

in equal protection cases to judge the reasonableness of the Act.<sup>210</sup>

If the Act is not found defective under the Federal Constitution, at least one question arises under the Indiana Constitution. The right to trial by jury in civil matters<sup>211</sup> may be violated by Indiana Code section 16-9.5-4-3(5). This section makes the issue of damages a matter for the court in those instances in which the insurer has admitted liability up to the statutory maximum and the insurer, the claimant, and the commissioner of insurance are unable to agree on the additional amount, if any, owing from the patient compensation fund. However, since the Act compensates the claimant for the denial of a jury trial on the issue of damages by establishing the health care provider's liability as a matter of law,<sup>212</sup> a court may find the trade-off sufficient to overcome the limited violation of the claimant's right.

## XIX. Trusts and Decedents' Estates

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During the current survey period there were no cases in the trust area and only three in the decedents' estates area considered worthy of comment. The most significant development during the period was the enactment of Public Law 288.<sup>1</sup> A number of the changes made by this legislation are minor and will receive little more than comment in the footnotes. Other changes are quite significant and will be dealt with to the extent space limitations permit.

### A. Case Developments

#### 1. Will Contests

In *Haskett v. Haskett*<sup>2</sup> the principal issue on appeal was whether a petition to determine heirship constituted a will contest

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<sup>210</sup>San Antonio School Dist. v. Rodriguez, 411 U.S. 1 (1972); Indiana High School Athletic Ass'n v. Raike, 323 N.E.2d 66 (Ind. Ct. App. 1975).

<sup>211</sup>IND. CONST. art. 1, § 20.

<sup>212</sup>IND. CODE § 16-9.5-4-3(5) (Burns Supp. 1975).

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<sup>1</sup>Ind. Pub. L. No. 288 (Apr. 22, 1975), amending scattered sections of IND. CODE tits. 29, 32. The Act became effective January 1, 1976.

<sup>2</sup>327 N.E.2d 612 (Ind. Ct. App. 1975).

and thus was subject to the six month limitation period for contesting a will.<sup>3</sup> Alleging the statutory grounds,<sup>4</sup> the plaintiff filed a complaint to contest the will. Plaintiff dismissed the action to contest upon his subsequent filing of a petition to determine heirs.<sup>5</sup> After a hearing on cross-motions for summary judgment, the trial court found that plaintiff was the son and heir at law of the decedent.<sup>6</sup> Subsequently, the defendants, legatees under the decedent's will, filed a motion to dismiss the plaintiff's heirship petition, alleging lack of subject matter jurisdiction in that the petition was filed subsequent to the six month limitation on will contests. The court overruled the motion and proceeded to trial on the issue of whether decedent believed the plaintiff to be dead at the time he executed his will, which is a key issue in a pretermitted heirship proceeding. The trial court found for the plaintiff,

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<sup>3</sup>Other issues presented and decided in *Haskett* but not treated in this case survey included the propriety of considering affidavits submitted on motions for summary judgment but not additionally or formally introduced or admitted into evidence, 327 N.E.2d at 617; the admissibility of opinion evidence of a lay witness, *id.* at 618; the sufficiency of the evidence as to acknowledgment by decedent that plaintiff-appellee was his own child as required by IND. CODE § 29-1-2-7(b)(2) (Burns 1972), 327 N.E.2d at 618; and whether at the time decedent executed his will he believed plaintiff-appellee to be dead as required under IND. CODE § 29-1-3-8(b) (Burns 1972) for taking by a pretermitted heir, 327 N.E.2d at 619-20.

The question of the right to share as a pretermitted heir of the decedent arose out of the following uncontested facts and allegations in the petition for determination of heirs. Plaintiff was born some three years prior to decedent's marriage to plaintiff's mother, with his birth certificate stating that decedent was plaintiff's father. The petition to determine heirs alleged that plaintiff was the natural son of the decedent, that decedent had acknowledged his paternity, and finally that decedent believed plaintiff was dead when he executed his will. *Id.* at 613-15.

<sup>4</sup>IND. CODE § 29-1-7-17 (Burns 1972). The statute provided:

Any interested person may contest the validity of any will or resist the probate thereof, at any time within six [6] months after the same has been offered for probate, by filing in the court having jurisdiction of the probate of the decedent's will his allegations in writing verified by affidavit, setting forth the unsoundness of mind of the testator, the undue execution of the will, that the same was executed under duress, or was obtained by fraud, or any other valid objection to its validity or the probate thereof; and the executor and all other persons beneficially interested therein shall be made defendants thereto.

The section was amended in 1975 to include the new general 5-month probate limitation period. *Id.* § 29-1-7-17 (Burns Supp. 1975).

<sup>5</sup>IND. CODE § 29-1-6-6 (Burns 1972) reads in relevant part:

(a) At any time during the administration of a decedent's estate, the personal representative or any interested person may petition the court to determine the heirs of said decedent and their respective interests in the estate or any part thereof.

<sup>6</sup>327 N.E.2d at 615.

determining that he was an heir at law of the decedent and that the decedent made his will under the belief that the plaintiff was dead and therefore had failed to provide for him.

In affirming the decision of the trial court, the Second District Court of Appeals held that the petition of a pretermitted heir did not constitute a will contest and therefore was not subject to the six month limitation period. Noting that the will contest statute<sup>7</sup> sets forth only two grounds for contest, unsoundness of mind and undue execution, the court stated that “[c]learly the petition to determine heirship is not built upon such foundations.”<sup>8</sup>

The determination of heirship statute<sup>9</sup> provides not only for a determination of heirs but also for a determination of their interests in the estate of the decedent. In the case of a pretermitted heir, this could have the effect of removing the heir’s intestate share of the testate property from the estate, with the will remaining operative in all other respects. Since the very purpose of a will contest is to void the will, a petition to determine heirs should not be classed as a complaint to contest the will and therefore subject to the limitation period applicable to a will contest.<sup>10</sup>

## 2. Nonprobate Assets

In 1971 the legislature amended Indiana Code section 32-4-1-1<sup>11</sup> to require that certain personal property held in the name

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<sup>7</sup>IND. CODE § 29-1-7-17 (Burns 1972). See note 4 *supra*.

<sup>8</sup>327 N.E.2d at 616.

<sup>9</sup>IND. CODE § 29-1-6-6 (Burns 1972). See note 5 *supra*.

<sup>10</sup>The court rejected appellants’ alternative contention that the 6-month period of limitation of the will contest statute must be read into the determination of heirship statute under the doctrine of *in pari materia*. The court first noted that the *in pari materia* doctrine, like any other statutory construction doctrine, “is to be used only when the language of the statute is clear and unambiguous” and that there was nothing unclear or ambiguous in the language of Indiana Code section 29-1-6-6, which provides that “at any time during the administration of a decedent’s estate” an interested party may petition for determination of heirship. The court further noted that even if the statutory language was unclear or ambiguous, the doctrine would not apply since the two statutes in question do not have the same purpose, a prerequisite for application of the doctrine. 327 N.E.2d at 617. For a further discussion of the *in pari materia* doctrine see *State v. Gerhart*, 195 Ind. 439, 44 N.E. 469, 33 L.R.A. 313 (1896); *City of Muncie v. Campbell*, 295 N.E.2d 379, 382 (Ind. Ct. App. 1973).

<sup>11</sup>Before its repeal the section as amended provided in relevant part: Household goods acquired during coverture and in the possession of both husband and wife and any promissory note, bond, certificate of title to a motor vehicle, certificate of deposit or any other written or printed instrument evidencing an interest in tangible or intangible personal property in the name of both husband and wife, shall upon

of both husband and wife should, upon the death of one spouse, become the sole property of the survivor unless a "clear contrary intention is expressed in a written instrument." In *Lester v. Lester*<sup>12</sup> the trial court found that, pursuant to the statute, certain notes and mortgages became the sole property of the decedent's surviving wife. On appeal, the executor of the decedent's estate, appellant in the case, contended that the amended statute did not apply because it became effective after the execution of the decedent's will.<sup>13</sup> Alternatively, appellant contended that if the statute as amended did apply, the decedent's will, which bequeathed all of his property to his brother, showed the requisite contrary intent.

In affirming the judgment of the lower court, the First District Court of Appeals stated, "It is well settled in Indiana that a will must be construed under the law in effect at the death of the testator."<sup>14</sup> The court rejected the appellant's claim that applying the statute would involve divesting rights vested in the estate. Instead, the court noted that the statute has no effect on the ownership of the personal property and that it sets out specific procedures by which a decedent may express the requisite contrary intention.<sup>15</sup>

The appellee, decedent's widow, recognized that, since she had property of her own, the fact that the will left her no property could be interpreted as an indication of a contrary intent; however, she argued that the reference in the will to property of her own could also be interpreted as a reference to the joint property in question. Appellee further argued that the fact she was not to take anything under the will did not preclude taking property passing outside the will.<sup>16</sup> On the basis of the language and possible interpretations of the will, it appears the court of appeals correctly concluded the will did not express the "clear contrary intent" required by the statute.

During the 1975 General Assembly an attempt was made to enact the Multi-Party Accounts provisions of the Uniform Probate Code<sup>17</sup> in lieu of Indiana Code section 32-4-1-1. The UPC provisions are more narrow in that the property subject to such

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the death of either become the sole property of the surviving spouse unless a clear contrary intention is expressed in a written instrument. Ch. 145, § 1, [1971] Ind. Act 383 (repealed 1975, effective Jan. 1, 1976).

<sup>12</sup>313 N.E.2d 357 (Ind. Ct. App. 1974).

<sup>13</sup>The decedent's will was executed July 23, 1971, and the amendment to section 32-4-1-1 became effective June 15, 1971.

<sup>14</sup>313 N.E.2d at 358, *citing* Hayes v. Martz, 173 Ind. 279, 90 N.E. 309 (1910).

<sup>15</sup>313 N.E.2d at 358.

<sup>16</sup>*Id.* at 359.

<sup>17</sup>UNIFORM PROBATE CODE §§ 6-101 to -113, 6-201.

survivorship construction is limited to accounts in financial institutions. Although the General Assembly failed to enact this legislation, they did repeal section 32-4-1-1, effective January 1, 1976.<sup>18</sup> The effect of this repeal is to leave Indiana without a statute as to any jointly held personal property. Presumably, this would mean a return to the common law, which preferred joint tenancy with right of survivorship in the absence of a contrary intention.<sup>19</sup>

### 3. *Equitable Adoption*

A number of jurisdictions have permitted a foster child who was never legally adopted to participate in the estate of his foster parent under the doctrine of equitable adoption.<sup>20</sup> In those jurisdictions, when the facts are sufficient to bring a case within the scope of the doctrine, the "equitably adopted" child receives a share of the estate equal to that of a legitimate or legally adopted child. A lesser number of jurisdictions follow the rule that nothing less than strict compliance with the statutory adoption scheme will entitle a foster child to an intestate share of his foster parents' estates.<sup>21</sup> In general, the justification for this strict interpretation is that adoption statutes are in derogation of the common law and therefore they must be strictly construed.<sup>22</sup>

In the jurisdictions recognizing the equitable adoption doctrine, the most common theory upon which recovery is allowed is specific performance of an express unperformed contract for adoption between the foster parents and the child, his natural parents, or someone standing *in loco parentis*.<sup>23</sup> However, specific performance has also been recognized where the adoption contract is implied from the "acts, conduct, and admissions of the parties."<sup>24</sup>

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<sup>18</sup>Ind. Pub. L. No. 288, § 51 (Apr. 22, 1975), *repealing inter alia* IND. CODE § 32-4-1-1 (Burns 1972).

<sup>19</sup>4 G. THOMPSON, COMMENTARIES ON THE MODERN LAW OF REAL PROPERTY § 1775 (J. Grimes, 1961 repl.).

<sup>20</sup>This doctrine, also referred to as adoption by estoppel, has been accepted by a majority of the states. As of 1972 twenty-six states have demonstrated a willingness to go beyond the statutory scheme of adoption. See Note, *Equitable Adoption: They Took Him into Their Home and Called Him Fred*, 58 VA. L. REV. 727, 728 n.10 (1972) (listing the cases accepting the doctrine).

<sup>21</sup>As of 1972 eight states had refused to go beyond the statutory adoption scheme, rejecting recovery based upon an unperformed contract to adopt. *Id.* at 727.

<sup>22</sup>*Id.* at 727-28.

<sup>23</sup>*Id.* at 727, 730-32. It must be recognized, however, that the contract to adopt is not in fact being specifically enforced. Recovery under an equitable adoption theory results only in the child being made an heir for purposes of inheritance from the decedent.

<sup>24</sup>*In re Lamfrom's Estate*, 90 Ariz. 363, 367, 368 P.2d 318, 321 (1962) (en banc). Elaborating on the principle of equitable adoption, the Supreme Court of Arizona stated:

Another theory upon which equitable relief is given to children not legally adopted is that of estoppel. Under this theory the adoptive parents are precluded from asserting the invalidity of adoptive status after performance on the part of the adoptive child under a mistaken belief that legal adoption existed.<sup>25</sup>

In a case of first impression in Indiana, the First District Court of Appeals in *In re Estate of Fox*<sup>26</sup> appears to have rejected the doctrine of equitable adoption. The court noted that the case contained two issues: whether the doctrine of equitable adoption should be recognized and whether the facts warranted a finding that the petitioner was an heir of the decedent. As to the first issue, the court stated that the longstanding laws of descent and distribution based upon "the traditional relationships of blood, marriage, or adoption" had "worked well" and were "quite adequate."<sup>27</sup> Presumably, the court's reference to "adoption" was to legal adoption. The remainder of the opinion dealt with the "more practical considerations of the merits of this individual case," that is, the amount of proof necessary to support a claim of equitable adoption.<sup>28</sup>

The burden of proof in an equitable adoption case is generally stated to be "clear, cogent, and convincing."<sup>29</sup> In *Fox* the court

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This court has in two instances recognized the widely held doctrine of equitable adoption, and laid down the following principles: (1) the promisor must promise in writing or orally to adopt the child; (2) the consideration flowing to the promisor must be twofold: (a) the promisee parents must turn the child over to the promisor, and (b) the child must give filial affection, devotion, association, and obedience to the promisor during the latter's lifetime; (3) when upon the death of the promisor the child has not been made the legally adopted child of the promisor, equity will decree that to be done which was intended to be done and specifically enforce the contract to adopt; (4) the child will be entitled to inherit that portion of the promisor's estate which he would have inherited had the adoption been formal. Furthermore it has been held in other jurisdictions that the contract to adopt need not be express, but may be implied from the acts, conduct, and admissions of the adopting parties.

*Id.*

<sup>25</sup>See *Jones v. Guy*, 135 Tex. 398, 402, 143 S.W.2d 906, 908 (1940). Space will not permit further discussion of the theories upon which equitable adoption rests or the merits of such theories. For further discussion of the doctrine of equitable adoption see Comment, *Equitable Adoption: A Necessary Doctrine?*, 35 S. CAL. L. REV. 491 (1962); Note, *Equitable Adoption: They Took Him into Their Home and Called Him Fred*, 58 VA. L. REV. 727 (1972).

<sup>26</sup>328 N.E.2d 224 (Ind. Ct. App. 1975).

<sup>27</sup>*Id.* at 225.

<sup>28</sup>*Id.*

<sup>29</sup>*In re Lamfrom's Estate*, 90 Ariz. 363, 368 P.2d 318 (1962) (en blanc); *Wilks v. Langley*, 248 Ark. 227, 451 S.W.2d 209 (1970); *Long v. Willey*, 391

noted that there was a lack of evidence of an intent on the part of the decedent and her husband to adopt the petitioner. Moreover, there was no record evidence of any communication regarding any adoption agreement between the Foxes and petitioner's natural parents, nor was there any evidence of adoption proceedings, attempted or completed. Consequently, the appellate court affirmed the decision of the trial court denying the petition to be declared an heir. Since the decision rested primarily on the insufficiency of the facts to support the claim of equitable adoption, one can only speculate as to the result had there been clear and convincing evidence of a contract to adopt. In light of the fact the court felt the need to discuss the proof necessary to establish equitable adoption, it would appear the existence of the doctrine of equitable adoption in Indiana thus remains open to question.

### B. Legislative Developments

Changes in probate law have been slow, with the first major effort beginning in the early 1940's and culminating with the publication of the Model Probate Code<sup>30</sup> in 1946. Since its approval by the Real Property, Probate and Trust Law Section of the American Bar Association in 1946, various provisions of the Model Code have been adopted or served as a pattern for major revision of probate laws in a number of states. The Indiana Probate Code of 1953, although modifying many of its provisions and adding other provisions unrelated to it, clearly was an attempt to conform to the Model Code.<sup>31</sup> Although a degree of uniformity could have been achieved by close conformity with and widespread adoption of the Model Code provisions, it was not conceived as a uniform code.<sup>32</sup> The promulgation of a Uniform Probate Code was the

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S.W.2d 301 (Mo. 1965); *Nichols v. Pangarova*, 443 P.2d 756 (Wyo. 1970). In *Long* the Supreme Court of Missouri said:

The claimant, or person seeking the decree of equitable adoption, has the burden of proving the adoption contract, and it has been said that the evidence must be examined with "special strictness," and that it must be so clear, cogent, and convincing as to leave "no reasonable doubt" in the chancellor's mind.

*Long v. Willey*, *supra* at 304-05 (citations omitted).

<sup>30</sup>The Model Probate Code was a project of a special committee of the Probate Law Division of the Real Property, Probate and Trust Law Section of the American Bar Association in cooperation with the research department of the University of Michigan Law School. See generally Simes, *The Indiana Probate Code and the Model Probate Code: A Comparison*, 29 IND. L.J. 342 (1954); Wellman, *The New Uniform Probate Code*, 56 A.B.A.J. 636, 637 (1970).

<sup>31</sup>Simes, *supra* note 30, at 342. This article presents an excellent comparison of the Model Code and the 1953 Indiana Probate Code.

<sup>32</sup>Wellman, *supra* note 30, at 637.

product of a continuing effort on the part of the Real Property, Probate and Trust Section to revise the earlier work and to encourage wider statutory recognition of its provisions. This work began in 1962 and culminated in 1969 with approval of the Uniform Probate Code (UPC) by the House of Delegates of the American Bar Association.<sup>33</sup> Several states have adopted the UPC with modification.<sup>34</sup>

Having enacted a new probate code as late as 1953, one can, to some extent, understand the lack of enthusiasm on the part of the Indiana legislature and the Indiana bar for another major revision of or a completely new probate code. On the other hand, when in 1974 each member of the Indiana Probate Code Study Commission "agreed to read, examine and study all of the Uniform Probate Code and the comments for each section,"<sup>35</sup> one cannot help but express disappointment that so few of the UPC provisions found their way into the recommendations of the Commission in the Probate Reform Act of 1975, and subsequently into Public Law 288.<sup>36</sup> However, the new law made a number of both major and minor changes in existing Indiana probate law. One change, which may prove to be the most significant if received favorably by the courts, is that of unsupervised administration.<sup>37</sup> Other significant changes were made in respect to family protection statutes (homestead and family allowances),<sup>38</sup> renuncia-

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<sup>33</sup>The Uniform Probate Code (UPC) was sponsored by the National Conference of Commissioners on Uniform State Laws in cooperation with the Real Property, Probate and Trust Law Section of the American Bar Association.

<sup>34</sup>ALASKA STAT. §§ 13.06.005 to 13.36.100 (1972); ARIZ. REV. STAT. ANN. §§ 14-1101 to -7307 (Special Pamphlet 1974); COLO. REV. STAT. ANN. §§ 15-3-1-101 to -8-102 (1974); FLA. STAT. §§ 731.01 to 735.302 (1974) (adopting the major provisions of the UPC, with several variations, omissions, and additions); IDAHO CODE §§ 15-1-101 to -7-307 (Supp. 1975); MINN. STAT. ANN. §§ 524.1-101 to 524.8-103 (Supp. 1975); MONT. REV. CODE ANN. §§ 91A-1-101 to -6-104 (Supp. 1975); L.B. No. 354, §§ 1 *et seq.*, [1974] NEB. LAWS 130 (effective Jan. 1, 1977); N.D. CENT. CODE §§ 30.1-01-01 to -35-01 (Special Supp. 1975); S.D. UNIFORM PROBATE CODE (1974). Although New Jersey has not adopted the Uniform Probate Code, it has substantially adopted sections 2-110, 5-501, and 5-502. N.J. STAT. ANN. §§ 3A:4-8 (Supp. 1975), 46:2B-8 (Supp. 1975), 46:2B-9 (Supp. 1975).

<sup>35</sup>McGill, *Preface*, INDIANA PROBATE CODE STUDY COMMISSION IN THE PROBATE REFORM ACT OF 1975 PROPOSED FINAL DRAFT iv (1974).

<sup>36</sup>Ind. Pub. L. No. 288 (Apr. 22, 1975), *amending* scattered sections of IND. CODE tits. 29, 32.

<sup>37</sup>IND. CODE §§ 29-1-7.5-1 to -8 (Burns Supp. 1975). *See text accompanying notes 69-98 infra.*

<sup>38</sup>IND. CODE § 29-1-4-1 (Burns Supp. 1975). *See text accompanying notes 54-59 infra.*

tion,<sup>39</sup> and self-proved wills.<sup>40</sup> A number of amendments to the Probate Code are designed to expedite administration by reducing the time allowed for will contests,<sup>41</sup> notice of appointment,<sup>42</sup> and filing and allowance of claims.<sup>43</sup> In addition to unsupervised administration, other provisions of the Act will also have the effect of minimizing the expenses of administration. The bond requirement for personal representatives is eliminated.<sup>44</sup> Inventory requirements have been modified so as to eliminate the need for the filing of a verified written appraisal of the decedent's property.<sup>45</sup> Another change implemented by the Act reduces the number of filings of final distribution decrees of real property.<sup>46</sup> Changes designed to give more flexibility in the administration of small estates<sup>47</sup> and in summary administrative procedures<sup>48</sup> also appear in the new law. Other changes, including those related to ancillary administration,<sup>49</sup> will not be treated in this survey.

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<sup>39</sup>IND. CODE § 29-1-5-3 (Burns Supp. 1975). See text accompanying notes 50-53 *infra*.

<sup>40</sup>IND. CODE § 29-1-5-3 (Burns Supp. 1975). See text accompanying notes 50-53 *infra*.

<sup>41</sup>IND. CODE § 29-1-7-17 (Burns Supp. 1975). This section reduces the period for will contests on resisting probate from 6 to 5 months.

<sup>42</sup>*Id.* § 29-1-7-7 (Burns Supp. 1975). This section reduces the period for notice of appointment after letters testamentary or letters of administration, special or general, are issued from the former 3-week period to a 2-week period. Thus, under the new statute, such notice must be published once a week for two consecutive weeks.

<sup>43</sup>*Id.* §§ 29-1-14-1, -2, -8, -9, -10, -16, -18, -19, -21 (Burns Supp. 1975). These sections primarily implement the new 5-month period for filing claims against estates. Additionally, the sections also restrict complaint and enforcement of tort claims against a deceased tortfeasor in negligence actions for personal injury or property damage.

<sup>44</sup>*Id.* § 29-1-11-1 (Burns Supp. 1975). See text accompanying notes 99-100 *infra*.

<sup>45</sup>IND. CODE §§ 29-1-12-1, -3 (Burns Supp. 1975). See text accompanying notes 101-104 *infra*.

<sup>46</sup>IND. CODE § 29-1-17-2 (Burns Supp. 1975). This section eliminates the necessity of recording the decree of final distribution of real property in the county where the estate is administered. The decree must still be recorded in every other county in which real estate affected by the decree is situated.

<sup>47</sup>*Id.* §§ 29-1-8-1, -2 (Burns Supp. 1975). These sections reword the former sections concerning dispensing with administration of small estates. Under the new law, administration may be dispensed with where the value of the gross probate estate less liens and encumbrances does not exceed \$8,500. Formerly, administration could be dispensed with where the value of the gross probate estate less liens and encumbrances did not exceed \$5,000.

<sup>48</sup>*Id.* §§ 29-1-8-3, -4 (Burns Supp. 1975). These sections broaden the scope and simplify the procedures of summary administration of decedents' estates.

<sup>49</sup>*Id.* §§ 29-2-1-1 to -17 (Burns Supp. 1975).

### 1. *Self-proved Wills*

The purpose of a self-proved will is that of admission to probate without the necessity of testimony of the subscribing witnesses.<sup>50</sup> Execution pursuant to the requirements of a self-proved will provision could save time and expense in administering an estate. Indiana Code section 29-1-5-3, which sets forth the formal requirements for execution of a will, was amended by the Act to provide for the self-proved will. The amendment adds subsection (b), which, in effect, provides under penalty of perjury for acknowledgement by the testator and verification by the witnesses that the will was executed with the formalities prescribed in subsection (a).<sup>51</sup> Other than its admission without testimony of subscribing witnesses, the will is treated the same as any other will. It may be contested on any of the recognized grounds for contesting wills<sup>52</sup> except signature requirements. Further, the self-proving provision does not affect the right of the testator to amend or revoke the will.<sup>53</sup>

<sup>50</sup>UNIFORM PROBATE CODE § 2-504, Comment.

<sup>51</sup>IND. CODE § 29-1-5-3(b) (Burns Supp. 1975).

An attested will may at the time of the execution or at any subsequent date be made self-proved, by the acknowledgment of the will by the testator and the verifications of the witnesses, each made under the laws of Indiana, and evidenced by the signatures of the testator and witnesses, attached or annexed to the will in form and content substantially as follows:

UNDER PENALTIES FOR PERJURY, We,

-----, -----, and  
-----, the testator and the witnesses  
respectively, whose names are signed to the attached or foregoing  
instrument declare:

- (1) that the testator executed the instrument as his will;
- (2) that, in the presence of both witnesses, he signed or acknowledged his signature already made or directed another to sign for him in his presence;
- (3) that he executed the will as his free and voluntary act for the purposes expressed in it;
- (4) that each of the witnesses, in the presence of the testator and of each other, signed the will as witnesses;
- (5) that the testator was of sound mind; and
- (6) that to the best of his knowledge the testator was at the time eighteen [18] or more years of age, or was a member of the armed forces or of the merchant marine of the United States, or its allies.

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Testator

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Date

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Witness

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Witness

<sup>52</sup>*Id.* § 29-1-7-17 (Burns Supp. 1975).

<sup>53</sup>*See* UNIFORM PROBATE CODE § 2-504, Comment.

## 2. Homestead, Widow's, and Family Allowances

The Act provides a new family protection statute,<sup>54</sup> superseding not only the homestead allowance but also the widow's and family allowances available under prior statutes.<sup>55</sup> The new law provides for an allowance of \$8,500 in personal property for the surviving spouse. If there is no surviving spouse, the dependent children are entitled to the allowance. If the personal estate is insufficient to pay the allowance in full, the balance may be made up out of real estate, the difference constituting a lien on the real estate. The new statute also provides that "an allowance under this section is not chargeable against the distributive shares of either the surviving spouse or the children."<sup>56</sup>

It should be noted the new statute grants the allowance to the "surviving spouse." Of the three statutes which it supersedes, only the homestead allowance was available to both husband and wife.<sup>57</sup> This rent-free occupancy of the ordinary dwelling house granted to the surviving spouse or children under the old homestead allowance was of limited value in most instances for two reasons. First, the right was limited to a period of one year or until the final decree of distribution, whichever occurred first. Secondly, recognition of tenancy by the entirety in all real property held jointly by husband and wife<sup>58</sup> would without the benefit of the statute in the majority of cases vest title to the dwelling house in the surviving spouse. Also, the \$3,000 allowance granted by the repealed Indiana Code section 29-1-4-2 was limited to the surviving "widow" as was the court allowance of \$50 per week in repealed Indiana Code section 29-1-4-3, which allowance was subject to the sound discretion of the court.

Therefore, in most cases the \$8,500 allowance under the new statute should prove more beneficial than the cumulative benefit of the three former family protection statutes, not only to the

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<sup>54</sup>IND. CODE § 29-1-4-1 (Burns Supp. 1975).

<sup>55</sup>P.L. 403, § 1, [1971] Ind. Acts 1892 (repealed 1975) (widow's allowance); P.L. 287, § 3, [1973] Ind. Acts 1533 (repealed 1975) (family allowance).

<sup>56</sup>The allowance under the new statute has the priority of a debt of a decedent, constituting a lawful claim against the estate. It is superior to all claims except costs and expenses of administration and reasonable funeral expenses. IND. CODE § 29-1-14-9 (Burns Supp. 1975).

<sup>57</sup>Ind. Pub. L. No. 287, § 2 (Apr. 14, 1973), *as amended* IND. CODE § 29-1-4-1 (Burns Supp. 1975).

<sup>58</sup>*Simons v. Bollinger*, 154 Ind. 83, 63 N.E. 28, 48 L.R.A. 234 (1900); *Chandler v. Chaney*, 37 Ind. 391 (1871); *Richards v. Richards*, 60 Ind. App. 34, 110 N.E. 103 (1915).

surviving husband but to the surviving wife and dependent children as well.<sup>59</sup>

### 3. Renunciation

The Act amended the present renunciation statute<sup>60</sup> by substituting section 2-801 of the UPC with a modification as to the time period for filing a renunciation.<sup>61</sup> In certain important aspects the amendment does not change the law. Both the prior and the amended renunciation statutes authorize the devisees under a will and the heirs taking under the succession laws<sup>62</sup> to renounce in whole or in part.<sup>63</sup> There are, however, some important changes. The former law limited the right of renunciation to an heir or "devisee"; the new provision extends the right to "an heir, devisee, person succeeding to a renounced interest, beneficiary under a testamentary instrument or person designated to take pursuant to a power of appointment exercised by a testamentary instrument."<sup>64</sup>

Also, the previous law provided that the renunciation could be defeated by a creditor of the heir or devisee if objected to within 30 days and if the court found that the creditor was prejudiced thereby.<sup>65</sup> No such right is given to creditors in the amended statute, and it must be assumed that no such right exists under the new Act. This conclusion is supported by the

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<sup>59</sup>One could imagine a situation in which the surviving wife or minor children might receive more under pre-Act law. For example, a husband dies leaving a wife and four dependent children. Assume that the husband held title to a dwelling house in his name, making disposition of it under his will in such manner that the wife would have no interest in the house. Further assume that she could not afford to elect against the will.

Rental value of home at \$250 per month for one year under 29-1-4-1	= \$ 3,000
Widow's allowance under 29-1-4-2	= 3,000
Allowance of \$50 per week under 29-1-4-3	= 2,500
Allowance of \$25 per week for each of 4 children under 29-1-43-3	= 5,000
Total	<u>\$13,500</u>

<sup>60</sup>IND. CODE § 29-1-6-4 (Burns 1972), as amended *id.* § 29-1-6-4 (Burns Supp. 1975).

<sup>61</sup>*Id.* § 29-1-6-4 (Burns Supp. 1975).

<sup>62</sup>At common law an heir could not renounce, title having vested in the heir by operation of law rather than by "gift" under a will. *In re Meyer's Estate*, 107 Cal. App. 2d 279, 238 P.2d 597 (1951); *Coomes v. Finnegan*, 233 Iowa 448, 7 N.W.2d 729 (1943); 2 J. GRIMES, HENRY'S PROBATE LAW AND PRACTICE ch. 26, § 11 (6th ed. 1954).

<sup>63</sup>Compare IND. CODE § 29-1-6-4 (Burns 1972), with *id.* § 29-1-6-4(a) (Burns Supp. 1975).

<sup>64</sup>*Id.* § 29-1-6-4 (Burns Supp. 1975).

<sup>65</sup>*Id.* § 29-1-6-4 (Burns 1972).

language of the statute which provides that the "renunciation relates back for all purposes to the date of death of the decedent or the donee," and the property, unless the decedent or donee has otherwise indicated in his will, is to pass as if the person renouncing had predeceased the decedent or donee as the case may be.<sup>66</sup>

Omitted from the amended statute is the provision that "succession so renounced shall be subject to the same Indiana inheritance tax that would have been assessed if there were no renunciation."<sup>67</sup> Under the old law, renunciation by one subject to a higher inheritance tax than the person taking after renunciation still subjected the inheritance to the higher tax. If one applies the same language regarding the time of taking after a renunciation as set forth above in the discussion on the rights of creditors, there would appear to be no justification for imposing the higher tax under the amended statute.

Under the former law an heir or devisee was given 3 months from the date of appointment of the personal representative to file a renunciation. Under subsection (b) of the amended renunciation statute, the period for filing a renunciation is 5 months from the date of death of the decedent. However, if the taker of the property is not ascertainable within the 5-month period, then the renunciation must be filed within 4 months after such taker is finally ascertained.<sup>68</sup>

#### 4. *Unsupervised Administration*

The extent of court supervision and control over the administration of a decedent's estate varies materially from state to state.<sup>69</sup> The traditional approach has been one of substantial court supervision and control beginning with probate or the appointment of a personal representative and continuing through closing

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<sup>66</sup>*Id.* § 29-1-6-4(c) (Burns Supp. 1975).

<sup>67</sup>*Compare* IND. CODE § 29-1-6-4 (Burns 1972), *with id.* § 29-1-6-4 (Burns Supp. 1975).

<sup>68</sup>*Id.* § 29-1-6-4(b) (Burns Supp. 1975). There are a number of other provisions of this statute which are not discussed in this survey because of space limitations. For example, the amended statute sets forth where and when the instrument of renunciation is to be filed, *id.*; what will constitute a waiver or bar of the right of renunciation, *id.* § 29-1-6-4(d); the effect of spendthrift provisions, *id.* § 29-1-6-4(e), and the effect on interests existing on January 1, 1976, *id.* § 29-1-6-4(g).

<sup>69</sup>For a good discussion of the state of the law in 1968 see Committee on Administration and Distribution of Decedents Estates, *Estate Administration: Current Practices and Proposed Uniform Probate Code*, 3 REAL PROPERTY, PROBATE & TRUST J. 143 (1968). See also Wellman, *The Uniform Probate Code: Blueprint for Reform in the 70's*, 2 CONN. L. REV. 453 (1970).

and distribution.<sup>70</sup> Supervised administration involves a single continuous proceeding before the court concerned with the administration and settlement of a decedent's estate.<sup>71</sup>

Article 3 of the UPC is designed to offer survivors—heirs and devisees—a number of alternative methods for settling inheritances, including unsupervised administration.<sup>72</sup> Admittedly, some of the methods involve risks,<sup>73</sup> but the risks can be minimized with competent counseling while affording survivors a greater voice in the settlement of a decedent's estate.<sup>74</sup>

Prior to the Act, Indiana law provided a measure of flexibility in the administration and settlement of a decedent's estate.<sup>75</sup>

<sup>70</sup>Wellman, *supra* note 69, at 453-56.

<sup>71</sup>UNIFORM PROBATE CODE § 3-501 & Comment; UNIFORM PROBATE CODE PRACTICE MANUAL § 9.1 (R. Wright ed. 1972); Averill, *An Introduction to the Administration of Decedents' Estates Under the Uniform Code*, 20 S.D.L. REV. 265, 280 (1975).

<sup>72</sup>For a complete summary of the choices available under Article 3 of the UPC see UNIFORM PROBATE CODE PRACTICE MANUAL §§ 6.1-6.14 (R. Wright ed. 1953). As to Article 3 of the UPC, one writer stated:

In a nutshell the philosophy of Article III of the code is that the transfer of property at death, whether in large amounts or small, the paying of the debts and the determination of and payment of the tax liabilities of the decedent, and the handling of all other matters associated with the transfer, is largely an administrative procedure; thus, the role of the courts in this area is passive. When irreconcilable disputes arise during the course of this administrative venture, such as disagreements concerning the priority of claims or the determination of heirship, the procedure loses its administrative flavor and becomes adversary and resort is had to the courts for decisions. At this point, for the first time, the courts' role becomes active.

If this philosophical and yet very real premise is accepted, lawyers handling decedents' estates readily conclude that most wills can be probated and most estates administered on an informal basis without any court supervision. When problems arise that cannot be resolved between the parties in disagreement, court intervention then becomes necessary to solve or eliminate the problem.

Limbaugh, *Probate and Administration Under the Uniform Probate Code*, 29 J. Mo. B. 430 (1973).

<sup>73</sup>UNIFORM PROBATE CODE PRACTICE MANUAL §§ 6.4, 6.10 (R. Wright, ed. 1972).

<sup>74</sup>In many instances the risks will be minimal or nonexistent. *Id.* § 6.13. However, the role of the lawyer may shift from one of guiding the estate through the formal procedures of traditional administration to one of counseling survivors as to the appropriate method to avoid the pitfalls of a wrong choice in the settlement of the estate.

<sup>75</sup>Both formal (with notice) and informal (without notice) probate or appointment of personal representatives in intestate estates was recognized prior to the Reform Act. IND. CODE §§ 29-1-7-4, -16, -17 (Burns 1972). Pre-Act law also provided for the collection of small estates through affidavits, *id.* §§ 29-1-8-1, -2 (Burns 1972), *as amended id.* §§ 29-1-8-1, -2 (Burns' Supp. 1975); elimination of administration, *id.* §§ 29-1-8-3, -4 (Burns 1972), *as*

However, except as supervised administration was avoided through affidavit procedures in small estates, supervised administration was the rule under the pre-Act Probate Code.<sup>76</sup> As of January 1, 1976, an Indiana court may permit administration of a decedent's estate without supervision.<sup>77</sup> Unsupervised administration is permitted only upon petition<sup>78</sup> and a granting of the petition by the court.<sup>79</sup> Persons who may file a petition for unsupervised administration are as follows: (1) The decedent's heirs at law if the decedent died intestate, (2) the legatees and devisees under a will, or (3) the personal representative.<sup>80</sup> Notice of a petition for unsupervised administration must be given to a decedent's creditors pursuant to Indiana Code section 29-1-7-7.<sup>81</sup> The court may grant the petition only if all of the following conditions are met:

- (1) All of the persons referred to in clause 1 or 2 of section 1 . . . have joined in the petition; (2) the estate is solvent; (3) the personal representative is qualified to administer the estate without court supervision; (4) the heirs, or legatees and devisees, as the case may be, freely consent to and understand the significance of administration without court supervision; and (5) the will does not request supervised administration.<sup>82</sup>

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*amended id.* §§ 29-1-8-3, -4 (Burns Supp. 1975); and summary proceedings for insolvent estates, *id.* § 29-1-8-8 (Burns 1972), *as amended id.* § 29-1-8-8 (Burns Supp. 1975).

<sup>76</sup>Among others, the following provisions evidence the extent of court supervision of administration in Indiana under pre-Act law: Formal notice requirements must be fulfilled, IND. CODE § 29-1-7-7 (Burns 1972), *as amended id.* § 29-1-7-7 (Burns Supp. 1975); *id.* § 29-1-7-18 (Burns 1972); *id.* § 29-1-17-2(a) (Burns 1972), *as amended id.* § 29-1-17-2(a) (Burns Supp. 1975); the requirements of a verified inventory and appraisal, *id.* § 29-1-14-3 (Burns 1972); approval of investment of funds of the estate, *id.* § 29-1-13-14 (Burns 1972); and approval in both partial and final distribution, *id.* §§ 29-1-17-1, -2 (Burns 1972).

<sup>77</sup>IND. CODE §§ 29-1-7.5-1 to -8 (Burns Supp. 1975) (the new chapter is entitled "Unsupervised Administration"). For those who consider unsupervised administration novel or revolutionary, it should be noted that unsupervised administration has been a part of Texas probate law since 1843, when Texas was an independent republic. See Marshall, *Independent Administration of Decedents' Estates*, 33 TEXAS L. REV. 95 (1955); Woodward, *Independent Administration Under the New Texas Probate Code*, 34 TEXAS L. REV. 687 (1956). Unsupervised administration has also been a part of the probate law of the State of Washington since 1868. WASH. REV. CODE ANN. §§ 11.68.010 to 11.68.120 (Supp. 1974).

<sup>78</sup>IND. CODE § 29-1-7.5-1(a) (Burns Supp. 1975).

<sup>79</sup>*Id.* §§ 29-1-7.5-1, -2.

<sup>80</sup>*Id.* § 29-1-7.5-1(a).

<sup>81</sup>*Id.* § 29-1-7.5-1(b).

<sup>82</sup>*Id.* § 29-1-7.5-2(a).

In providing for unsupervised administration pursuant to the provisions and conditions just stated rather than amending the Code to accommodate Article 3 of the UPC, the legislature established a procedure that will save time and expense, but the effectiveness of unsupervised administration may be seriously impaired.<sup>63</sup> Under the UPC unsupervised administration is the rule, with supervised administration occurring only when a petition requesting it is filed.<sup>64</sup> Furthermore, where an estate is being administered without supervision and formal orders of the court become necessary, each formal proceeding is independent of all others.<sup>65</sup> Thus, under the UPC, unsupervised administration will continue after a formal order of the court except in the case of a formal order for supervised administration. Under the new Indiana provisions for unsupervised administration, however, the only procedure provided for when a formal court order is necessary during an unsupervised administration is a revocation of the order for unsupervised administration.<sup>66</sup> If the estate is to be administered thereafter as unsupervised, it appears that a subsequent petition for unsupervised administration would have to be filed and approved by the court.<sup>67</sup> Presumably, this would require an additional notice to creditors.<sup>68</sup> At best, such a procedure is cumbersome; at worst, it is time consuming and expensive.

Another disadvantage of requiring a petition for unsupervised administration rather than for supervised administration as under the UPC is demonstrated by the fourth prerequisite for granting

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<sup>63</sup>The Probate Code Study Commission noted that the purpose of the chapter on unsupervised administration and the method adopted for accomplishing that purpose was that of providing an "alternative to the existing method of administering estates" by engrafting "upon the existing Code those provisions of the Uniform Probate Code as would provide such an alternative without substantially revising large areas of the present Code." INDIANA PROBATE CODE STUDY COMMISSION IN THE PROBATE REFORM ACT OF 1975, PROPOSED FINAL DRAFT 14 (1974).

<sup>64</sup>UNIFORM PROBATE CODE § 3-502.

<sup>65</sup>*Id.* § 3-107.

<sup>66</sup>IND. CODE § 29-1-7.5-2(b) (Burns Supp. 1975) provides:

The court may, on its own motion or the motion of an interested person, revoke an order of unsupervised administration and require an administration on terms and conditions which the court specifies if the court finds that such a revocation is in the best interests of the estate, creditors, taxing authorities, heirs, legatees, or devisees.

<sup>67</sup>*Id.* § 29-1-7.5-1(a) provides in part:

Upon the filing of a petition under IC 1971, 29-1-7-5, the following persons may *at any time* petition the court for authority to have a decedent's estate administered without court supervision . . . .

(Emphasis added).

<sup>68</sup>Subsection 29-1-7.5-1(b) provides for notice to creditors of petitions for unsupervised administration and does not appear to waive the requirement in case of a second petition in proceedings for the same estate.

unsupervised administration—the requirement of consent. While it may be possible to obtain the consent of all the heirs, devisees, or legatees, there remains the question of what will suffice as an understanding of “the significance of administration without court supervision.” Also, if any of the heirs, legatees, or devisees are minors, and thus cannot give consent, it would appear unsupervised administration has been precluded.

Once unsupervised administration has been granted, the power of the personal representative is as extensive as the power of the personal representative in a supervised administration.<sup>89</sup> In fact, new Indiana Code section 29-1-7.5-3<sup>90</sup> sets forth 28 activities and functions which the personal representative may perform without court order, including any act necessary or appropriate to the administration of an estate, so as long as the order of unsupervised administration remains unrevoked. Since no change was made in the existing law relative to the filing of claims against the estate, creditors of the decedent will continue to file claims in the court issuing letters and such claims will be processed in the same manner and subject to the same limitations as in the supervised administration.<sup>91</sup>

Unsupervised estates may be closed at any time after 5 months from the date of the original appointment of the personal representative by the filing of a verified closing statement.<sup>92</sup> The

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<sup>89</sup>Stated another way, “the fact that the proceeding is supervised neither limits nor increases the power of the personal representative.” UNIFORM PROBATE CODE PRACTICE MANUAL § 9.1 (R. Wright ed. 1972).

<sup>90</sup>This section was patterned after Uniform Probate Code section 3-715.

<sup>91</sup>INDIANA PROBATE CODE STUDY COMMISSION IN THE PROBATE REFORM ACT OF 1975, PROPOSED FINAL DRAFT 14-15 (1974).

<sup>92</sup>IND. CODE § 29-1-7.5-4(a) (Burns Supp. 1975). This section requires a verified statement that the personal representative has done the following:

(1) published notice to creditors as provided in IC 1971, 29-1-7-7 and that the first publication occurred more than five [5] months prior to the date of the statement;

(2) fully administered the estate of the decedent by making payment, settlement or other disposition of all claims which were presented, expenses of administration and estate, inheritance and other death taxes, except as specified in the statement, and that the assets of the estate have been distributed to the persons entitled. If any claims remain undischarged, the statement shall state whether the personal representative has distributed the estate subject to possible liability with the agreement of the distributees or it shall state in detail other arrangements which have been made to accommodate outstanding liabilities; and

(3) sent a copy thereof to all distributees of the estate and to all creditors or other claimants of whom he has actual knowledge whose claims are neither paid nor barred and has furnished a full account in writing of his administration to the distributees whose interests are affected thereby.

estate may then be closed 3 months after the closing statement is filed if no proceedings involving the personal representative are pending in court. Upon closing the estate, the appointment of the personal representative terminates.<sup>93</sup>

Claims against the personal representative, except those based upon fraud, misrepresentation, or inadequate disclosure related to settlement of the estate, are barred within 3 months after the closing statement is filed unless a proceeding to assert these claims is pending.<sup>94</sup>

After the estate has been distributed, "undischarged claims not barred may be prosecuted against one or more distributees."<sup>95</sup> However, the liability of any distributee shall not exceed "the value of his distributive share as of the time of the distribution."<sup>96</sup> Each distributee shall have the right of contribution but must protect that right by notice to the other distributees of the demand made on him in sufficient time to permit the other distributees to participate in the suit.<sup>97</sup> The right of any claimant to proceed against any distributee is barred either 3 years after the death of the decedent or 1 year after the closing statement is filed, whichever occurs later.<sup>98</sup>

### 5. Bond Requirements

Except where excused by the terms of the will, former Indiana Code section 29-1-11-1 required the personal representative to file a bond before entering upon the duties of his office; the expense of the bond, however, was borne by the estate.<sup>99</sup> To minimize expenses in the administration of estates, the 1975 legislature amended this section by providing that no bond shall be required unless the will provides for the execution and filing of a bond by the personal representative or the court finds, on its own motion or on petition by an interested person, that the bond is necessary to protect the creditors, heirs, devisees, or legatees.<sup>100</sup>

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<sup>93</sup>*Id.* § 29-1-7.5-4(b). This section is patterned after Uniform Probate Code section 3-1005.

<sup>94</sup>IND. CODE § 29-1-7.5-6 (Burns Supp. 1975). This section was patterned after Uniform Probate Code section 3-1005.

<sup>95</sup>IND. CODE § 29-1-7.5-5 (Burns Supp. 1975). This section adopts the language of Uniform Probate Code sections 3-1004.

<sup>96</sup>IND. CODE § 29-1-7.5-5 (Burns Supp. 1975).

<sup>97</sup>*Id.*

<sup>98</sup>*Id.* § 29-1-7.5-7.

<sup>99</sup>*Id.* § 29-1-11-1 (Burns 1972), *as amended id.* § 29-1-11-1 (Burns Supp. 1975).

<sup>100</sup>*Id.*

### 6. Appraisement of Property

Previous law required a verified appraisement of all the decedent's property.<sup>101</sup> Under the Act, the personal representative has only to prepare "a verified written inventory in one or more written instruments, indicating the fair market value of each item" of the decedent's property.<sup>102</sup> However, the Act gives the personal representative the discretion to employ a disinterested appraiser; and, contrary to prior law, the personal representative may employ different appraisers to appraise different assets.<sup>103</sup> The new law also provides that the personal representative may furnish any interested person with a copy of the inventory or any supplement or amendment to it as an alternative to filing a copy with the court.<sup>104</sup>

## XX. Workmen's Compensation\*

### A. Routine Course of Employment

During the period covered by this survey, two significant Second District Court of Appeals cases, *Estey Piano Corp. v. Steffen*<sup>1</sup> and *Rivera v. Simmons*,<sup>2</sup> involved the issues of compensability pursuant to Indiana's Workmen's Compensation Act<sup>3</sup> for an injury incurred during the normal and routine course of employment. Based on very similar fact situations, the court approved the Industrial Board's determination to grant compensation in *Estey* and to deny compensation in *Rivera*.

To qualify for workmen's compensation, the employee's injury must result from an accident arising out of employment.<sup>4</sup> Accident is "any unlooked-for mishap or untoward event not expected or designed by the one who suffers the injury."<sup>5</sup> The two

<sup>101</sup>*Id.* § 29-1-12-1 (Burns 1972), as amended *id.* § 29-1-12-1 (Burns Supp. 1975).

<sup>102</sup>*Id.* § 29-1-12-1(a) (Burns Supp. 1975).

<sup>103</sup>*Id.* § 29-1-12-1(b).

<sup>104</sup>*Id.* § 29-1-12-1(c).

\*Tony H. Abbott

<sup>1</sup>328 N.E.2d 240 (Ind. Ct. App. 1975).

<sup>2</sup>329 N.E.2d 39 (Ind. Ct. App. 1975). *Rivera* was decided less than one month after *Estey*.

<sup>3</sup>IND. CODE §§ 22-3-2-1 *et seq.* (Burns 1974).

<sup>4</sup>*Id.* § 22-3-2-2. See generally 1A A. LARSON, THE LAW OF WORKMEN'S COMPENSATION § 37.20 (1973) [hereinafter cited as LARSON].

<sup>5</sup>Heflin v. Red Front Cash & Carry Stores, 225 Ind. 517, 522, 75 N.E.2d 662, 664 (1947).