DEFINING 'DESCENDANTS'

Defining 'Descendants': Science Outpaces Traditional Heirship

Developments in assisted reproduction technology expand the universe of individuals who may claim to be heirs, thus creating new possible ambiguities in testamentary dispositions.

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Most of us intuitively know who is in our "family." In fact, we may even take for granted the ease with which we identify our children and other descendants. As all lawyers know, however, ordinary definitions do not always carry legal weight. For example, an individual may call the daughter of his or her spouse's sister a niece, but she is not the individual's legal heir. Likewise, an individual's in-laws are not related to him or her. The word "child" can mean immediate offspring, a minor, or both. Combine common parlance with scientific advances involving assisted reproduction technology (ART), and the result has been considerable legal confusion and state-to-state inconsistency in defining "descendants" for inheritance purposes.

Evolving definitions

Defining family members in the law has never been obvious. Moreover, estate planning clients are rarely concerned about children conceived via ART, either because they are beyond that stage in their own lives or they do not believe that the issue is relevant to their family situation. While current definitions may be sufficient in most instances, such as artificial insemination of a married woman, they do not generally contemplate planning for posthumous children. Nonetheless, any planning for grandchildren and future generations has the potential to affect children who are posthumously born—and even those who are posthumously conceived. Posthumous conception has been defined as "the transfer of an embryo or gametes with the intent to reproduce a live birth after the gamete (sperm or ova) provider has died."
Only relatively recently did the law redefine "descendants" vis-a-vis adopted children and nonmarital children to conform to the changing landscape of society. Technology demands, and case law trends support, that the law will soon need to take a consistent position concerning offspring conceived through ART, including those conceived posthumously. In the interim, estate planners may note the changing legal boundaries and some of the planning techniques—and traps—that planners and clients will likely face in the not-so-distant future.

The inheritance issues presented when a child is conceived after the death of a parent are still largely in a state of flux. There is little consistency across the states in the heirship and inheritance rights of such children, either at the legislative or judicial level. Virtually all of the trust instruments and other documents that the authors, estate planners themselves, see are silent on the topic of posthumous conception. This may result from lack of awareness, a belief that existing definitions are sufficient,

or the thought that the possibilities for conflict are too remote or nebulous to conquer in drafting.

Nonetheless, ART statistics show that we will not be in a position to look the other way for very long. The volume of assisted births is astounding: "Sperm donations generate between 30,000 and 60,000 conceptions every year, and roughly 6,000 children are conceived through egg donations annually as well." Furthermore, the number of surrogate births abroad resulting in "world babies" (i.e., those born to foreign surrogates) is growing considerably.

**History repeats itself**

By way of background, below is a brief recap of some of the issues that most of us now take for granted in planning for adopted children and nonmarital children. Indeed, we are able to take these issues for granted because there is largely consistency across state statutes in addressing the rights of such persons. However, this was not always the case.

After decades of case law and legislation, an adopted child is now the child of the adoptive parent, and generally the grandchild of that person's parents—unless the child was already an adult at the time of the adoption. Formerly, under the common law "stranger to the adoption" rule, an adopted child was not an heir or beneficiary of the parents or other relatives of the adopting parents. This distinction, of course, arose out of attempts to test the law and to create definition where there was none. Following several cases in which people adopted spouses (after a "sham" divorce) or domestic partners, apparently with the intent of making the adoptees beneficiaries to family wealth, lawyers and lawmakers stepped in to curtail the rights of an adult adoptee.

Similarly, a child who is adopted by a stranger (i.e., "adopted out") is often excluded from inheritance through his or her biological family, regardless of the intention of that family. For example, if a man's child is adopted during the man's lifetime by the new husband of his former wife, the child is not necessarily his heir or his parents' heir. On the other hand, if the man were to pass away before the adoption, the child would generally remain an heir of the man's parents.

In the same way, the law of the 20th century has redefined the inheritance rights of nonmarital children. Although society long ago recognized that not all children are born of
a marriage, the law was not so quick to accept and define legal inheritance rights in such cases. For example, at common law in Illinois, a child born out of wedlock could not inherit from his or her natural father. Not until 1977 was this law found to be unconstitutional. The statute was only clarified in its current form in 1998 to provide that children born out of wedlock are heirs of both the child's mother and father, and that both the mother and father would be heirs of the child.

Today, most states have enacted statutes defining the inheritance rights of adopted children and nonmarital children. Even so, sophisticated estate planning documents often contain definitions of "descendants" that explicitly address these situations. These provisions can minimize possible ambiguities in determining what law should apply (i.e., in the case of dynasty trusts), or they can allow clients to override existing law to suit their own family and personal beliefs. They are regularly customized to accommodate same-sex couples, unmarried couples, and unique adoptive situations. Rarely, however, are they customized to account for children conceived through ART—unless the issue is presently pertinent to the testator or grantor.

**Current law and future trends**

Given the difficulty that we have even in identifying and defining the relatives we know and care for, ART opens new areas of personal and legal ambiguities. As one New York court phrased that state's policy, "if an individual considers a child to be his or her own, society through its laws should do so as well." Nevertheless, putting this into practice can be challenging for drafters and interpreters. Furthermore, just as the law now exists as to adoptees, if an individual considers a child to be his or her own, does it necessarily follow that the child is a grandchild of the individual's parents? Current statutes do not deal with this uniformly with respect to children of ART. Thus, even with the existing law and comprehensive definitions of descendants, we have significant gaps in a world in which a child can be born years after the death of a parent or in which a child can be born to a woman who is not the child's "mother," as is the case of surrogacy. "To address the problem, every state should have a comprehensive statute that balances the interest of the decedent and the state while advancing the best interests of posthumously conceived children."

Most ART procedures involve anonymous and presumably still-living gamete providers, but some conceptions reportedly have been generated by deceased donors. More women are choosing to conceive babies with the use of their deceased husbands' or significant others' sperm, especially widows of men killed in Iraq. Thus, we have a growing population of persons whose parentage and inheritance rights are unsettled as a matter of law.

**Inheritance rights of posthumously conceived children.** Although still in the early stages of development, the legal community has made considerable progress over the last two decades in defining the inheritance rights of posthumously conceived children. As is often the case in the evolution of a legal theory, the starting point has been existing law. Legal scholars have developed, and some states have adopted, uniform laws that specifically address ART. A few states, such as California, have even adopted statutes that attempt to get ahead of the issues by comprehensively regulating inheritance rights. Increasingly, a growing body of case law is shaping the legal landscape. Still, there is a long road ahead in achieving consistency and certainty.
While the inheritance rights of a child conceived after the death of a parent may be largely unclear, the law has long provided for "posthumous children." A child born within roughly nine months after the death of a father has almost universally been an heir of the father. This is because, for legal purposes, a child comes into being at the time of conception. As it was traditionally viewed, as soon as the child is *en ventre sa mere* (i.e., in the mother's womb), the child is a person with inheritance rights, as long as he or she is later born alive. Even though the law on this is well-settled, however, the underlying logic is not necessarily helpful with respect to posthumous conception. Is an embryo *en ventre sa mere* before it is implanted? As gametes can be successfully stored for many years, how long is it appropriate to wait to decide the shares of alternate takers?

**State statutes do not offer any consistency.** As noted above, the law has started to address these and other related issues. There are drafts of "uniform laws," but scant statutory or case law, much less uniformity. The first legislative model was entirely negative, as is the Ohio statute, both completely denying heirship rights to children conceived posthumously via assisted conception. The 2008 Amendments to the Uniform Probate Code (UPC), adopted thus far only by Colorado and North Dakota, provide that, if an individual is a parent of a child of assisted reproduction who is conceived after the individual's death, the child is treated as "in gestation" at the individual's death if the child is *in utero* not later than 36 months after the individual's death or born not later than 45 months after the individual's death. Even so, the term "in gestation" may still be unclear in the case of an embryo not yet implanted. Nonetheless, the UPC amendments are valuable in that they attempt to limit the period for determining heirship.

The Uniform Parentage Act (UPA), approved in 2003 by the American Bar Association and adopted in nine states, provides:

> If an individual who consented in a record to be a parent by assisted reproduction dies before placement of eggs, sperm, or embryos, the deceased individual is not a parent of the resulting child unless the deceased spouse consented in a record that if assisted reproduction were to occur after death, the deceased individual would be a parent of the child.

Thus, the UPA adds the element of a consent requirement.

As is often the case with uniform laws, however, the intent of the UPA may be altered by the manner in which it is adopted. For example, Texas, Utah, and Washington have modified the above section of the UPA to replace "individual" with "spouse" so that it reads as follows:

> If a spouse dies before the placement of eggs, sperm, or embryos, the deceased spouse is not a parent of the resulting child unless the deceased spouse consented in a record kept by a licensed physician that if assisted reproduction were to occur after death the deceased spouse would be a parent of the child.

Ostensibly, these legislative modifications were an attempt to limit the right of posthumous conception to surviving spouses. On their face, however, they might give more inheritance rights to nonmarital children than to those of married couples, in that they require consent only in the case of a spouse and not, for example, of an unmarried...
decendent-parent. Indeed, this may frustrate, rather than further, legislative intent.

Most recently in 2008, the American Bar Association approved the Model Act Governing Assisted Reproductive Technology, which, as to posthumous conception, basically adopts the applicable provisions of the UPA. 17

Finally, the Restatement (Third) of the Law of Property 18 as to wills and trusts contains the following language:

Unless the language or circumstances indicate the transferor had a different intention, a child of assisted reproduction is treated for class gift purposes as a child of a person who consented to function as a parent to the child and who functioned in that capacity or was prevented from doing so by an event such as death or incapacity. 19

Unless the language or circumstances indicate that the transferor had a different intention, a class gift that has not yet closed physiologically closes to future entrants on the distribution date if a beneficiary of the class gift is then entitled to distribution. 20

This makes the Restatement in some respects the most expansive of the model acts and current statutes, in that it:

- Disregards marital status.
- Does not require consent to be in writing or to be specifically to postmortem conception.
- Does not require consent at all if it is prevented by death or incapacity.
- Postpones closing a class to future entrants until the distribution date. 21

It does not, however, resolve the issue as to whether a beneficiary is sufficiently "in being" so as to be entitled to distribution. In other words, is a frozen embryo entitled to distribution? What if that frozen embryo is implanted and born alive within nine months? Comment j to section 15.1 of the Restatement states that a child produced posthumously by assisted reproduction is treated as in being at the decedent's death, if the child was born within a "reasonable time" after the decedent's death.

By way of illustration, the comment refers to this situation: A trust provides for the payment of income to the grantor's grandchildren starting at age 21. The grantor's son dies after her, leaving frozen sperm to his wife who has a second child. The comment says that when that child reaches 21, he or she is entitled to a share of the income. Again, the black letter law has made progress towards defining inheritance rights, but the ambiguities need to be further contained.

As previously noted, several other states already have laws addressing the heirship by children conceived postmortem, not all of which are based in the uniform laws. Louisiana allows inheritance if the child is born within three years of the deceased parent's death and the parent consented in writing to the use of his or her genetic material. 22

The California statute also contains specific hurdles that the deceased parent must meet. The law of that state provides that a person is eligible to inherit "on the death of a decedent" if the decedent specified, in a signed and dated writing that his or her genetic material should be used for posthumous conception and if the decedent designated a person to control the use of that genetic material. It further requires that the child be
conceived and *in utero* within two years of the parent's death and consistent with the wishes of the deceased parent (except in case of cloning). 23

Florida, by contrast, makes a child ineligible to inherit unless the decedent-parent explicitly provided for the posthumously conceived child in his or her will. 24 Interestingly, however, the Florida statute does not address whether the posthumously conceived child might inherit under a trust instrument, and it does not deny that a posthumously conceived child is, in fact, a child of the decedent.

Of the 11 states that have statutes regarding posthumously conceived children, six follow the UPA and the rest do not. 25 In all, only about one-third of the states have law—case or statutory—in this area, and they vary markedly. The few cases in this area and the Uniform and Model Acts illustrate the need for states to enact legislation to resolve the implications of posthumous conception.

**Case law offers logic, but lacks consistency.** Although ART is slowly being incorporated into our inheritance statutes, the issues have only begun to withstand the test of case law. The vast majority of case law confronts the issues associated with artificial insemination, probably because it has been an available scientific technique for more than 60 years. While there are apparently no court cases involving a child born after the death of an egg donor, there is a reported situation in which a dying young woman gave her eggs to her parents to allow them to "reproduce" her. 26

Postmortem conception for a female and even for some males (e.g., in a same-sex relationship) necessarily requires a surrogate or gestational mother. But at last count, nine states and the District of Columbia ban or void surrogacy contracts by statute and eight states specifically allow them. 27 Even so, court cases examining the rights of posthumously conceived children of deceased mothers are bound to occur, given that egg donation is a booming, highly lucrative business today with donors offered fees of as much as $50,000. 28 In contrast, the typical payment for sperm donation is under $100.

The earliest court decision involving postmortem artificial insemination was by a French tribunal in 1984. That tribunal found that the sperm belonged to the man, and his intent was determinative, but it declined to allow inheritance rights by anyone conceived post-mortem. 29

In this country, a common fact pattern in case law indicates that the prospect of combat service or chemotherapy may cause a person to have his or her gametes frozen for later use, in case the donor should die or become sterile. In the cases discussed below, the donor died before conception occurred. Not only could the courts be faced with determining whether the after-born child is the biological child of the deceased donor, but also whether he or she is a member of the class of either the descendants of the deceased parent or of an ancestor of the deceased parent. For example, if the parent's aunt created a trust for her brother's descendants (that brother being the father of the deceased parent), is the posthumously conceived child a member of that class? For how long should that class remain open?

Many of these issues have yet to be explored in case law. Most of the cases in this area arise out of claims for Social Security benefits. Although these cases are widely cited and each is informative in and of itself, they provide little consistency or cohesive guidance as
to the inheritance rights of posthumously conceived children. In eight cases to date, the Social Security Administration has considered claims of minors conceived after the death of the father. The minors have prevailed in four of these cases, and failed in the other four.

More important than the individual results, the Social Security cases provide an illustration of the problem. Under the Social Security Act, a minor child can establish his or her inheritance rights either by certain provisions in the Act itself or by state intestacy laws. Because each of the provisions in the Act requires that the insured be living at the time of the child's conception, a posthumously conceived child can establish his or her right to Social Security benefits based on only status as an intestate heir of the decedent.

As a result of the disparity across state laws, the cases are evenly split. For example, relying on Arkansas law, one court ruled that a child created as an embryo during his parents' marriage but implanted in the mother's womb after his father's death could not inherit from the latter under the state's intestacy laws and, therefore, was ineligible for Social Security benefits. On the other hand, relying on Arizona law, the Ninth Circuit found that posthumously conceived twins were legitimate children of the decedent and accordingly entitled to benefits, holding that inheritance rights are irrelevant, contrary to a Social Security ruling.

The Social Security cases may illustrate the application of state intestacy law, but they do not confront many of the more challenging issues that may need to be addressed in dynasty-type planning. In particular, because they are limited to cases involving minor children of decedents, they have a de facto time limit, they are not concerned with whether a posthumously conceived child is an heir of the decedent-parent's ancestors, and they do not grapple with issues such as children born out of wedlock (unless addressed by the underlying intestacy statute) or treatment of a non-biological same-sex parent.

**A New York Surrogate's Court sets the framework for an analysis.** The 2007 New York Surrogate’s Court decision of *In re Martin B*, is the only case the authors found to be truly instructive for the estate planning practitioner. In that case, which was decided at the trial court level, Martin B, as grantor, created a number of trusts in 1969. As is common, the trust agreements provided that, after Martin's death, property would be held in further trust for his wife and issue during the life of his wife, and they gave her a testamentary power to appoint trust assets among Martin's descendants at her subsequent death.

Martin was survived by his wife and one son. A second son, James, predeceased Martin by six months. James' gametes, however, had been cryopreserved during life following a diagnosis of Hodgkin's lymphoma. Approximately three and five years after Martin and James passed away, James' widow conceived and gave birth to two children by means of ART. The trustees of Martin's trusts sought court instruction as to whether Martin's posthumously conceived grandchildren were eligible to receive trust distributions and whether they were permissible appointees of a power of appointment.

From an estate planner's perspective, this case is significant on multiple fronts. For one, the relevant language of the trust instrument—that beneficiaries are to be ascertained at the time set for distribution—is fairly common in modern trusts. The case of *In re Martin B*. involved ascertaining the intention of the creator of a trust—not merely determining
takers in intestacy. It did not involve a will. Finally, it was an uncontested application by the trustees seeking the advice of the court.

The distinction between ascertaining takers in intestacy or under a simple will versus ascertaining beneficiaries under a trust instrument (whether inter vivos or testamentary) is more significant than it might appear at first blush. Unlike intestacy, a grantor has broad authority in defining "descendants." Also unlike intestacy, the basic rules of construction require consideration of the intention of the grantor or testator. Ascertaining takers under a trust is complicated by the passage of time. On the other hand, a simple will can be changed at any time prior to death (assuming capacity), and it will necessarily distribute trust property within a relatively brief period after death. This minimizes the need to foresee remote, future possibilities. Interestingly, in the Martin B case, it is unlikely that the grantor would have formed intent or even considered the possibility of his posthumous grandchildren in 1969 when he executed the irrevocable trust instruments.

Today, trusts are regularly established to provide for generations to come. This is in sharp contrast to the New York statutory definition of an "after-born" child, which on its face applies only to children and not to grandchildren.

Thus, the New York Surrogate was in the unique position of having to ascertain the intent of a person as to a situation that he almost certainly had not contemplated, and she had little statutory or judicial authority to follow. She examined the statutes of Louisiana, California, and Florida (discussed above), the UPA, and Social Security cases, model codes and Restatements of the law. The Surrogate summed up her finding that "where a governing instrument is silent, children born of this new biotechnology with the consent of their parents are entitled to the same rights 'for all purposes as those of a natural child.'"

In the Martin B case, the Surrogate construed "issue" and "descendants" to include the posthumous children. Stating that "decisions and enactments from earlier times—when human reproduction was in all cases a natural and uniform process do not fit the needs of this more complex era," the Surrogate adopted the rationale of the Restatement of Property, namely that where the instrument is silent, children born of the new biotechnology with the consent of their parent are entitled to the same rights as a natural child. The court relied on the permission that James gave for his wife to decide what to do with his semen and that she had the remaining sperm destroyed. The Surrogate gave the children the benefit of the doubt and concluded their grandfather would have wanted them to be treated the same as his other grandchildren. Accordingly, she held that the posthumously conceived children were eligible to inherit through their father because Martin intended all members of his bloodline to receive a share of the trust funds. This was in spite of the absence of any language in the trusts as to posthumous children or a statute governing such matters.

What to do until the dust settles

As children conceived and born via ART become more common and postmortem conception increases, it is incumbent on the planner to attempt to determine a client's wishes. At a basic level, most planners would include dispositive provisions, or at least precatory language, in the documents of individuals who have informed the planner of the existence of preserved sperm or ova.

As the Martin B case illustrates, however, these issues can arise even in well-drafted estate plans of persons who are not themselves affected by ART. If a trust is to last for
multiple generations, and if it is to benefit those who are not yet born, the issues surrounding ART have the potential to alter the dispositive scheme. While it may feel as if the possibilities are remote now, the increasing practice of harvesting gametes—particularly of those facing life-threatening situations—indicates that the prevalence of these issues will only increase. If a trust is to benefit multiple generations, should a child conceived after a descendant's death with

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his or her gametes and consent be considered a descendant of the original maker of the trust?

Inevitably, many clients will not want to address these complex personal issues. Advisors may understandably be reluctant to spend the time required to explore the issues thoroughly. The Uniform Acts are a step in the right direction but are unlikely to gain widespread adoption soon. However, to remain silent is, in effect, the equivalent of counseling a client to leave the matter up to the rules of intestacy—something that few planners would advocate. Furthermore, if not addressed in our documents, we leave open the possibility of conflict with future laws and ambiguity as to whether a future (unknown) statute or existing language might control.

For those who do need to address the issue today, we can take our cues from the statutes and case law that we currently know. It is, of course, possible to include a basic definitional provision—as is routinely done in the case of adopted and nonmarital children. As happens today with the routine provisions, some clients will shudder in distaste, and others will not give the provision a second glance.

Various criteria may be involved in defining posthumously conceived issue, such as:

- Consent by the gamete provider.
- Marital status.
- Time limit.
- Notice to the fiduciary.
- Number of birth mothers.

Depending on the context, a definitional provision might start off like one of the following:

**Parental Status of Deceased Individual.** An individual will be considered the parent of a child conceived and born after the individual's death if he or she (i) dies prior to placement of his or her sperm, ova, or a resulting embryo, and (ii) designates another individual who is living at the time of placement as the other intended parent of any resulting child.

**Child Born by Posthumous Conception or Implantation.** For purposes of any distribution hereunder, an individual will be considered the child of his or her biological parent, even if placement of that parent's sperm, ova, or a resulting embryo occurs after the death of that parent, so long as the other parent is the deceased parent's surviving spouse or an individual designated by the deceased parent, and the child is born alive not more than 300 days after the date of the distribution.
**Child by Surrogacy.** An individual will be considered to be the parent of a child if the individual or his or her spouse or domestic partner contributed a gamete or embryo and such contribution resulted in the birth of the child to an adult woman who, under the terms of a surrogacy or similar agreement agreed to bear but not to parent the child, whether or not implantation of the gamete or embryo occurred before the death of the individual.

In customizing any such provision, a planner should consider the issues that are raised by existing statutes and case law, both for their instruction and for their loopholes and potential for future conflict. We need to ask our clients if they are willing to include children of their daughters-in-law born after their sons' deaths. For example, some clients may wish to deny inheritance rights to posthumously conceived children who are not born to a surviving spouse or life partner. Otherwise several women may use a man's sperm after he dies and numerous "descendants" may be created. Others may wish to exclude posthumous children in cases in which the decedent-parent did not formally consent to the child's conception. And what about when a surrogate may be involved?

Perhaps the most difficult decision for estate planners is whether to adopt a default provision and, if so, the terms of such a provision. For administrative convenience, a definition may impose a time limit, as under the UPC or the California Code. Such a time limit may be based on an actual live birth, or it may be based on a decision to attempt *in vitro* fertilization or other means of assisted reproduction.

Finally, and in the case of dynasty trusts, most importantly, does the client choose to recognize a posthumous child of a descendant of his or hers as his or her own descendant? This is akin to the "stranger to the adoption" rule discussed above that we have long since done away with in the case of adoptees.

**Conclusion**

Even in the course of writing this article, the topic can seem, in one minute, esoteric and unlikely, and the next minute, as if we have been acting irresponsibly by not regularly addressing these issues. Estate planning is rarely limited to providing for a client’s immediate offspring. Thus, while a client may be able to estimate the probability of his or her own use of ART, the future is clouded at the next or "skip person" level. None of us can safely predict the conduct of our descendants.

Science once again has evolved faster than the law. As planners, it is our job to consider the unlikely, to minimize future conflict, and to inform our clients as to the opportunities and consequences of their choices. Few of us today would draft a document that leaves the future takers of property to chance or to intestacy, yet we do not routinely address the possibility of children born of assisted conception. For some clients, and for some level of planning, perhaps we should reconsider how and when we define the most basic of our relationships.

1 Throughout this article, the term "ART" is used as a general umbrella for any medical or scientific intervention, including *in vitro* fertilization and other forms of assisted conception, intended ultimately to result in a live birth.
Sperm and egg donors, usually anonymous and not intended to be parents, are generally not considered to be parents.


See, e.g. Marsh v. Field, 130 NE 753 (Ill., 1921).


755 ILCS 5/2-2.


Comment to Article 7, section 703 of the Uniform Parentage Act.


UPC section 2-120(k); Col. Rev. Stat. §15-11-120 and NDCC §30.1-04-19

UPA Article 7, section 707.


It can be found at www.abanet.org/family/committee/artmodelact.pfd.

REST 3d PROP-WDT (T.D. No. 4, 2004)

Id, at section 14.8.

Id, at section 15.1.

REST 3d PROP-WDT section 14.8 comment h, Reporter's Note.


Cal. Prob. Code §249.5


Those which differ are California, Florida, Louisiana, Ohio, and Virginia.


Center for American Progress, Guide to State Surrogacy Laws, 12/17/2007. Arizona, D.C., Indiana, Kentucky, Louisiana, Michigan, Nebraska, and New York void or ban


29 Parpalaix v. Centre d’Etude et de Conservation du Sperme, French Tribunal de Grande Instance (civil trial court 8/1/1984), the seminal case.


32 Finley, 270 SW3d 849 (Ark., 2008).

33 Gillett-Netting v. Barnhart, 371 F3d 593 (CA-9, 2004); see Social Security Acquiescence Ruling 05-1(9).

34 Note 10, supra.

35 In re Martin B., supra note 10, quoting N.Y.S. Consolidated Laws §5-3.2(b)

36 REST 3d PROP-WDT section 14.8.

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