

## **LAW REVIEW**

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### **CAN A BAD GUY LUCK INTO AN INHERITANCE?**

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Can a bad guy luck into an inheritance? That was the question asked by the trial judge in a Southern California probate case.

#### **Intestate Death**

Laura Barnes and Clifford Shellenbarger were married for a very short time more than forty years ago. They had a daughter Michele. After they divorced and Clifford moved on, their son Lesley was born.

Clifford, the natural father, never saw his son Lesley.

42 years later Lesley died intestate, meaning without a will, leaving no surviving spouse, registered domestic partner, or child. Who inherits Lesley's estate? Certainly not bad dad Clifford.

#### **Probate Code**

The California probate code has a series of codes starting with section 6400, which describes the order of inheritance when someone dies without a will. In essence, the Legislature has written a "default statutory will" for those who die without a will. It's easy reading if you are interested.

Section 6402 recites that when someone dies intestate with no surviving spouse, registered domestic partner or children, his or her estate passes to the parents--equally.

In Lesley's case, his estate passes upward to his parents Laura and Clifford 50-50.

### Bad Dad

Mother Laura filed documents alleging that because Clifford abandoned Lesley, and as she claimed, "has not paid one dime to support his children," bad dad Clifford lost his right to inherit half of their son's estate.

That is when the trial court wrote, "Can a bad guy luck into an inheritance, and is there an equitable way to avoid it?" The trial court answered the second question with a "no." Mother Laura appealed.

The Court of Appeal in this Ventura County case summed it up succinctly, "It is unfair the father should reap a financial windfall after the death of his son. This is so because father never even saw his son for the 42 years he lived. We hold that a probate court may not, on principles of equity, disinherit a natural parent who abandons a child who later dies intestate."

The Court rejected the argument that the failure to pay child support or the lack of a meaningful (or any) parent-child relationship affected bad dad's rights as an intestate heir.

Bad dad wins. Justice is not served, but the law is upheld.

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