. The divergence arose in connection with the application of the fourth requirement—whether the stepchild would have been adopted "but for a legal barrier."

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The first decision was *Estate of Stevenson*,[4] a holding by the Sixth District Court of Appeal in San Jose. An intestate decedent's stepchildren sought to share in her estate. The stepchildren (born in 1950 and 1951) and their natural father had separated from the natural mother and had lived with the decedent during the 1950s and then again for a number of years beginning in 1966. They believed the decedent was their mother, and they did not learn otherwise until they were in their thirties. In 1967 the father told the stepchildren's natural mother that the decedent wanted to adopt them, but the natural mother refused her consent. The stepchildren continued their relationship with the decedent until she died in 1990.

The trial court found that the stepchildren met the requirements of Section 6454 (then 6408(e)), and the court of appeal affirmed. After ruling for the stepchildren on the other elements of the claim, the court turned to the "legal barrier" requirement. The appellants (the decedent's natural children and grandchildren) stressed the fact that, although the natural mother's refusal to allow adoption constituted a legal barrier while the stepchildren were minors, the barrier disappeared when the stepchildren became adults—20 years before the decedent died. Therefore, the appellants argued, the court could not conclude that there would have been an adoption "but for a legal barrier," because there had been no legal barrier for 20 years.

The court of appeal disagreed, holding that "it must appear that the legal barrier existed when the parties attempted adoption. It is not necessary that the legal barrier exist until the time the stepparent dies."[5] The court cited *Estate of Lind*[6] for the principle that courts should interpret the term "legal barrier" broadly, "in the spirit of the policy that calls for a liberal interpretation of adoption laws in the best interest of the adopted person."[7] Accordingly, even though the *Stevenson* stepchildren had been adults for nearly 20 years when the decedent died, and even though there had been no overt efforts at adoption at any time after they reached their majority, the court held that they were entitled to the same intestate status as natural and formally adopted children.

Division Five of the Second District Court of Appeal in Los Angeles came to exactly the opposite conclusion on strikingly similar facts in *Estate of Cleveland*.[8] In this case the operative facts were stipulated or conceded for purposes of the summary judgment that led to the appeal. In substance, the putative stepchild and his mother had lived with the decedent when the stepchild was between 12 and 24 years old. During this time the decedent had asked the mother if he could adopt the stepchild, but she refused. The decedent died 16 years after the stepchild reached his majority without ever having taken any steps to adopt him.

The trial court granted summary judgment against the stepchild. The court of appeal affirmed, holding that the amount of time that had passed between the stepchild's majority and the decedent's death precluded a finding that the decedent would have adopted the stepchild "but for a legal barrier."[9]

The court discussed the *Stevenson* decision at length and rejected its analysis. It pointed out that *Lind*, on which *Stevenson* relied, did not involve the duration of a legal barrier to adoption, and the language in *Lind* was dictum. The *Cleveland* court also made clear that it believed it was following a more literal view of the statute. Key to the court's decision was the use of the phrase "but for" in the statute, which "is plain and unequivocal in its meaning . . . . [T]he legal impediment [must be] the actual cause or the cause in fact of the failure to adopt."[10] On this basis, the court concluded that a legal barrier could not possibly be an "actual cause or the cause in fact of the failure to adopt" 16 years after the barrier had disappeared.

Cleveland also took a far more practical view of the statute, in several respects. First, the court recognized that the entire purpose of the statute is to treat the stepchild according to the decedent's wishes, meaning that the failure to attempt adoption during the stepchild's majority is a relevant fact. The only consequence of creating "the relationship of parent and child" under the statute is to confer rights of inheritance. But a decedent who wanted the stepchild to inherit could easily achieve that result by formally adopting the stepchild or including the stepchild in a will. When a decedent does neither, "it is fair to conclude that when many years pass without an adoption after the legal impediment ceases to exist, the decedent had other reasons for not effectuating the adoption."[11]

In the same vein, *Cleveland* recognized that the length of the period between the stepchild's majority and the decedent's death is a relevant factor, since there can be cases "where the decedent dies shortly after the claimant reaches the age of majority and an adoption could not reasonably have been accomplished during the interim."[12] Of course, neither *Stevenson* nor *Cleveland* involved this kind of gray area—in both cases many years had passed between the stepchildren's majority and the decedents' deaths. The Second District apparently was not willing to close the door entirely under certain circumstances.

Cleveland also recognized that *Stevenson*'s interpretation of the statute "would invite sham or marginal claims" that would have to be resolved with "the stalest sort of evidence" in a context where "the decedent is unavailable to rebut these claims asserted by persons with a direct financial interest."[13]

Finally, and most importantly, *Cleveland* sought to "inject[] a strong dose of certainty into the operation" of the statute.[14] The court recognized that anyone who had anything that might be considered a "relationship of parent and child"—a protean concept at best—could be at risk and would have to undertake estate planning that might not otherwise be necessary. *Cleveland* acknowledged that individuals, to say nothing of the lawyers who advise them, should know where they stand.

Perhaps the most striking feature of these two decisions is that they relied on identical principles of statutory construction. In fact, *Cleveland* quoted *Stevenson*'s description of the rules, including the phrase that "when the meaning is plain, we apply it."[15] In spite of the fact that both courts thought the meaning was plain, they came to opposite conclusions. Indeed, they even reached opposite conclusions on the significance of the hypothetical examples they both used to discuss the statute. For instance, the *Stevenson* court believed that its interpretation was *supported* by the fact that "once the child reaches adulthood, the parties may decide that adopting the child is not so important."[16] The *Cleveland* court said that the same fact "would weigh *against* the conclusion that a decedent considered the individual to be one of his or her 'children.'"[17]

Unfortunately, the supreme court declined to review *Cleveland* (the *Stevenson* appellants did not seek review), and it did not depublish either decision. Although it is not uncommon for the supreme court to allow the law to develop in the courts of appeal for a period of time before resolving conflicts among the districts (and sometimes divisions within districts), there are not many situations in which there is such a direct and irreconcilable conflict as the one between *Stevenson* and *Cleveland*. Moreover, unlike most inter-court conflicts, the *Stevenson-Cleveland* conflict exists in an area where predictability and certainty are crucially important. The absence of guidance threatens to create estate planning problems throughout the state for many years to come—in situations where, as the

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Cleveland court noted, the single most important witness is unavailable.

The other districts of the court of appeal are not bound by either decision.[18] Indeed, even the other divisions within the Second District are not obligated to follow *Cleveland*.[19] What law will govern putative adoptions under this statute? What if the "relationship of parent and child" begins and flourishes in Monterey County (in the Sixth District) during the unadopted child's minority, but several years after the child reaches majority, the stepparent moves across the border into San Luis Obispo County (in the Second District) and dies a few weeks later while domiciled there? Since probate proceedings would be proper only in San Luis Obispo County, is the stepchild denied the benefit of the Sixth District's more liberal interpretation of the statute?

There is no answer to these questions. The only reliable advice an estate planner can give to a client is to go through the time and expense of undertaking a formal adoption or preparing a will, even though neither may be necessary for the particular individual in the absence of this decisional conflict. It is particularly troubling that under *Stevenson*, once a stepparent has expressed an interest in adopting a minor, there is no reliable way to back out of the decision short of preparing a formal will that excludes the potential stepchild—assuming the testator even knows there is such a person.

The absence of clear guidance from the courts threatens to create estate planning problems in situations where the single most important witness is unavailable.

The estate planning uncertainties are not limited only to potential stepparents. Under the rules of intestate succession, a parent can inherit from a child—meaning that potential stepchildren, who may not even know that anyone ever asked about adopting them, must be aware that if they happen to die young, a Section 6454 parent may claim their estate.

The real problem, however, is not the conflict between the Second District and the Sixth District; it lies with the fundamental failures of the statute itself.

Section 6454 suffers from terminal vagueness. Before yet another appellate court has to try to remedy the vagueness through reconstructive surgery, the legislature should excise it from the Probate Code. The rationale for doing so is fundamental:

> *An act which is so uncertain that its meaning cannot be determined by any known rules of construction cannot be enforced. If no judicial certainty can be settled upon as to the meaning of a statute, the courts are not at liberty to supply one. It must be capable of construction and interpretation; otherwise it will be inoperative and void. An act is void where its language appears on its face to have a meaning, but it is impossible to give it any precise or intelligible application in the circumstances under which it was intended to operate.*[20]

Although most cases involving challenges for vagueness concern penal or prohibitory statutes, the philosophy of those cases applies equally to civil statutes such as Section 6454.[21] One rule worthy of note is that "'a statute which either forbids or requires the doing of an act in terms so vague that men [and women] of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law.'"[22] Although Section 6454 technically neither "forbids [n]or requires the doing of an act," California's laws governing the descent and distribution of estates should be drafted with the same degree of certainty as that required for penal or prohibitory statutes. The obvious problem with a vague law is that it "impermissibly delegates basic policy matters to . . . . judges and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application."[23]

One strong indicator of Section 6454's vagueness is the amount of appellate review lavished on it during its relatively short life. The first court to consider the statute was Division Three of the Fourth District in *Estate of Claffey*.[24] In its 1989 decision, the court attempted to interpret the term "relationship" as used in the statute. Later that year, Division One of the Second District offered "guidance" to probate courts as to "what meaning should be given to the phrases 'would have adopted' and 'but for a legal barrier.'"[25] Despite this "guidance," only three years later the court in *Stevenson* was forced to consider the questions of whether a "continued" relationship could be "temporarily interrupted" for seven years[26] and whether a "legal barrier" needed only to exist "when the parties attempted adoption."[27]

Within a year after that, the court of appeal in *Cleveland* reached its contrary conclusion. Against the background of the probate law's glacially slow evolution, it is very telling that a statute intended to apply "in very limited situations"[28] has resulted in four published decisions in such a short time.

In enacting Section 6454, the legislature was responding to "many changes in the American family and in public attitudes" and the fact that "more decedents have had plural families and leave adopted children, stepchildren, children born out of wedlock, and relatives of the half-blood."[29] It appears that "[t]he section was adopted to address those situations, as is the usual case, where the custodial parent remarries. The stepparent takes the children into the home, raising them as his or her own, but is refused the right to adopt by the noncustodial parent."[30]

The problem with the legislature's response is that it creates a class of "heirs" whose "rights" to inherit are based solely on varying and unpredictable judicial interpretations of a particular statute. The fact of birth or formal adoption furnishes an objective, immutable basis for determining heirship. In contrast, Section 6454 impermissibly delegates this determination to judges and juries for resolution on an ad hoc, highly subjective basis.[31]

The uncertainty created by Section 6454 is far-reaching. Obviously, it affects decedents who die intestate with the mistaken belief that "the statutory scheme satisfies the basic goal of allowing their closest kin to succeed to their estates."[32] However, the uncertainty also can affect the disposition of the estate of a decedent who leaves a will or trust that is invalidated in whole or in part because of circumstances that create a full or partial intestacy.[33] Since Section 6454 applies in "determining intestate succession by a person or a person's issue from or through a foster parent or stepparent," a stepchild claiming under Section 6454 might argue that his or her inheritance rights must include the same protection afforded to natural or

adopted children under the omitted child statute.[34] In light of the seemingly limitless reach of Section 6454 in the intestate succession area, estate planners may need to advise clients to include a provision in their wills or trusts specifically disinheriting all persons who may have claims under Section 6454.

Section 6454 demonstrates that some matters simply defy reliable, precise definition. Perhaps the fact that no other state has adopted any statute similar to Section 6454[35] suggests that rights of inheritance should be based solely upon facts that can be measured and determined objectively, such as birth and formal adoption. The following phrases from the statute exemplify its lack of precision:

"Family relationships." *Claffey* supplies the best example of the difficulty of resolving Section 6454's vagueness judicially. There the court of appeal affirmed the trial court's instruction to the jury that the "relationship" to which the statute referred is "one 'like that of' a natural parent and child in the sense of a 'family' relationship."[36] The *Claffey* court conceded that:

> *The meaning of [S]ection 6408, subdivision (a) (3) is not so abundantly clear as [appellant] contends. The term "relationship" in subdivision (a) (3) (A) cannot refer solely to the dictionary meaning, i.e., the stepchild/stepparent relationship that arises upon the natural parent's remarriage. If that were true, every remarriage, standing alone, would satisfy part (A) whether the new partner even knew the children or was ever allowed to see them.*[37]

The fact that no other state has adopted a statute similar to Section 6454 suggests that inheritance rights should be based solely on objectively measurable facts.

Unfortunately, the "family relationship" construction adopted in *Claffey* did not add clarity to a statutory provision that *Claffey* itself said was not "so abundantly clear."

What is a "family relationship"? Certainly not every family exhibits the "Father Knows Best" kind of family relationship presented in vintage 1950s television programs. Many families are marked by discord, estrangement, failure of communication, dysfunction, and outright contempt.

Consider this relationship: an adult stepchild, who as a minor would have been adopted but for his natural parent's refusal to consent, is now serving a 10-year sentence for the attempted murder of his late stepparent; the relationship began during the child's minority; and until the stepparent's death, the two wrote monthly hate letters to one another. No

one would seriously claim this is the kind of family relationship that should trigger the rights conferred by Section 6454. But if the hypothetical stepchild were instead natural or formally adopted, his right to inherit from his deceased intestate parent/victim would be indisputable and, like it or not, the relationship would qualify as a "family relationship" by virtue of the birth or adoptive relationship.

Given the range of troubled and abusive parent-child relationships that exist within the broad realm of "family relationships," this hypothetical is not necessarily extreme. One could easily conjure up many more examples of parent-child relationships that clearly are not what the *Claffey* court had in mind when it thought it had resolved an ambiguity in the statute. The court merely shifted to a new ambiguity.

Worse, because the conduct governed by this statute may not come under court scrutiny for many years, today's family relationship may end up being judged by the paradigm of a family that is one or more generations removed—just as today's paradigm no longer resembles the "Father Knows Best" family of a generation ago.

"Continued throughout joint lifetimes." Not only does the statute fail to include a precise definition of the type of relationship that will qualify, but it also requires that this undefinable relationship continue for the joint lifetimes of the stepchild and stepparent. So far, only *Stevenson* has wrestled with the continuity requirement. During the 35-year relationship between the stepchildren and the decedent, there was a period of seven years in which the stepchildren lived with their natural father while he was not living with the decedent. The decedent's natural children claimed that this gap in cohabitation defeated the stepchildren's rights under Section 6454 because the "relationship" did not "continue[] throughout the joint lifetimes" of the stepchildren and the decedent. *Stevenson* determined there was a continuous relationship despite this seven-year hiatus.

After acknowledging the "fluid state of today's family units" and "the frequency of separation and divorce," the court concluded:

> *[E]ven if the relationship between the stepparent and child does not flourish during the separation, the length of time spent together may outweigh the fact that the relationship was temporarily interrupted . . . . A 35-year relationship which is interrupted for several years is certainly* as strong as, *for example, an uninterrupted 15-year relationship. In short, the type of "bright line" rule advocated by appellants would be unnecessarily*

harsh and could lead to unfair results.[38]

In effect, the court took the position that despite the language of the statute, a discontinuous relationship can be legally continuous if it is "strong" enough—whatever that means.

The court also borrowed language from *Claffey* in order to find that where the parties do not reside together continuously (as when stepchildren leave home on reaching adulthood), there can still be a continuous relationship as long as there is a "family relationship."[39] But *Stevenson* came no closer than *Claffey* to reconciling the term "family relationship" with the myriad possible relationships among modern families. Instead, like so many other courts confronted by a vague statute, *Stevenson* held that "[c]ourts should consider the totality of the circumstances to determine whether the relationship satisfies the statutory criteria."[40]

How will any California resident determine what might be considered the "totality of circumstances" as of a yet unknown and unknowable date of death? More importantly, how can anyone know for certain how to end an otherwise continuous relationship if separation alone may not be sufficient?

"Would have adopted but for a legal barrier." Section 6454's vagueness is thrown into stark relief by *Stevenson* and *Cleveland*'s conflicting interpretations of the clause "would have adopted the person but for a legal barrier." Neither the statute nor its legislative history provides any guidance as to when, or for how long, this "legal barrier" must exist during the course of the continuing relationship. In addition to reaching opposite conclusions on the significance of a prolonged failure to adopt a minor after he or she reaches majority, *Stevenson* and *Cleveland* also were in conflict over the question of whether Section 6454's legal barrier requirement was intended to encompass only barriers to the adoption of minors or instead extends to the barriers that may prohibit the adoption of adults.

These contradictory opinions, issued by panels of experienced jurists, emphasize how absurd it is to believe that persons of ordinary intelligence can understand Section 6454 and apply it to their own situations.

The best cure for Section 6454's malady, and perhaps the only cure, is the simplest: it should be repealed. Further, the repeal should be fully retroactive to govern not only all cases pending on the date of repeal, but also all existing relationships that would otherwise come under the statute.

The statute's vagueness and uncertainty cannot be remedied by amend-

ment. Would adding the word "family" before the word "relationship" in the statute provide any greater certainty about what relationships the statute governs? Would adding an express direction to the trial court to consider the "totality of the circumstances," or to consider how "strong" a relationship is, help determine when an otherwise-continuous relationship terminates, or a discontinuous relationship can nevertheless be considered continuous? Would specifying a time during which, or at which, a legal barrier to adoption must exist provide useful guidance as to whether a stepparent's failure to adopt a stepchild resulted from something besides the existence of a legal barrier? The answers are obvious.

Eliminating the rights of stepchildren to inherit under Section 6454 will restore to the laws of intestacy the fundamental predictability and certainty upon which probate and estate planning lawyers and their clients must rely. This result does not affect the ability of a stepparent to provide for inheritance by a stepchild; a will or trust is all that is necessary. While perhaps there is some populist appeal to the notion that people shouldn't need wills or trusts, where stepchildren are concerned it is better to follow a predictable set of rules than to rely on the vagaries of judicial interpretation. ◆

[1] This statute is the descendant of a series of nearly identical, but differently numbered, code sections. PROB. CODE §6454 was added by 1993 Cal. Stat., ch. 529, §5. The original statute was §6408(a)(2) (1983 Cal. Stat., ch. 842, §55). There were three more versions: §6408(a)(3) (1984 Cal. Stat., ch. 892, §41.5), §6408(b) (1985 Cal. Stat., ch. 982, §21), and §6454's immediate predecessor, §6408(e) (1990 Cal. Stat., ch. 79, §14). For ease of reference, all citations to the statute are to §6454 unless the context requires otherwise.

[2] The statute does not include definitions of "foster child" or "stepchild"; in fact, the PROB. CODE doesn't define those terms anywhere. For ease of discussion, this article uses "stepchild" and "stepparent" to cover both foster child and stepchild relationships in which a child seeks to achieve an intestate succession relationship of parent and child.

[3] The statute was not always burdened by this circularity. The original version said, "The relationship between a person and his or her foster parent or stepparent has the same effect as if it were an adoptive relationship if" various conditions were met. The amendment of this language, designed to eliminate a potentially unintended result (*see* Estate of Claffey, 209 Cal. App. 2d 254, 257 note 2 (1989)), unfortunately only made the statute less clear.

[4] 11 Cal. App. 4th 852 (1992).

[5] *Id.* at 866.

[6] 209 Cal. App. 3d 1424 (1989).

[7] 11 Cal. App. 4th at 866.

[8] 17 Cal. App. 4th 1700 (1993).

[9] The underlying dispute was different from Stevenson, in that the summary judgment motion

concerned the stepchild's standing to recover (for the benefit of the estate) property held in a trust created by the decedent. Unless he could prove a right to intestate succession via §6454 (then §6408(e)), the stepchild would be a stranger to the estate and therefore not entitled to pursue recovery of the trust property as an "interested person" under PROB. CODE §48(a)(1). This procedural difference did not affect the question of whether the stepchild complied with the requirements of §6454.

[10] 17 Cal. App. 4th at 1709.
[11] *Id.* at 1710.
[12] *Id.* at 1711.
[13] *Id.*
[14] *Id.* at 1712.
[15] *Id.* at 1709.
[16] 11 Cal. App. 4th at 866.
[17] 17 Cal. App. 4th at 1710 (emphasis added).
[18] L.A Police Protective League v. City of Los Angeles, 163 Cal. App. 3d 1141, 1147 (1985).
[19] *Id.*
[20] In re Di Torio, 8 F.2d 279, 281 (N.D. Ill. 1925).
[21] "The requirement that a law be definite and its meaning ascertainable by those whose rights and duties are governed thereby applies not only to penal statutes, but to laws governing fundamental rights and liberties." Perez v. Sharp, 32 Cal.2d 711, 728 (1948).
[22] Franklin v. Leland Stanford Junior University, 172 Cal. App. 3d 322, 347 (1985), *rev den.*, quoting Connally v. General Const. Co., 269 U.S 385, 391 (1926).
[23] Music Plus Four, Inc. v. Barnet, 114 Cal. App. 3d 113, 126 (1980).
[24] 209 Cal. App. 3d 254 (1989).
[25] Lind, 209 Cal. App. 3d at 1434 (1989).
[26] 11 Cal. App. 4th at 861 (1992).
[27] *Id.* at 866.
[28] Claffey, 209 Cal. App. 3d at 258.
[29] 16 CAL. LAW REVISION COM. REP. 2301, 2318 (1982).
[30] Claffey, 209 Cal. App. 3d at 258 note 4.
[31] PROB. CODE §6454.
[32] Cleveland, 17 Cal. App. 4th at 1713.
[33] *Id.* at 1707 note 9.
[34] PROB. CODE §6570 affords protection for children of a testator born or adopted after the execution of a will in which the testator fails to provide for them. In this circumstance, the omitted children are entitled to succeed to an intestate share of the decedent's estate despite the existence of a contrary plan of distribution under the will.
[35] *See* Cleveland, 17 Cal. App. 4th at 1704-05 note 6.
[36] 209 Cal. App. 3d at 257.
[37] *Id.* at 257-58.
[38] Stevenson, 11 Cal. App. 4th at 861 (emphasis added).
[39] *Id.* at 861-62.
[40] *Id.* at 862.

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