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NOTES

RECENT REFORMS IN THE LAW OF ESTATES, WILLS AND TRUSTS

The New York State Legislature, in 1961, created the Temporary Commission for the Modernization, Revision and Simplification of the Law of Estates [hereinafter referred to as the Commission on Estates] for the purpose of correcting the defects in the laws relating to estates and their administration by "modernizing, simplifying, and improving such law and practice."¹ The Commission on Estates has decided that the means most likely to result in legislative acceptance of its proposals, as well as their easy assimilation into the working knowledge of the practicing profession, was to consider each general area of the law of estates separately and to submit its proposals yearly to the legislature for enactment.² Thus, after a period of years, it is hoped that a complete modernization of the law of estates will have been accomplished.

As a result, in the past few years, several amendments to the Decedent Estate Law, Personal and Real Property Laws, and the Surrogate's Court Act have been enacted, which reflect the recommendations of the Commission on Estates. Many of these amendments are of a technical and procedural nature with the purpose of increasing the uniformity and fluidity of the mechanics of estate practice. Some codify case law rules. Many others, however, make substantial changes in New York law, as enunciated in prior cases and statutes. It is the intent of this note to carefully examine the most significant of these substantive changes enacted in 1965. Proceeding statute by statute, former New York law will be developed in detail, defects will be pointed out, and the amendments will be evaluated.

Classification and Enumeration of Future Estates

Article three of the New York Real Property Law deals with the creation, classification and definition of estates in real property.

For over seventy years, sections 35 to 41, in particular, have delineated the definitions and distinctions between future estates, i.e., those in which the right of possession is postponed to a future time. More precisely, under a provision of the Real Property Law, estates have been divided into estates in possession, i.e., those entitling the owner to immediate possession of the property, and estates in expectancy, i.e., those postponing possession to some future time. Estates in expectancy were limited to those enumerated in the article, which were divided into future estates and revocations.

Thereafter, the statute defined future estates, remainders and revocations in accordance with their common-law meanings. Finally, it was provided that a future estate must be either vested or contingent—vested when an ascertained person exists who would have an immediate right to possession of the property on the determination of all the intervening estates, and contingent "while the person to whom or the event on which it is limited to take effect remains uncertain." 

A source of some confusion has arisen because section 40 purportedly provides for mutually inconsistent categories of future estates. In practice these estates tend to overlap because they fit both definitions. For example, "Blackacre to B for life, and upon B's death remainder to C, if he is then living," is subject to two constructions. First, C could be held to have a contingent future interest, contingent upon his survival of B. Secondly, C may have a vested interest, subject to divestment in the event that he does not survive B. Therefore, New York courts in their effort to effectuate the testator's (or transferor's) intent, have developed four distinct categories of future interests. The future estate indefeasibly vested, the future estate vested subject to open, the future estate vested subject to complete defeasance, and the future estate subject to condition precedent, have each been

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3 N.Y. REAL PROP. LAW § 35 (effective until June 1, 1966).
4 N.Y. REAL PROP. LAW § 36 (effective until June 1, 1966).
5 N.Y. REAL PROP. LAW § 37; N.Y. REAL PROP. LAW §§ 38, 39 (effective until June 1, 1966).
6 N.Y. REAL PROP. LAW § 40 (effective until June 1, 1966).
7 See 1962 N.Y. LEG. DOC. NO. 65, N.Y. LAW REVISION COMM’N REP. (C) 5.
9 Dougherty v. Thompson, 167 N.Y. 472, 483, 60 N.E. 760, 763 (1901) ("The intention is the paramount rule of construction.").
12 supra note 9; Burns v. Stilwell, 103 N.Y. 453, 9 N.E. 241 (1886).
14 Kelso v. Lorillard, 85 N.Y. 177 (1881). Professor Simes further divides contingent remainders into the following categories: "(a) where the remainder
recognized in New York. These are the categories of future estates likewise recognized by the Restatement and other eminent authorities.\(^\text{16}\)

The Commission on Estates followed through on prior recommendations of the Law Revision Commission\(^\text{16}\) and added further suggestions of its own to redefine and redivide the statutory scheme of future estates in order to clarify, unify and simplify the pertinent sections. The legislature, adopting the Commission's proposed revisions, has therefore made extensive changes in the language of the provisions in article three dealing with "future estates." One important change is the elimination of the old term "estate in expectancy" since the traditional definition of future estates is believed to include that concept.\(^\text{17}\) The amended section 35 (effective June 1, 1966) divides estates in property into "estates in possession" and "future estates." The definition of future estates remains unchanged: they are estates limited to commence in possession at some future day either with or without the determination (or intervention) of a precedent estate created at the same time. New section 36 divides future estates into estates left in the creator, \textit{i.e.}, reversions, and estates created in favor of persons other than the creator, \textit{i.e.}, remainders. The amendments redefine remainders and reversions, but only to perfect the language of existing statutory expressions of these common-law concepts.\(^\text{16}\)

In altering section 40 (effective until June 1, 1966), which unsuccessfully divides future estates into either vested or contingent, the legislature made sweeping changes in the language of the section, but no change in the substance of New York law. It merely codified prior judicial interpretations of section 40 when it enacted new sections 40-40-c (effective June 1, 1966). The amendments recognize four kinds of future estates: \(^\text{19}\) (1) Indefeasibly vested estates—those created in favor of ascertained persons in being which when created are certain to become an estate in possession, \textit{e.g.}, "Blackacre to A for life, remainder to C and his heirs" (\(C\) has a future estate indefeasibly vested); (2) Estates

\(^{15}\)Restatement, Property § 157 (1936); 2 Powell, Real Property §§ 275-78 (1950); 1 Simes & Smith, op. cit. supra note 14, §§ 110-14.

\(^{16}\)Supra note 7.

\(^{17}\)See 4 Estates Report 436.

\(^{18}\)Id. at 443-64.

\(^{19}\)These statutory definitions are modeled on those of the American Law Institute and Professor Powell, which are cited in note 15, supra. See also Restatement, Property § 157, comment (1936) for a detailed explanation of the examples.
vested subject to open—these are the same as those indefeasibly vested except that the estate is subject to diminution by reason of other persons becoming entitled thereto, e.g., “Blackacre to B for life, remainder to B’s children”; C is B’s first child (C has a future estate which is vested subject to open—to let in other children of B); (3) Estates vested subject to complete defeasance—those in favor of ascertained persons in being which will become estates in possession at the expiration of preceding estates but which are subject to termination as provided by the creator, e.g., “Blackacre to B for life, remainder to B’s devisees and legatees, with a power of appointment given to B, but if B fails to exercise the power, remainder to C and his heirs” (C has a future estate subject to complete defeasance if B exercises the power); (4) Estates subject to a condition precedent—those in favor of unborn or unascertained persons or dependent upon the occurrence of an uncertain event, e.g., “Blackacre to B for life, remainder to C and his heirs but only if C shall attain the age of 21 years” (while he is a minor C has a future estate subject to a condition precedent).

The amendments to article three effect no notable changes in the law. Primarily they eliminate superfluous definitions and classifications of future estates. In so doing, a clear and unambiguous scheme of permissible future estates has been created. Existing definitions of recognized common-law concepts have been made more accurate. Furthermore, reform in the manner in which estates vested was a proper subject of change and one which had been urged upon the legislature for many years.

Validity of “Pour-over” Provisions

“Pour-over” provisions in a will are generally utilized as a method for devising additional property in accordance with the terms of a pre-existing inter vivos trust. “Pour-over” bequests and devises are usually found in the residuary clause. In New York, an analysis of conflicting case law leaves some doubt as to the circumstances under which these provisions will be held valid. Historically, the method employed by a testator in an effort to expand a will beyond the confines of the written instrument itself was incorporation by reference. To give effect

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20 See Samuels, Incorporation By Reference In New York Wills, 19 N.Y.U.L.Q. 270, 271-72 (1942). Basically, the common-law requirements for incorporation were as follows: (1) a description, in the will, sufficient for identification of an extrinsic dispositive writing, in addition to a cross reference to the will in the extrinsic instrument; (2) proof that the writing referred to was actually in existence at the time the will was executed; and, (3) an intent, manifested in the will, to incorporate the existing instrument. Id. at 272.
to his intention, a pre-existing and extrinsic writing was referred to in the will. In general, this reference was sufficient to permit the terms of the extrinsic instrument to be incorporated into the will itself.\textsuperscript{22} New York adopted this common-law doctrine.\textsuperscript{23} In 1828, however, New York provided, by statute, that in order for a will to be properly executed, it had to be subscribed by the testator “at the end.”\textsuperscript{24} Initially, there was no indication of how this statute would affect incorporation by reference, since judicial construction of the statute had not yet been undertaken. The specific question to be decided was whether the statute, requiring subscription of a will “at the end,” would be interpreted so as to preclude the incorporation technique.

The New York Court of Appeals, in\textit{Matter of O’Neil},\textsuperscript{25} decided the subscription issue, holding that it is the \textit{physical} end of the instrument, as opposed to its \textit{logical} end, to which we must look for subscription. This decision, excluding an extrinsic instrument, therefore disallowed incorporation by reference.\textsuperscript{26} Chief Justice Ruger, by way of dictum, surmised that the “legislative intent was doubtless to guard against frauds and uncertainty in the testamentary disposition of property.”\textsuperscript{27} Shortly thereafter, this attitude toward incorporation of an extrinsic instrument became firmly established as a judicial rule of exclusion.\textsuperscript{28} Thus, the New York courts abandoned the common-law doctrine, finding it to be in opposition to the basic principles of the statute requiring subscription at “the end of the will.”

... Although some subsequent cases validated devises or bequests contained in extrinsic instruments,\textsuperscript{29} the rationale of the exclusionary rule was not re-examined in light of contemporary considerations of practicality until 1932, when the Court of Appeals decided

\textsuperscript{22} E.g., Newton v. Seaman’s Friend Soc’y, 130 Mass. 91 (1881). “If a will, executed and witnessed as required by statute, incorporates in itself by reference any document or paper not so executed and witnessed, ... the paper referred to therein, takes effect as part of the will, and should be admitted to probate as such.” \textit{Id.} at 93.


\textsuperscript{24} N.Y. Sess. Laws 1828, ch. 6, § 40, as amended, N.Y. DECED. EST. LAW § 21(1).

\textsuperscript{25} 91 N.Y. 516 (1883).

\textsuperscript{26} Booth v. Baptist Church, 126 N.Y. 215, 247-48, 28 N.E. 238, 242 (1891). It was enunciated in this case that an unattested dispositive paper could not be incorporated into the will, even though the paper was sufficiently identifiable. \textit{Ibid.}

\textsuperscript{27} \textit{Matter of O’Neil}, 91 N.Y. 516, 520 (1883).

Matter of Rausch. There, the deceased stipulated that an existing trust, which he had established for his daughter, be increased by the residue of his estate. It was evident that the testator had attempted to incorporate into his will the agreement creating the trust. However, in addition to incorporation by reference, another element was present—-independent significance. Although this term has not been precisely defined, it has been stated that, if the facts identifying and explaining the gift expressed in the will have significance outside the will, then the disposition will be valid. For example, a reference to an existing trust will be permitted, since the trust is self-sustaining and has separate meaning and existence apart from the will. Therefore, an identifying reference to the trust is a sufficient expression of the gift itself. As a result, it is apparent that the Court afforded decisive weight to the concept of independent significance as a justification for incorporation by reference.

Subsequent cases have substantiated this decision so that it is now indisputable that a “pour-over” provision from a will to an existing trust agreement, merely identified by the will, must be given effect. Nevertheless, while this rule itself has been recognized, confusion exists as to the impact of certain variants upon the inter vivos trust. These problems may be stated as follows:

(a) should a “pour-over” be permitted only where the inter vivos trust is unamendable; or,
(b) if amendable, only if it has not been amended; or,
(c) if amended, only if the amendments are immaterial; or,
(d) if amended, only where the amendments were made with testamentary formality?

Section 47-g of the Decedent Estate Law was proposed by the Commission on Estates in order “to resolve doubts as to the extent to which it is permissible in New York, to devise, bequeath or appoint property . . . to the trustee of an inter vivos trust. . . .”

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30 258 N.Y. 327, 179 N.E. 755 (1932).
31 See Matter of Fowles, 222 N.Y. 222, 233, 118 N.E. 611, 613 (1918); see also 2 Estates Report 290-98.
33 See id. at 331, 179 N.E. at 756.
34 Id. at 333, 179 N.E. at 757.
36 See, e.g., President & Directors of Manhattan Co. v. Janowitz, 260 App. Div. 174, 21 N.Y.S.2d 232 (2d Dep't 1940); Fifth Third Union Trust Co. v. Wilensky, 70 N.E.2d 920 (Ohio 1946), which are suggestive of these problems. See also Scott, The Law of Trusts 1941-45, 59 Harv. L. Rev. 157, 167 (1945).
It appears that the statute will be successful in accomplishing its ordained purpose. Effective June 1, 1966, section 47-g provides that a "pour-over" trust will be valid when the trust is executed and acknowledged by the parties thereto, "prior to or contemporaneously with the execution of the testator's will or codicil and identified therein." Where the trust instrument is amendable or revocable, it will nevertheless be given effect as it appears in writing on the date of the testator's death. All amendments subsequent to death shall be effective only if the testator so declares in his will. Consequently, only a revocation or termination of the trust before the testator's death will cause the devise or bequest to lapse. Even under these circumstances, the disposition will not lapse where a specific alternative provision has been made.

The liberal treatment afforded "pour-over" trusts by the legislature should have a decided effect upon their continued use. Now, a testator desirous of providing for someone after his death, need only create a nominal inter vivos trust for the beneficiary and provide for an increase through an appropriate provision in his will. This arrangement benefits both the testator and the beneficiary. During the testator's life, he may utilize the assets intended for the trust and, at the time of his death, the increment in the trust will not be subject to estate taxes, since a "pour-over" trust becomes part of an inter vivos trust, which by definition is a non-testamentary trust.38

Application of Principal to Income Beneficiary

A spendthrift trust is defined as one which provides that its income shall not be alienated by the beneficiary by anticipation or be taken by the beneficiary's creditors in advance of payment to him.39 In New York, by statute, all express trusts under which the beneficiary is to receive the rents and profits of real property or the income of personal property are spendthrift trusts. Sections 103 of the Real Property Law and 15 of the Personal Property Law expressly provide that the right of a beneficiary to receive such rents, profits and income "can not be transferred by assignment or otherwise." 40 Furthermore, the courts have held that these statutes render indestructible valid testamentary trusts, so that neither the trustee, the beneficiary nor the courts may alienate the trust property or invade the principal of the trust unless the settlor provides otherwise.41

38 Id. at 292.
There has been an extended and articulate controversy as to
the wisdom of New York's policy that all income trusts are spend-
thrift trusts unless the settlor expressly provides to the contrary.
This interpretation by the courts overlooks the probable intent of
the drafters of the statute,\(^42\) that the section was to be applicable
to persons who were true spendthrifts, persons who require pro-
tection from themselves.\(^43\) Argument has centered about the com-
patibility of such trusts with New York's strong policy of free
alienability,\(^44\) their effect on economic initiative,\(^45\) and their effect
in insulating a part of the real wealth of the beneficiary from his
creditors.\(^46\)

Over a period of time, statutory amendments have considerably
relaxed the apparent intractability of case-law interpretation of what
constituted a spendthrift trust. For example, while the settlor of
an inter vivos trust is still alive, the trust can be revoked with
his consent and that of all other beneficially interested parties.\(^47\)
The interests of the beneficiary's creditors have been substantially
protected by provisions which allow them to attach the income of the
trust in excess of the needs of the beneficiary for support and
education.\(^48\) In addition, there are procedures which enable a
creditor to garnish a maximum of ten per cent of the income of
the trust fund, and to apply to the debt such portion as the court
may decide proper with due regard for the debtor and his family's
support requirements.\(^49\) These amendments are primarily procedural
phenomena, and were not intended to abrogate the principle upon
which the statute relating to spendthrift trusts was predicated.

In the absence of authority from the settlor or statutory mandate,
neither the beneficiary nor the trustee can alienate the trust res.
However, "these restrictions on the alienation by a beneficiary of
income under a trust fund do not apply to gifts of specific amounts
payable out of both income and principal."\(^50\) In addition, the mere

\(^{42}\) 1 N.Y. REV. STAT. tit. 2, ch. 1, § 55 at 728 (1829), now in N.Y. REAL
PROP. LAW § 103.

\(^{43}\) See Walsh, Indestructible Trusts and Perpetuities in New York, 43
YALE L.J. 1211, 1234 (1934). See also Leggett v. Perkins, 2 N.Y. 297, 308-09
(1849).

\(^{44}\) Sparks, Policy Considerations: Alienability of the Beneficial Interest in
a Trust in New York, 9 BUFFALO L. REV. 26, 29-30 (1959); See also Niles,

\(^{45}\) See Walsh, supra note 43, at 1229-30. But see Griswold, SPENDTHRIFT
TRUSTS § 555 (2d ed. 1947).

\(^{46}\) Ibid.

\(^{47}\) N.Y. REAL PROP. LAW § 118; N.Y. PERS. PROP. LAW § 23 (supp. 1965).
However, once the settlor dies, inter vivos trusts become virtually impossible
to revoke. See Culver v. Title Guarantee & Trust Co., 296 N.Y. 74, 70
N.E.2d 163 (1946).

\(^{48}\) N.Y. REAL PROP. LAW § 98.

\(^{49}\) CPLR 5205(e) (1).

\(^{50}\) See Matter of Trumble, 199 N.Y. 454, 92 N.E. 1073 (1910).
fact that the trustee is empowered to invade the corpus does not, ipso facto, permit the beneficiary to alienate his interest.\(^5\)

The 1963 report of the Commission on Estates recommended that the beneficiary's right to the income of these spendthrift trusts be made alienable to a limited extent, and that the courts be empowered to invade the trusts in cases where the income beneficiary is destitute and incapable of educating or supporting himself.\(^2\)

Pursuant to this recommendation, the legislature, in 1964, amended the existing sections of the Real and Personal Property Laws.\(^3\) Likewise, Section 103-a was added to the Real Property Law, and Section 15-a was added to the Personal Property Law. Both sections permit a court, having jurisdiction over an income trust, to invade the principal of such trust under the proper circumstances, unless the instrument creating the trust provides otherwise. The court may make an allowance from the principal to any income beneficiary whose support or education would not otherwise be sufficiently provided for. Before the invasion is effected, however, the court must be satisfied that the intent of the settlor would more nearly be carried out by invading the trust.\(^4\)

The changes effected by the 1965 amendments were necessary adjustments to eliminate the hardship that the mandatory spendthrift trust had caused in New York. Problems often resulted when careless draftsmanship omitted express authorization to invade principal when the income made payable to the beneficiary became insufficient for the purposes intended by the settlor. In addition, few draftsmen were perspicacious enough to contemplate the effect of inflation on the value of the trust income, which left many beneficiaries with a virtually worthless right to minimal income and no opportunity to make use of the still valuable, but unreachable

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\(^2\) 2 Estates Report 31.

\(^3\) N.Y. Real Prop. Law § 103(1)(b) (supp. 1965); N.Y. Pers. Prop. Law § 15(1)(b) (supp. 1965). The sections in effect provide that the beneficiary of an express trust, to receive rents and profits, may transfer any amount in excess of ten thousand dollars of the annual income he is to receive to certain enumerated persons. Such assignments shall be effective for the period of one year.

"Under present law, future trust income is unassignable and is taxable to the income beneficiary. The amendment changes the law only to the extent that income beyond the needs of the beneficiary may be assigned within the family so that greater after-tax income is available." 2 Estates Report 456.

\(^4\) N.Y. Real Prop. Law § 103-a(2) (supp. 1965). The principal is susceptible of invasion only to the extent the income beneficiary, in whose favor the invasion is made, is entitled to the principal of the trust property; or, in the event that the income beneficiary be not entitled to the principal of the trust property, if all persons beneficially interested in the trust, being adult and competent, consent in writing to the invasion, to the extent such persons consent thereto. See N.Y. Real Prop. Law § 103-a(1)-(3) (supp. 1965).
principal. These adjustments do much to render the mandatory spendthrift trust tolerable, but they necessarily indicate the rejection by the legislature of more substantial change.

The more important, and as yet unresolved, question is whether all income trusts should necessarily be considered spendthrift. The Commission on Estates seems to have begged the question by concluding that the intent of the testator or settlor is fulfilled when the trust he has created is interpreted as being inalienable and indestructible. The Commission report concludes that the settlor could have made an outright gift if he desired to avoid the effects of a spendthrift trust. Responsible critics have offered alternatives which deserve more consideration than the Commission has apparently given them.

It would be feasible to develop a statutory procedure by which spendthrift income trusts are permissible rather than mandatory. The testator's intent to protect the trust from the beneficiary could be given effect by allowing him to create a spendthrift trust if he expressly provides for one. It might even be wise to restrict his power to create spendthrift trusts to those income trusts for the benefit of true spendthrifts. Certainly these proposals merit the serious consideration of the legislature and the Commission.

Uniform Principal and Income Act

The adoption of the Uniform Principal and Income Act, dealing with the apportionment and allocation of principal and income in trusts, has been considered desirable by many states. Here, in one concise unit, convenient and workable rules are set forth for fiduciaries who must deal with apportionment problems peculiar to decedent's estates, with particular attention to business operations, disposition of natural resources, sale of timber, property subject to depletion, underproductive property and bond purchases. For purposes of this statute, principal is any property which has been set aside by the owner, or person legally empowered, to be delivered to a remainderman. Any return on, or use of, such principal, whether in money or property, is income, and as such, goes to the income beneficiary.

Recognizing both the need for uniformity in the area, and the practical convenience of codification of the law, the Uniform Principal and Income Act was adopted, with slight modifications, on

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55 2 Estates Report 509.
56 See Walsh, supra note 43, at 1237-39; Sparks, supra note 44, at 31-32.
57 At least twenty-four states have thus far enacted statutes similar to the Uniform Principal and Income Act. 3 Estates Report 422 n.8.
June 1, 1965, and has been enacted in Article 2-A of the New York Personal Property Law.60

The scope and applicability of this statute is immediately delimited by section 27-a(1), wherein it is stated that the trust shall be administered "in accordance with the terms of the trust instrument, notwithstanding any contrary provisions of this article"; and, by section 27-a(2), which declares that where the trust instrument bestows discretionary power upon the trustee, an inference of abuse of this power shall not arise from the fact that the trustee makes allocations contrary to the provisions of the article.

Therefore, it is evident that the terms of the trust instrument, including a grant of discretionary power to the trustee, will prevent the operation of the statute in relation to the administration of a particular trust. Within its purview, article 2-A has notably changed pre-existing New York law in at least three areas. First, by proportionally increasing the rights of tax-exempt organizations when they share, with a non-exempt legatee, in the distribution of net income earned by the administration of an estate. Secondly, by abandoning the fiction of "implied intention of the testator," which cast upon the fiduciary an imperative duty to sell all underproductive property in which both a life beneficiary and a remainderman had an interest. That is, since underproductive property would not yield sufficient income for the life beneficiary, it was believed that, by converting the property to money and distributing the proceeds between the two interests, the testator's true intention would be effectuated. Thirdly, the statute provides a sound basis for the apportionment of all stock distributions between principal and income.

The first change, concerning the distribution of net income earned by the administration of an estate, was effected to negate the influence of prior decisional law. For example, in 1962, the New York Court of Appeals held that net income earned during the administration of an estate (after the initial estate tax had been paid but prior to distribution) should be distributed among tax-exempt organizations and non-exempt residuary legatees in accordance with their interests in the estate as set forth in the will, not in proportion to the respective values of the estate, considered after the payment of taxes.61 Thus, although it was recognized that the amount of the trust was increased by an amount equal to the non-taxable legatee's exemption,62 nevertheless, all net income earned

60 See 3 Estates Report 421-22.
62 N.Y. Deced. Est. Law § 124(3)(ii) (sup. 1965) provides that when apportioning federal and state estate or other death taxes, any deduction or exemption allowed by reason of the relationship of any person to the decedent, or by reason of the charitable purposes of the gift, shall inure to the benefit
by the administration of the estate, including money directly attributable to the tax exemption, was divided equally.

Newly enacted Section 27-d of the New York Personal Property Law now provides that "income earned during the further administration of the estate . . . shall be distributed to the residuary legatees in proportion to their interests in the residuary estate after the making of such [estate or inheritance tax] payment." (Emphasis added.) This modification relates specifically to the inherent inequity of the distribution made in Matter of Shubert,63 and changes the law in this regard.

A hypothetical will illustrate this change. Assume that a $1,000,000 estate is to be distributed evenly between two residuary legatees, of which one has a tax exemption. The taxable estate is $500,000,64 on which a tax of $145,700 is paid.65 At this point, the exempt legatee is entitled to $500,000, while the other legatee will receive $354,300. Thus, the tax exempt legatee actually receives approximately 59% of the net estate of $854,300. This conclusion is not in dispute.66 Assume, however, that the net estate is not distributed, but rather is administered and produces additional income of $100,000. Under the Shubert rule, each legatee would then receive 50% or $50,000. The new statute, on the other hand, directs distribution of this income in proportion to each legatee's interest in the net estate, i.e., cognizance shall be taken of each party's interest in the net estate. Thus, the exempt legatee will receive 90% of the income or $59,000 and his co-legatee will be entitled to $41,000. This result is justified on a proportional basis, i.e., if an income of $834,300 returns $100,000, a similar income investment of $500,000 would return $59,000.

Tax exemptions for charitable, religious and scientific organizations have been created on a policy basis.67 Section 27-d is consistent with the intent of both state and federal tax laws, since it permits the exempt legatee to receive his proper share of the net income earned by the administration of an estate.

The second change effected by this statute has eliminated the fiction that, should a devise or bequest of property subsequently become underproductive, the testator will be deemed to have intended a sale at his death with an allocation of the proceeds between the income beneficiary and the remainderman. For example, in the

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65 Int. Rev. Code of 1954, § 2001. The figures employed herein are based on the present tax rate.
66 See ibid.
case of *Lawrence v. Littlefield*, the court was faced with the claim that the residuary estate was not producing sufficient income to realize the testatrix’s intention of providing for the plaintiff, her niece, as a life beneficiary. In addition to naming her niece as income beneficiary of the estate, the testatrix provided the trustees with a power of sale over the income producing property. The court held that the testatrix impliedly intended that plaintiff receive a determinable minimum monthly income from the estate. In order that this “intention” might be fulfilled, the court ordered the trustee to sell the real estate in question as quickly and advantageously as possible. Plaintiff was entitled to income payments from the proceeds of the sale computed from the time of the testatrix’s death. In addition, plaintiff was to receive income payment in the future from this same source. The defendant’s remainder was thereby altered and became the balance of the proceeds from the sale which might remain upon the plaintiff’s death.

In an effort to do away with both the fiction of implied intention and the uncertainty of the amounts allocable thereto, the legislature enacted a provision under which all property, excluding listed securities, which does not produce an average net income of one per cent per annum of its inventory value for more than a year, shall be sold and the proceeds allocated, according to a schedule established by the statute, between principal and income.

The substitution of a concrete rule in place of the former fiction will eliminate much litigation concerning both implied intention and the question of productiveness. Moreover, to statutorily declare that an earning capacity of one per cent or less prima facie reduces an asset to the underproductive class is certainly reasonable. In addition, the statute provides a safeguard to the remainderman.

The third significant section of article 2-A concerns the apportionment between principal and income of distributions of stock made to a trustee by a corporation or an association. The need for such a provision becomes evident upon an analysis of the historical developments in this area.

In 1913, the Court of Appeals decided *Matter of Osborne*. There, the court required that cognizance be taken of the following considerations in allocating stock distributions between principal and income: whether or not it is any part of a stock split or stock dividend; whether profits that are capitalized are properly repre-

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69 *Id.*, at 582-83, 109 N.E. at 618.
70 *Ibid.*; see 3 Estates Report 457-60.
72 3 Estates Report 458.
74 209 N.Y. 450, 103 N.E. 723 (1913).
sented; and, finally, the intrinsic or intact value of the stock and its value after distribution. It was only after making these difficult and time-consuming determinations that the trustee was permitted to allocate the distribution.\textsuperscript{75}

In an effort to simplify the procedure necessitated by this Osborne rule, Section 17-a of the New York Personal Property Law was enacted in 1926, whereby “any dividend which shall be payable in the stock of the corporation or association declaring . . . such dividend . . . shall be principal and not income of such trust.” The statute, however, failed to classify stock distributions other than stock dividends, \textit{e.g.}, the right to subscribe to shares of other securities issued by the distributing corporation or association.\textsuperscript{76}

In the latter situation, the trustee was forced to depend upon decisional law to guide his course of action. In such instances, the trustee was not even permitted to rely upon the designation corporate directors placed on the distribution.\textsuperscript{77} Indeed, it has been repeatedly stated that: “[W]hat is capital to the corporation may be income to the trust and what is income to an ordinary shareholder may be corpus to a trust shareholder.”\textsuperscript{78} A change in the times often caused a corresponding change in the judicial treatment of stock distributions. In 1958, the contrariety of views concerning distributions of stock was presented to the New York Court of Appeals by seven trust companies, in an application for leave to appeal, each contending that trustees were unable to rely upon prior decisions as guides to proper treatment of distributions of a generally similar character.\textsuperscript{79} However, on appeal, the Court not only refused to end the chaotic situation, but Judge Burke placed the onus of change on the legislature.\textsuperscript{80}

The legislature’s response \textsuperscript{81} abrogates the Osborne rule and its modifications. This statute is an extensive codification of all distributions of stock from either a corporation or an association. All distributions can now be apportioned quickly, simply and authoritatively. The significance of this statute does not lie in the nomenclature it bestows on any particular distribution. On the contrary, its inherent importance is indicated by the fact that \textit{definite classifications now exist for each distribution}.

\textsuperscript{75} See \textit{id.} at 475, 103 N.E. at 730. “[I]n each case the courts should look into the facts, circumstances and nature of the . . . dividend and the rights of the contending parties according to justice and equity.” \textit{Ibid.}


\textsuperscript{77} Matter of Osborne, 209 N.Y. 450, 476, 103 N.E. 723, 730-31 (1913).

\textsuperscript{78} Matter of Payne, 7 N.Y.2d 1, 23, 163 N.E.2d 301, 312, 194 N.Y.S.2d 465, 481 (1959) (dissenting opinion). See also Robertson v. de Brulatour, 188 N.Y. 301, 80 N.E. 938 (1907); McLouth v. Hunt, 154 N.Y. 179, 48 N.E. 548 (1897).

\textsuperscript{79} 2 Estates Report 198-99.


\textsuperscript{81} \textit{Supra} note 73.
Election by Surviving Spouse

At common law, dower and curtesy protected surviving spouses against disinherition by vesting each with life estates in the real property of the other. In the twentieth century, with wealth concentrated primarily in personal property, dower and curtesy were easily evaded by technical transfers, and merely resulted in hindering the alienability of property. With the dual objective of guarantying the surviving spouse a larger and fairer share of the deceased's estate, and of assuring that real property would be more alienable, the legislature, as of August 31, 1930, abolished curtesy and dower prospectively and enacted Section 18 of the Decedent Estate Law. This section provided the surviving spouse with a limited personal right to elect against the will and to take the share he or she would have been entitled to in intestacy. The right of election was not absolute, and certain minimal dispositions in favor of the survivor could insulate the estate from attack.

Section 18 was defective in certain respects since, in protecting the survivor's share of the probate estate, it made no provision for the testator's inter vivos transfers. In particular, inter vivos transfers which are essentially testamentary, such as Totten Trusts and joint bank accounts, were available to the testator to make this new elective right practically ineffective.

At first, the courts appeared to emphasize the legislative intent of insuring the surviving spouse a proper share. In *Newman v. Dore*, the New York Court of Appeals held that transfers which were merely "illusory" were invalid as violations of statutory policy. The test applied was one of good faith, viz., whether the testator seriously intended to divest himself of ownership, irrespective of

85 N.Y. Real Prop. Law §§ 189, 190. (Except that a widow married to a man before Sept. 1, 1930 still had a right of dower in lands of which he was seised prior thereto.)
86 The intestate share is determined under the provisions of Section 83 of the Decedent Estate Law. Section 18, however, limits the elective share by providing that in no event can it exceed one-half of the net estate. N.Y. Deced. Est. Law § 18(1) (a).
87 See N.Y. Deced. Est. Law § 18(1)(b), (d)-(f). When the intestate share was less than $2,500, the surviving spouse could take it outright. N.Y. Deced. Est. Law § 18(1)(c). However, when it was more, by establishing a trust equivalent to the intestate share for the benefit of the survivor, the testator could effectively limit the elective share to $2,500 cash. N.Y. Deced. Est. Law § 18(1)(b).
89 275 N.Y. 371, 9 N.E.2d 966 (1937).
whether this would adversely affect the interest of the spouse. Therefore, it was assumed that transfers of a testamentary nature, such as the Totten Trust, were illusory per se. Subsequently, Matter of Halpern demonstrated that the validity of the transfer under New York law, despite the retention of significant indicia of ownership by the testator, placed Totten Trust funds beyond the spouse's right of election. Since the surviving spouse can be effectively disinherited by several of these legally recognized transfers, e.g., Totten Trusts, joint bank accounts and any others which are not considered illusory, the elective right has become "diluted and to a large extent meaningless."

With the aim of affording the surviving spouse meaningful protection, and on the recommendation of the Commission on Estates, sections 18-a and 18-b were added to the Decedent Estate Law. Section 18-a provides that any gift causa mortis, Totten Trust, deposit or tenancy with survivorship in another person, revocable trust or one capable of being invaded, which is established after marriage and after August 31, 1966, will be included in decedent's net estate for the purpose of determining the amount which a surviving spouse may elect to take. Section 18-b comprehensively outlines the extent of the right of election as it will be applied after the effective date of the statute. It establishes the right of a surviving spouse to an elective share of one-third of the net estate (as defined by section 18-a) if decedent is survived by children or their descendants, and one-half thereof in all other cases. The right of election itself remains substantially unchanged. It is still subservient to the will if provision for the wife is made by absolute property devise and/or the creation of a trust equal in amount to the elective share. However, it has updated former section 18

90 Id. at 379, 9 N.E.2d at 969.
92 303 N.Y. 33, 100 N.E.2d 120 (1951). See also Inda v. Inda, 285 N.Y. 27, 33 N.E.2d 779 (1941) (in which a joint bank account was held similarly valid).
94 3 ESTATES REPORT 25. Section 145-a of the New York Surrogate's Court Act was amended to provide the surrogate with appropriate jurisdiction.
95 However, payments of any kind under a pension, stock bonus, or other such plan, insurance proceeds, and United States savings bond payments are specifically excluded. N.Y. DECED. EST. LAW § 18-a(2) (supp. 1965).
96 This right of election under section 18-b is independent of N.Y. DECED. EST. LAW § 83 (supp. 1965).
97 That is, the net estate after deduction of all debts, funeral and administration expenses, and disregarding all inheritance taxes.
98 See N.Y. DECED. EST. LAW § 18-b(1) (d)-(j) (supp. 1965). Section 18-b (1) (j) codifies Matter of Shupack, 1 N.Y.2d 482, 136 N.E.2d 513, 154 N.Y.S. 2d 441 (1956), which upheld the validity of these trusts.
by increasing, from $2,500 to $10,000, the maximum amount the survivor can take absolutely from a trust smaller in amount than the elective share. The section additionally expands the right of election where there is partial intestacy.99

Sections 18-a and 18-b, permitting a surviving spouse inter alia to participate in certain inter vivos transactions have eliminated the loophole fostered by judicial construction of the old statute. By specifically identifying the traditional devices of disinheritance, the legislature has more realistically defined the property against which the surviving spouse will be permitted to elect. At the same time, the value of any of the "inter vivos—testamentary" provisions, as defined in section 18-a, that have been made in favor of the surviving spouse will also be included in the computation of the elective share.100 This reform gives vigor to the statutory policy of protecting the surviving spouse from disinheritance and alleviates the confusion as to the effect of transfers which unlawfully subvert the spouse's right of election.

Case law established that an illusory transfer was invalid in its entirety and that the property, or a sum equal thereto, had to be returned to the estate.101 However, under section 18-b(3), the residue of section 18-a testamentary transfers are valid and effective after the pro rata deduction of the elective share. Section 18-a will include in the net estate those trusts over which the deceased had maintained a degree of control,102 but, presumably, they must be distinguished from a "purported trust" over which deceased retained virtually complete control, i.e., the type condemned in Newman v. Dore. The first is a real trust, and upon an election its beneficiary will suffer only to the extent of its pro rata contribution to the elective share.103 The latter is not a real trust, nor even a real transfer, and deserves different treatment. It may be surmised that the legislature's intent with regard to these truly fraudulent transfers was that they continue to be treated as in Newman. However, the legislature has left open the possibility of their being diminished merely by a proportionate contribution to the elective share, and not declared entirely invalid, as in Newman.

The legislature's choice in proscribing certain enumerated devices, which have been used to defeat the elective right, appears

99 N.Y. DECEd. EST. LAW § 18-b(2) (supp. 1965).
100 The old law sometimes gave an unintended benefit to the survivor: the spouse could be well provided for by Totten Trusts, and at the same time retain the right to elect against the will.
102 Where the settlor retains "a power to revoke such disposition, or a power to consume, invade or dispose of the principal thereof," the disposition will be regarded as testamentary in nature, and shall be included in the trust estate. N.Y. DECEd. EST. LAW § 18-a(1)(e) (supp. 1965).
103 It must be noted that subsections 18-a(1)(e) and 18-b(3) must be read in conjunction with each other to reach this conclusion.
to be a wise one. It eliminates the difficulties of interpretation involved in a broadly worded test,\textsuperscript{104} and yet it minimizes an undesirable burdening of the freedom of alienation which a more arbitrary standard test would involve, \textit{e.g.}, the federal income tax approach which includes in the estate all transfers made within three years of death.\textsuperscript{105}

Although the statute expressly exempts from its application insurance proceeds and "pay to survivor" United States savings bonds, it is unlikely that these exemptions will be utilized as effective means of disinheriting a surviving spouse. However, if future cases indicate that these exemptions are being employed to frustrate our declared public policy, the legislature should be prepared to amend the statute, so that the overall policy of providing the wife with a substantial share of her spouse's "testamentary" estate will be effectuated. The legislature has additionally closed a loophole in advance by extending the elective share concept to intestacies. This provision has the commendable effect of preventing the deceased from making inter vivos—testamentary transfers, and then dying intestate to prevent the surviving spouse from being able to elect. A continuing defect in the amendments consists in the fact that, although the surviving spouse's share is reduced from one-half to one-third if there are issue, there is no guarantee that the children will be provided for out of the increased unelected portion.\textsuperscript{108} For example, where a deceased husband leaves his estate to persons other than those in his immediate family, the surviving spouse's elective share will be decreased, not for the benefit of the decedent's children, but for the benefit of non-familials, even though the wife may have to use her decreased elective share to support several of the children.

Evaluated as a whole the addition of sections 18-a and 18-b have the pronounced effect of allowing a surviving spouse to elect against an estate which more nearly reflects the true or actual estate of the deceased spouse.

\textit{Inheritance by and from Illegitimates}

At common law, a child born out of wedlock was "filius nullius," or son of no one, and had no inheritance rights.\textsuperscript{107} In the past, New York has chosen to alter this concept by means of statutory enactment.\textsuperscript{108}

\textsuperscript{104} \textit{E.g.}, \textit{Model Probate Code} § 33(a) (Simes 1946) treats "any gift in fraud of the marital rights" as a testamentary disposition.


\textsuperscript{106} \textit{Id.} at 222.

\textsuperscript{107} \textit{1 Blackstone, Commentaries} *129.

\textsuperscript{108} Section 24 of the New York Domestic Relations Law provides, in substance, that an illegitimate child whose parents intermarry, or who have in-
Presently, intestate inheritance by an illegitimate child in New York is governed by subdivision 13 of Section 83 of the Decedent Estate Law. Under this statute, the illegitimate child inherits from the mother when there is no lawful issue. While the illegitimate is thus statutorily permitted to inherit from the mother, nevertheless, he may not inherit from the mother's relatives after the death of the mother, either as a representative of the mother or as the intestate's next of kin. An exception to this rule is made only when the intestate is another illegitimate child of the mother.

Inheritance from the child is governed by subdivision 7 of section 83. Significantly, where the illegitimate is survived by a spouse and a descendant, the intestate distribution of his estate comports with normal succession intestacy. In addition, where the illegitimate is survived by children and predeceased by his spouse, the distribution is in accordance with the norm; but where he is survived solely by a spouse and his mother, the spouse takes five thousand dollars and one-half the residue, with the balance going to the mother or her relatives, with the illegitimate's father being excluded. However, if the illegitimate is survived only by his parents or their relatives, his mother, or her relatives should she be dead, inherit from the estate as if the child were legitimate and predeceased by his father and his father's relatives.

Finally, under no circumstances can the child take anything in intestacy from his father or his father's kindred, nor can the father receive an intestate portion of the illegitimate's estate.

With reference to New York's statutory provisions, it has been stated that "perhaps the greatest area of discrimination against an illegitimate, and one where no amelioration has been forthcoming," termarried, is legitimatized and is entitled to the rights and privileges of legitimate children. Section 145 of the same statute provides that children conceived after a marriage which was subsequently annulled are deemed the legitimate children of both parents in certain cases. Where the marriage was procured by force, duress or fraud, they are deemed legitimate unless the court declares otherwise. If the marriage is void because of an existing marriage, the children are nevertheless legitimate if, for example, the innocent party was without knowledge of the prior marriage. However, if the children are born before a marriage which is void or voidable (except as shown above), they will be illegitimate unless the court declares them legitimate.

114 Supra note 112.
is the area of inheritance.” 115 The presence of numerous illegitimates in society appears to warrant legislative reform. Indeed, it was estimated that in 1958, there were 200,000 illegitimate births in the United States.116 A majority of jurisdictions, recognizing the gravity of the situation, have enacted statutory amendments to provide increased inheritance rights for the illegitimate.117 In this respect, there remains only one state which denies an illegitimate the right to inherit equally from his mother in the same manner as legitimate issue.118 Indeed, two states have already gone so far as to abolish, for purposes of inheritance, all distinctions between legitimate and illegitimate children.119

Recognizing the inequity 120 of the present statute which allows the mother’s collaterals to reach the illegitimate’s property, without reciprocative provisions, the legislature has substantially amended it.

Effective March 1, 1966, inheritance by and from illegitimates will be governed by Section 83-a of the Decedent Estate Law. The changes embodied therein are three in number. First, the illegitimate child is to be considered the legitimate child of the mother, so that both he and his issue will inherit from his mother and her kindred. Secondly, where a court of competent jurisdiction makes an order of filiation prior to, or within two years of the illegitimate’s birth and during the lifetime of the father, such child shall be considered legitimate for the purpose of intestate distribution of the father’s estate. This declaration of paternity provides the basis for the illegitimate’s subsequent inheritance rights in the father’s estate; moreover, the illegitimate’s issue shall be entitled to inherit as if he were legitimate. The legislature, however, has apparently denied the illegitimate and his issue the right to inherit from his father’s kindred.121 The reasoning here employed is that the parents of the illegitimate’s father will often be unaware of the existence of the child.122 As a result, they are deprived of an opportunity to disinherit the child by positive action, i.e., by making a will. Thirdly, where the illegitimate dies intestate, his father will be permitted to inherit from the child, only if a reciprocal right with respect to his...

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115 Note, 23 Brooklyn L. Rev. 80, 86 (1956).
117 4 Estates Report 271.
118 Ibid.
120 “None may gainsay the harshness and seeming unfairness of the discrimination against those unfortunate enough to have been born out of wedlock, but as the inheritance of property is governed by statute the remedy must be obtained by the Legislature.” Matter of Cady, supra note 110, at 130, 12 N.Y.S.2d at 752.
121 4 Estates Report 266.
122 Ibid.
father's estate has previously been established. In other words, the filiation proceeding, as outlined above, must have been successfully completed.

Section 83-a substantially increases the illegitimate's right of inheritance. In this regard, the legislature's acts are entirely consistent with the recent legislative policy that has been employed by other states. The enactment of this statute is one more measure taken to close the vast gap that exists between the illegitimate and his legitimate brethren.

Renunciation of Intestate Share

In New York it has long been established by case law that one who is entitled to a testate share of an estate can renounce his interest completely. The Court of Appeals in *Albany Hosp. v. Guardian Soc'y* 123 held that, even though a devise to a named person is provided for in a will, a devisee may still refuse the gift after the death of the testator, and title will be held to have never vested in him, since acceptance or rejection of the attempted testamentary transfer relates back to the time of the devise. Then the devise (or legacy) will be disposed of as though the designated devisee (or legatee) predeceased the testator. 126 Although acceptance is presumed, the theory is that the devise is like a consensual transfer, in which property can be offered to, but not forced upon, the devisee. 128 In addition, to constitute an acceptance no formal assent is necessary, nor is there any formal procedure for renunciation; any unequivocal declaration of intention to renounce would appear to be sufficient. 128

However, the distributee of an intestate share cannot prevent title from vesting in him. The theory here is that upon the intestate's death, the distributee, by action of law instantaneously acquires the right to a beneficial interest in the estate, 129 although he may subsequently divest himself of the intestate share. 130 The distributee's share will be diminished by the payment of an inheritance tax on the transfer as will the share of a devisee or legatee. Because the intestate share is said to vest in him immediately,

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129 Matter of Ramsdill, 190 N.Y. 492, 495, 83 N.E. 584, 585 (1908).
130 3 *ESTATES REPORT* 237.
the distributee labors under several disadvantages from which the devisee (or legatee) is free.

The distributee cannot return the share to the estate to avoid its attachment by his creditors. However, a devisee (or legatee), because his renunciation relates back to the time of the testator’s death, can effectively renounce his share, and thereby avoid the vesting of title. On the other hand, any attempt by the distributee to renounce his share will be regarded as an independent transfer of a vested interest. As such, not only will the intestate share be subject to inheritance taxes, payable by the estate, but also, upon transfer back to the estate, it will be subject to gift taxes, payable by the distributee. In addition, an attempted transfer back to the estate may be avoided as an endeavor to defeat the rights of the distributee’s creditors. Also, a distributee’s attempt to renounce his intestate share and to testify to the decedent’s actions, which would have the effect of benefiting the witness’s successors in interest, will be disallowed under the “deadman’s statute.”

The Commission on Estates recommended that the disparity between the right to renounce shares in testacy and intestacy be removed. It regarded the discrepancy as deriving from theoretical differences (as distinguished from practical differences) between taking under a will and by operation of the law of intestate distribution. The legislature responded by enacting Decedent Estate Law Section 87-a. Under this section a person entitled to an intestate share may renounce all or part of it by a signed writing filed with the surrogate’s court within six months after the issuance of letters of administration. Notice of such renunciation must also be filed with the representative of the estate and the other distributees. Furthermore, this right of renunciation will have the same effect as though the renouncing person had predeceased the decedent, and shall be retroactive to the date of the decedent’s death. Partial renunciations are permitted, but only as to a percentage of the total share; partial renunciation limited to specified

132 See 6 PAGE, WILLS 38 (1962).
133 Supra note 129.
135 Supra note 131, at 407.
137 3 ESTATES REPORT 25.
138 This period may be extended in the surrogate’s discretion if reasonable cause is shown.
139 Provision is made for a similar filing on behalf of an infant, incompetent or deceased person. N.Y. DECED. EST. LAW § 87-a(2) (supp. 1965).
140 N.Y. DECED. EST. LAW § 87-a(3) (supp. 1965).
items is expressly forbidden.\textsuperscript{141} A renunciation may not be made \textit{after} the distributee has accepted all or part of the property of the decedent.\textsuperscript{142} Finally, one may withdraw or revoke a renunciation under section 87-a only after application to the proper surrogate’s court which, in the exercise of its discretion, will determine whether there is reasonable cause for such withdrawal, and only in such manner as the surrogate directs.\textsuperscript{143}

In creating a right to renounce an intestate share, the legislature has properly developed rather strict statutory standards and forms. Its purpose was to avoid any ambiguity with respect to standards previously established by case law concerning the question of renunciation of a testate share. Indeed, the length of time during which a renunciation may be made, and the manner in which it may be made, in the case of a \textit{testate} share, are only nebulously defined. Consistency would appear to mandate that similar rules of renunciation, in both testate and intestate situations, are desirable. The statutory standard is easily complied with, and provides adequate notice to everyone interested in the proceedings. The legislature could have better equalized the positions of the distributee and the devisee (or legatee) by determining that the unambiguous standards of the statute are applicable to both.

The statutory provision dealing with renunciation of an intestate share in New York is more highly developed than is the case law concerning renunciation of a testate share. Therefore, the question arises as to what extent the declared legislative policy with respect to renunciation of an intestate share will affect those questions still undecided in the area of testate renunciation. For example, may one renounce only part of a testate share, and under what circumstances may a renunciation be revoked? The courts could interpret the statute as being applicable to testate as well as intestate situations, or they could hold that, by omitting reference to the former situation, the legislature has tacitly approved the existing body of case law governing testate succession. Whatever the outcome, the legislature should have made explicit its attitude regarding the case law concerning renunciation under a will.

The equalization of the positions of those taking a share of an estate under a will and those taking one by intestacy is a much needed reform, in view of the fact that there appears to be no distinction between the passage of property by will or intestacy, beyond the technical distinctions drawn from their individual legal theories. It would appear that the legislature has not given full enough consideration to the necessity of reforming the law governing testate succession.

\textsuperscript{141} N.Y. Deced. Est. Law § 87-a(4) (supp. 1965).
\textsuperscript{142} N.Y. Deced. Est. Law § 87-a(5) (supp. 1965).
\textsuperscript{143} N.Y. Deced. Est. Law § 87-a(6) (supp. 1965).