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THE RIGHT OF A CREDITOR OF AN HEIR TO CONTEST THE WILL

I. Introduction

Kazar Harootenian died, leaving his four children as his heirs. An instrument dated four days prior to his death stated that it was his will. The will expressly disinherited two of his children, left little to a third, and bequeathed the rest of his estate to his daughter, Agnes. It appeared that Agnes, together with her disinherited brother George, had persuaded the deceased to sign such a will in order to obtain most of the estate for themselves. George wished to be disinherited because he owed money on an unsatisfied judgment against him, and if he received a share in the estate it would be diminished by the satisfaction of the outstanding judgment. Thus there was apparent collusion between George and Agnes not only to get most of the estate for themselves but also to place George’s share in the hands of Agnes and out of the reach of his creditor.

Jean Harootenian, George’s divorced wife, held the unsatisfied judgment against him for unpaid support payments. If the will disinheriting George was valid, he would have no property to satisfy her judgment. However, if the will was invalid, George would get his intestate share. Jean, therefore, contested the validity of the will on the ground, inter alia, that the decedent’s signature was procured by the undue influence of George and Agnes.

George and Agnes resisted Jean’s contest and insisted that Jean was not even an appropriate party to the probate proceeding. The applicable probate code section provided that only an “interested person” may contest a will.

The issue, then, was whether a judgment creditor of a disinherited heir is an “interested person” within the meaning of the statute and therefore a proper party to contest the will.

The California Supreme Court in In re Harootenian’s Estate held that a judgment creditor of a disinherited heir is an “interested person” within the meaning of the statute, provided that the creditor has perfected a lien on the debtor heir’s property. In arriving at its decision, the court recognized a distinction between the right of a general creditor and that of a judgment creditor to contest a will in a probate proceeding. The court also discussed the necessity of an “interested” creditor to have perfected a lien on the debtor heir’s property.

Is the distinction between a general creditor and a judgment creditor crucial to the issue of standing? Furthermore, must the judgment creditor have perfected a lien in order to be an “interested person”? Finally, why should any creditor have the right to contest the probate of a will?

1 CAL. PROF. CODE § 370 (West 1956).
3 This case provides what is perhaps the best discussion of the various approaches to this issue. The plurality opinion, written by Justice Shenk and concurred in by Justice Schauer, held that a judgment creditor who has perfected a lien on the heir’s property could contest the will. A concurring opinion, written by Justice Carter and concurred in by Justice Traynor, said that any judgment creditor of an heir should be able to contest the will, whether or not such creditor had perfected a lien. It also said that standing to contest should be
evoked conflicting decisions. At times decisions in this area have been based on considerations of policy, but just as often courts have based their decisions upon a property interest theory.

This note will discuss the controversy in the context of probate practice and how the Uniform Probate Code treats the right of a creditor of a disinherited heir to challenge the will.

II. Necessity of the Probate Contest and the Corresponding Necessity for Limits

Probate today is a legislatively created process whereby special probate courts adjudicate the external validity or invalidity of wills. It is necessary to probate a will since generally that is the exclusive way for a beneficiary to establish his testamentary rights. Legislatures have determined that this probate decree is in rem, i.e., it is a statement on the validity of a will which is final and conclusive against the entire world.

Since a probate decree has this sweeping in rem effect, there should be some point at which parties with adverse interests can challenge the decree. Since the legal rights of heirs, beneficiaries, and others are in large part determined by the probate court’s decree, there must be a forum in which to protect these interests.

The forum is the probate court itself and the time to protect these interests is generally immediately after the will has been propounded for probate but before the probate decree has been entered. Most states also allow the decree granted to a creditor who has brought an action and affected a valid attachment of the interest of the heir in the estate. A dissenting opinion, written by Justice Edmonds and concurred in by Justice Spence, would refuse to any creditor of an heir the right to contest the will.

4 Cases holding that general creditors of heirs do not have standing are collected infra, note 22. Cases contra are collected infra, note 30. Cases holding that judgment creditors do have standing are collected infra, note 36. Cases contra are collected infra, note 46.

5 In re Harootenian’s Estate, 38 Cal. 2d 242, 238 P.2d 992 (1951); In re Shepard’s Estate, 170 Pa. 323, 32 A. 1040 (1895).

6 E.g., Lee v. Keech, 151 Md. 34, 133 A. 835 (1926).


8 On the general right of creditors of heirs to contest the will, see generally, T. ATKINSON, WILLS § 99, at 518 (2nd ed. 1953); 3 W. PAGE, WILLS § 26.60, at 134 (Bow-Parker ed. 1961); 2 WOERNER, THE AMERICAN LAW OF ADMINISTRATION § 217, p. 716 et seq. (3rd ed. 1923); KERSON, CREDITORS AND THE WILL CONTEST, 14 HASTINGS L. REV. 18 (1962); Note, Right of Persons Claiming Through an Heir to Contest a Will, 27 IOWA L. REV. 443 (1942); 40 CALIF. L. REV. 449 (1952); 12 CORNELL L. Q. 247 (1917); 27 NOTRE DAME LAWYER 659 (1952); 4 STAN. L. REV. 607 (1952); 5 VAND. L. REV. 857 (1952); 2 WASH. & LEE L. REV. 166 (1940); 36 YALE L. J. 150 (1926); and the following Annotations: 46 A.L.R. 1490 (1926); 128 A.L.R. 963 (1940).

9 The external validity of the will includes its genuineness, proper execution, testamentary character, and the capacity of the testator.

10 T. ATKINSON, WILLS § 96, at 499 et seq. (2nd ed. 1953).

11 In the United States, legislatures early adopted an in rem probate proceeding both as to realty and personality. See generally, T. ATKINSON, WILLS § 93, at 483 (2nd ed. 1953); 1 W. PAGE, WILLS § 2.18, at 59 (Bow-Parker ed. 1961). For a general discussion of the in rem nature of a probate proceeding see Simes, THE ADMINISTRATION OF A DECEDENT’S ESTATE AS A PROCEEDING IN REM, 43 MICH. L. REV. 675 (1945). The early English probate practice, however, did not have an in rem probate decree as to reality, and as a result there could be inconsistent determinations of a will’s validity. See T. ATKINSON, WILLS § 93, at 480 et seq. (2nd ed. 1953); REFFY & TOMP KINS, HISTORY OF WILLS, at 96 et seq. (1928).
of the probate court to be contested within a limited time after it has been entered.\textsuperscript{12}

Just as it is necessary to have a time and place to contest a will, it is necessary to limit those who have the right to contest. This expedites the probate process and settles estates with the least possible delay and expense. If anyone were allowed to contest the decree of probate, there would be endless opportunity for harassment. Consequently, there must be a carefully defined group of proper parties who may contest the probate of the will.

In formulating this perimeter, the probate codes of most states have attempted to limit those who may challenge the will to "persons aggrieved" or "persons interested" in the outcome.\textsuperscript{13} Even in the absence of express statutory limitation, courts themselves have narrowed the field of contestants to "interested persons."\textsuperscript{14}

It is unanimously agreed that a sentimental interest in the disposition of the estate is not sufficient to render a party "interested." The contestant must have a direct and immediate \textit{pecuniary} interest that may either be impaired or defeated by the probate of the will or be benefitted by setting it aside.\textsuperscript{15} While some courts have additionally insisted that the contestant have a legal interest or recognized legal estate in the property affected by the will,\textsuperscript{16} other courts have been less stringent on this requirement.\textsuperscript{17}

Certain parties will categorically be construed as "interested persons." A classic example is the heir or next of kin who has been disinherited or who has been bequeathed an amount less than his intestate share.\textsuperscript{18} If the will is declared invalid, the heir will benefit by receiving his full intestate share. In short, all persons are "interested" who can show that property will go immediately and directly to them if the will is set aside. Conversely, certain people are held never to have the "interest" required of a proper party to a will contest. For example, creditors of the decedent are held not to have standing to contest the validity of the will, since they are satisfied out of the estate whether there is a will or not.\textsuperscript{19}

There is, however, no consensus as to whether the personal representative

\textsuperscript{12} T. Atkinson, Wills § 98, at 514-515 (2nd ed. 1953).

\textsuperscript{13} E.g., Cal. Prob. Code § 370 (West 1956) provides that "any person interested" can contest. Uniform Probate Code § 3-105 provides that "persons interested" may take part in proceedings. See generally 3 W. Page, Wills § 26.52, at 117 et seq. (Bowe-Parker ed. 1961).

\textsuperscript{14} E.g., Crawforsville Trust Co. v. Ramsey, 178 Ind. 258, 98 N.E. 177 (1912); In re Stewart, 107 Iowa 117, 77 N.W. 574 (1898); In re Goldsberry's Estate, 95 Utah 379, 81 P.2d 1105 (1938); W. Page, Wills § 26.52 note 13 supra.

\textsuperscript{15} E.g., Estate of Land, 166 Cal. 538, 137 P. 246 (1913); In re Duffy's Estate, 228 Iowa 426, 292 N.W. 165 (1940); Teckenbrock v. McLaughlin, 246 Mo. 711, 152 S.W. 38 (1912); W. Page, Wills note 13 supra.

\textsuperscript{16} E.g., Smith v. Bradstreet, 33 Mass. (16 Pick.) 264 (1834); Lee v. Keech, 151 Md. 34, 133 A. 835 (1926).

\textsuperscript{17} In re Harootenian's Estate, 38 Cal. 2d 242, 249, 238 P.2d 992, 996 (1951) says that "[i]t is not interest in the estate as such which determines his right. It is his interest in the devolution of the estate which establishes the right to contest."


\textsuperscript{19} Montgomery v. Foster, 91 Ala. 613, 5 So. 349 (1890); Hooks v. Brown, 125 Ga. 122, 53 S.E. 583 (1906).
of the deceased or assignees and grantees of heirs may contest a will. This note will discuss whether the creditor of an heir has standing to contest the probate of a will.

III. Rights of Creditors of Heirs to Dispute the Will's Validity

A. Rights of General Creditors

Courts have usually held that a general creditor of a disinherited heir does not have standing to contest the validity of the will in probate court. In re Shepard's Estate illustrates the typical manner in which courts have decided the right of a general creditor to contest. In Shepard the testatrix left a will bequeathing her property precisely as it would have descended under the laws of intestate succession except for the exclusion of her son Henry. The one-fourth interest in the estate that would have been Henry's intestate share was bequeathed to Henry's wife and children, protecting Henry's share from seizure by his creditors. The creditors contested probate of the will alleging that the decedent's signature was forged. The issue was narrowed to whether or not Henry's creditors were "persons interested" as required by statute.

The court conceded that a general creditor is interested in his debtor acquiring more property, since the latter's ability to pay and the former's ability to seize property depend on the value of the debtor's assets. The court decided, however, that this general interest is not the interest required by statute. The court considered these creditors' interest too intangible and remote; the eventuality of the creditors ever actually satisfying themselves from this property was too uncertain. The court also reasoned that if the creditor is to have standing as a "party interested," it must be by a theoretical substitution to the right of the son. Since the creditor claims through the son, he could not contest since his and the son's interests are antagonistic.

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20 3 W. PAPE, WILLS § 26.55, at 125 at seq. (Bowe-Parker ed. 1961) and cases collected therein. Note also that § 1-201(20) of the Uniform Probate Code provides that the term "interested person" also includes "... persons having priority for appointment as personal representative. ..." This would seem to clarify this area in those states having adopted the Code. See also Annot., 31 A.L.R. 2d 756 (1955).

21 3 W. PAPE, WILLS § 26.59, at 133 (Bowe-Parker ed. 1961) and cases cited therein.

22 Lockard v. Stephenson, 120 Ala. 641, 24 So. 996 (1899) (also held that judgment creditors had no right to contest); San Diego Trust & Savings Bank v. Heustis, 121 Cal. App. 675, 10 P.2d 158 (1932); In re Harootenian's Estate, 38 Cal. 2d 242, 238 P.2d 992 (1951); Keefer v. Lauer, 73 Kan. 388, 85 P. 541 (1906); Lee v. Keech, 151 Md. 34, 133 A. 835 (1926) (held also that judgment creditor had no right to contest); Smith v. Bradstreet, 33 Mass. (16 Pick.) 264 (1844); In re Langevin's Will, 45 Minn. 429, 47 N.W. 1133 (1891) (allowed judgment creditors to contest, but not general creditors); Watson v. Alderson, 146 Mo. 333, 48 S.W. 478 (1898) (allowed judgment creditors to contest, but not general creditors); Bank of Tennessee v. Nelson, 40 Tenn. (3 Head) 426 (1859) (also held that judgment creditors had no right to contest).

23 170 Pa. 325, 32 A. 1040 (1895).

24 Id. at 326, 32 A. at 1040.

25 Id. at 327, 32 A. at 1041. See also, on the remoteness of the interest of a creditor of an heir, Judge Edmond's dissenting opinion in In re Harootenian's Estate, 38 Cal. 2d 242, 255, 238 P.2d 992, 999 (1951) wherein he says that "... if the contest is successful, and if the real estate distributable to the debtor has not been sold during administration, and if that real estate is finally distributed to the debtor, the creditor then will have a property interest in the estate of the decedent." (Emphasis in original.)

26 In re Shepard's Estate, 170 Pa. 327, 32 A. 1041 (1895).
Policy considerations were perhaps the real basis of the court's decision in Shepard. Allowing the statute to include creditors of heirs within its definition of "interested parties" would be to "... invite every disappointed creditor of every heir and legatee to contest the will of a parent who has attempted to provide for those dependent for subsistence on a thriftless son." These words suggest that the unique facts in Shepard may have shaped the court's decision. They also suggest that the court was concerned about a deluge of similar litigation if every creditor of every heir were allowed to contest. Extended litigation obviously could tie up large estates on behalf of a creditor whose claim may be inconsequential.

The earliest American case deciding the issue, Smith v. Bradstreet, indicated that the reason a general creditor did not have standing to contest was that, inter alia, he did not have a requisite property interest in the estate. To have standing, the court said, the decree rejecting or allowing probate must give or divest some right to property of the contestant.

Although the general rule is that general creditors of heirs cannot contest the will, at least one jurisdiction has granted them standing. In Brooks v. Paine's Ex'rs, the testator had left a will which bequeathed the bulk of his estate to his sons' children, and only a small part of it to his sons. The sons acquiesced in the bequest, but their creditors, some of whom were general creditors, wished to contest the will on the grounds that the testator revoked it before his death. The question was whether a creditor of an heir can contest a will which disinherits the heir.

The court held the creditor to be a proper party. First, probate of the will is a conclusive in rem proceeding and cannot be collaterally attacked. Disinherited heirs could acquiesce in an invalid instrument or indeed actively fabricate such an instrument, thereby defeating the interests of their creditors. If the creditors are not allowed to contest the probate of the will, they would have no remedy at all against the defrauding heirs. Second, the court conceded the premise that a testator has a right to dispose of his property as he sees fit; but the issue here is whether the heirs can make the will for the testator or settle property in a proceeding that will adjudge a false document to be a true one. Third, although the creditors of an heir may not have an actual property interest in the estate, the court nonetheless concluded that they were proper parties to contest since it is "... not merely persons who have a legal interest in the estate.

27 Id. at 328, 32 A. at 1041.
28 Id. Throughout the Shepard opinion there is no distinction drawn between general and judgment creditors. Indeed, in light of the history of the case in the lower court, it seems that Shepard applies to judgment creditors as well as general creditors. See 11 Pa. Co. Ct. 133 (1892).
29 33 Mass. (16 Pick.) at 265 (1834).
30 The Kentucky Supreme Court granted standing to both general and judgment creditors first in Brooks v. Paine's Ex'rs, 123 Ky. 271, 90 S.W. 600 (1906) and later in Mullins v. Fidelity & Deposit Co., 30 Ky. L. Rptr. 1077, 100 S.W. 256 (1907).
31 123 Ky. 271, 90 S.W. 600 (1906).
32 Id. at 273, 90 S.W. at 600.
33 Id. at 274, 90 S.W. at 600.
34 Id. at 275, 90 S.W. at 601.
of the decedent, but those who have a legal interest to be affected by the probate of his will, that are let in to contest the probate.”

B. Rights of Judgment Creditors

While general creditors generally have no standing to contest the will, the opposite is true as to judgment creditors. The earliest precedent establishing different rules for judgment creditors than for general creditors is Smith v. Bradstreet, in which the caveator was a creditor of a disinherited heir. The court held that a general creditor was not a “person aggrieved” within the applicable statute since, first, his interest was too contingent and remote and, second, the probate of the will could divest no property right of the creditor. The creditor revised his facts to state that he had perfected a lien on the heir’s property. The court held that the lien created an appropriate real property interest which could be followed up by perfect title and that probate of the will could divest this right. The lien creditor, therefore, has standing.

In re Langevin’s Will illustrates the reasoning generally set forth by courts in granting judgment creditors standing to contest. In that case the testator disinherited his son. Before the decedent’s death, the son’s creditors recovered a judgment and lien on all real estate the son had or might acquire. These creditors wished to contest the will’s validity on grounds of undue influence and lack of capacity. The issue, of course, was whether the judgment creditors had standing to contest, i.e., whether they were “interested persons” within the meaning of the appropriate statute. The court stated that the interest that will entitle one to oppose a will must be a legally recognized interest in the property affected by probate. Furthermore, the court stated that a judgment creditor of an heir has this interest since, if there is no valid will, the heir takes his intestate share immediately at the testator’s death, and at that point the judgment immediately becomes a lien on the property in the heir’s hands. Probate of the will would divest that lien. Therefore while a general creditor lacks such requisite interest, a judgment creditor is indeed an “interested party.”

The court in In re Duffy’s Estate, a comprehensive case in accord with Langevin, did not consider as material the fact that a judgment lien may not

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35 Id. at 276, 90 S.W. at 601.
36 In re Harootianian’s Estate, 38 Cal. 2d 242, 238 P.2d 992 (1951); In re Duffy’s Estate, 228 Iowa 426, 292 N.W. 165 (1940); In re Langevin’s Will, 45 Minn. 429, 47 N.W. 1133 (1891); Watson v. Alderson, 146 Mo. 333, 48 S.W. 478 (1898); Teckenbrock v. McLaughlin, 246 Mo. 711, 152 S.W. 38 (1912); In re Van Doren’s Estate, 119 N.J.Eq. 80, 180 A. 841 (1935); In re Coryell’s Will, 4 App. Div. 429, 39 N.Y.S. 508 (1896); Bloor v. Platt, 78 Ohio 46, 84 N.E. 604 (1908); Seward v. Johnson, 27 R.I. 396, 62 A. 569 (1905); Koromowski v. Jackowski, 164 Wis. 254, 159 N.W. 912 (1916).
37 33 Mass. (16 Pick.) 264 (1834).
38 Id. at 265.
39 Id. Smith v. Bradstreet was followed precisely by the recent Massachusetts case, Marcus v. Pearce Woolen Mills, 353 Mass. 483, 233 N.E.2d 29 (1968) which confirmed the division between creditors with liens and those without.
40 45 Minn. 429, 47 N.W. 1133 (1891).
41 Id. at 430, 47 N.W. at 1133.
42 Id.
43 228 Iowa 426, 292 N.W. 165 (1940).
be an estate in land in the technical sense. The lien, said the court, is nonetheless a valuable property right.\textsuperscript{44} The court noted that probate adjudications should be as far reaching as possible and all persons with adverse interests should be given an opportunity to be heard.\textsuperscript{45}

While the general rule is that a judgment lien creditor is an "interested person" and a proper party to a will contest, some cases have declined even to permit a judgment creditor to contest a will.\textsuperscript{46}

\textit{Lee v. Keech}\textsuperscript{47} perhaps best represents the cases denying standing to judgment creditors. The judgment creditor therein held a judgment lien on the property of a disinherited son. The debtor son's intestate share had been left to his wife and thus out of the reach of creditors. The court analyzed the question of the judgment creditor's right to contest in terms of the nature of the interest held by a judgment creditor of an heir and the nature of the requisite interest to contest. The kind of interest required to contest probate must be "... such an interest gained in the property as will give the creditor a part of the sum total rights of ownership.\textsuperscript{48,49} The court then concluded that a judgment lien is a statutory lien which is more in the nature of a remedy than an estate. It gives the creditor no property right or estate in the property itself, and therefore cannot support a \textit{caveat}.\textsuperscript{49}

The case law dealing with the rights of creditors of heirs is somewhat confused. Many of these cases expressly reject the arguments advanced by the other courts, and the nonspecific statutory requirements offer no help in rectifying this confusion. Furthermore, in those jurisdictions having only old cases or no cases at all on point, lawyers can only guess as to the state of the law.\textsuperscript{50}

\section*{IV. The Uniform Probate Code}

\textbf{A. Purposes of the Code}

It would be anticipated that the confusion in probate law would be clarified by the Uniform Probate Code,\textsuperscript{51} which had as its object the streamlining and unifying of probate practice. In 1969, the National Conference of Commissioners on Uniform State Laws, in response to a recognized need for change,\textsuperscript{52} adopted the Uniform Probate Code which was thereafter endorsed by the Ameri-
can Bar Association. The purposes of the Code are, first, to provide a simple, efficient, and flexible means of settling estates with a minimum of court interference or supervision and, second, to provide uniformity of probate practice among the states.

By spring 1974, a number of states had adopted the Code; it is presently being discussed before the legislatures of a number of other states. One commentator predicts that by the end of the decade the Uniform Probate Code will be to probate law what the Uniform Commercial Code is to commercial law. Due to the great interest in the Code it is important that it be widely discussed and criticized.

B. The Right to Contest the Will

In analyzing the Uniform Probate Code provisions covering the right to contest the will, it is important to keep in mind the purposes of the Code and to determine whether the provisions implement these purposes.

Section 3-105 of the Code provides that "persons interested in decedents' estates" may apply for determination in informal probate proceedings and may petition the court for formal proceedings. Section 3-401 specifically states that formal testacy proceedings may be commenced by an "interested person." Section 1-201(20) defines the phrase "interested person":

"Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries and any others having a property right in or claim against a trust estate or the estate of a decedent, ward or protected person which may be affected by the proceeding. It also includes persons having priority for appointment as personal representative, and other fiduciaries representing interested persons. The meaning as it relates to particular persons may

53 E.g., see Uniform Probate Code §§ 3-101 et seq.
54 States enacting or substantially modeling their probate codes after the Uniform Probate Code by spring 1974 are Alaska, Arizona, Colorado, Idaho, Maryland, and North Dakota.
57 Section 3-105 provides in part: "Persons interested in decedents' estates may apply to the Registrar for determination in the informal proceedings provided in this Article, and may petition the Court for orders in formal proceedings within the Court's jurisdiction including but not limited to those described in this Article."
58 Section 3-401 provides in part: "A formal testacy proceeding is litigation to determine whether a decedent left a valid will. A formal testacy proceeding may be commenced by an interested person filing a petition as described in Section 3-402(a) in which he requests that the Court, after notice and hearing, enter an order probating a will, or a petition to set aside an informal probate of a will or to prevent informal probate of a will which is the subject of a pending application, or a petition in accordance with Section 3-402(b) for an order that the decedent died intestate."
vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

Upon analysis it will be seen that the § 1-201(20) definition gives no answer to the question of whether a creditor of a disinherited heir is an "interested person." All the enumerated persons in the first sentence stand in a definite relation to the decedent. For example, the word "heirs" clearly means heirs of the decedent. Likewise the word "devisees" clearly means devisees of the decedent. It follows that the word "creditors," as used in the same enumeration, also must mean creditors of the decedent. A creditor of a decedent, of course, is a proper party to any will proceeding since he is to be satisfied out of the estate. But, as mentioned previously, a decedent's creditors are never proper parties to contest a will since their interests are satisfied whether the will is valid or not. The crucial point, however, is that the word "creditors" as used here gives no guidance about the right of the creditor of a disinherited heir to contest. Indeed, there is no guidance on the question throughout § 1-201(20); the last sentence of that section perpetuates the ambiguity.

The provisions of the Code do not, therefore, adequately clarify the right of a creditor of an heir to contest a will; this very ambiguity conflicts with the purposes of the Code. One purpose of the Code, it will be recalled, is to provide a simple, flexible, and efficient system of estate settlement. This purpose is hardly served by a Code whose ambiguity begs litigation on the very issue of standing. Another purpose of the Code is uniformity. The Code's silence on an issue which has already been decided inconsistently in various jurisdictions is hardly the path toward uniformity of interpretation.

The situation reduces to this: The case law conflicts as to rights of creditors of heirs; past statutory requirements for standing to contest have not provided adequate clarity; and the Uniform Probate Code's definition of "interested persons" is ambiguous on creditors' rights.

V. Analysis and Resolution

How should the next case concerning the right of a creditor of an heir to contest a will be decided? If the case is in a state having adopted the Code, how should the Code be interpreted? How should the Code or state statutes be changed in advance to preclude further litigation on this troublesome question?59

A. Response to Allowing No Creditor to Contest

Various arguments have been advanced for the position that no creditor of an heir should have the right to contest the will. Lee v. Keech60 dismissed all creditor contests on the ground that the creditor of an heir does not have a genuine estate in the property of the deceased and therefore the creditor's interest is not "part of the sum total rights of ownership."61 This is precisely

59 On the right of creditors of heirs to contest the will see the sources collected note 8 supra.
60 151 Md. 34, 133 A. 835 (1926).
61 Id. at 36, 133 A. at 836.
the type of reasoning rejected in *In re Duffy's Estate* as "... attaching too much importance to quibble and technicality, and overlooking the common sense of the situation."62 Other courts in similar circumstances have found it equally easy to decide that at least a judgment creditor with a lien has a sufficiently substantial interest in the property to be a “person interested” in the proceedings.63 The ease with which courts disagree makes it apparent that arguments based on a property interest theory are more in the nature of assertions than reasonable foundations for a court's decision.

Another argument advanced for the position that no creditor of an heir should have standing is that to allow *any* creditor of an heir to contest presents the problem of a creditor with a small claim indefinitely tying up a large estate, thus depriving those to be benefitted under the will from receiving their bequests.64 This reasonable fear, however, could be alleviated by a state's enactment of a statute requiring that a claim be of a certain amount before granting a creditor standing. Or, rather than a designated amount, perhaps it would be more just to have a formula determination for deciding when to give a creditor standing. This formula could include the size of the estate, the wealth of those to be benefitted under the will, and the solvency of the debtor heir, as well as the amount of the creditor's claim. There is no reason why, in the absence of such a statute, a court itself could not devise such a formula. An additional way to prevent small claims from tying up large estates would be to limit the right to contest to judgment creditors. Allowing only judgment creditors to contest would in effect eliminate many small claims since creditors with small claims would not be reducing their claims to judgments with the same urgency and frequency as those with large claims. Finally, the fear of a small claim tying up a large estate may be entirely unfounded simply because small claimants would not find the expense of suit worthwhile.

Another argument against letting any creditor contest is that giving creditors this right would result in a flood of litigation as all creditors of all heirs joined the proceedings.65 This problem could also be alleviated by a rule allowing only judgment creditors standing; there are simply fewer judgment creditors than general creditors. Judging from the scarcity of cases on this issue, even in a jurisdiction allowing *both* judgment and general creditors to contest, it is doubtful if the fear of a litigious deluge is realistic.66

It has also been argued that since legatees and devisees can renounce their interest in bequests to the detriment of their creditors,67 then, logically, a creditor of a beneficiary should not have standing to contest an invalid will if acquiesced in by the beneficiary.68 The argument is that if the beneficiary can renounce

63 E.g., *In re Harootianian's Estate*, 38 Cal. 2d 242, 238 P. 2d 992 (1951); *In re Duffy's Estate*, 228 Iowa 426, 292 N.W. 165 (1940); *Smith v. Bradstreet*, 33 Mass. (16 Pick.) 264 (1834).
64 *In re Shepard's Estate*, 170 Pa. at 328, 32 A. at 1041.
65 Id.
66 In Kentucky, the only jurisdiction allowing all creditors of heirs to contest, there have been only two such contests. See note 30 supra.
the bequest, he should be allowed to acquiesce in a will depriving him of a be-
quiest. However, the cases generally have not been concerned with creditors of
legatees or devisees, but rather have dealt with creditors of heirs. And although
the rule is that legatees and devisees can renounce a bequest, the general rule
as to heirs is that they cannot renounce their intestate share. Therefore the
logic now runs the opposite direction: Since heirs cannot renounce their share,
they should not be allowed to acquiesce in a spurious will disinheriting them.
It should be noted that often it is not a situation of heirs merely acquiescing in
an invalid will, but rather a case of the heirs having actively procured it!

The Uniform Probate Code, however, allows all those who will take an
interest in a decedent's estate, both beneficiaries and heirs, to renounce their
interest. In states having adopted the Code, this alone would support the
original logic that since heirs can renounce, they should be allowed to acquiesce.
But it is questionable whether heirs or devisees or legatees could renounce their
interest when a judgment lien is held against them on the property, since § 2-
801(d)(1) bars the right to renounce if there is an "encumbrance" on the
property.

In summary, the arguments for not allowing any creditor of an heir the
right to contest are of limited persuasive value.

B. Response to Allowing All Creditors to Contest

This discussion has discounted the arguments for allowing no creditor the
right to contest. But why, now, should not all creditors be allowed to contest?
General and judgment creditors have a similar interest insofar as the chances of
payment and satisfaction for all creditors are improved if their debtors have
more assets. Additionally, since probate proceedings are usually in rem, should
not all creditors have a chance to contest a possibly fraudulent will in the only
forum available?

The persuasive considerations above, however, are countered by yet more
forceful ones. A general creditor's interest in the devolution of the estate is less
substantial than a judgment creditor's, since there is less assurance that a general
creditor will ever satisfy himself out of the estate. First, the general creditor
must reduce his claim to a judgment, and second, this must be done before the

70 UNIFORM PROBATE CODE § 2-801(a) provides in part: "A person (or his personal
representative) who is an heir, devisee, person succeeding to a renounced interest, beneficiary
under a testamentary instrument or person designated to take pursuant to a power of appoint-
ment exercised by a testamentary instrument may renounce in whole or in part the succession
to any property or interest therein by filing a written instrument within the time and at the
place hereinafter provided."
71 UNIFORM PROBATE CODE § 2-801(d) provides in part: "Any (1) assignment, con-
vveyance, encumbrance, pledge or transfer of property therein or any contract therefor, (2)
written waiver of the right to renounce or any acceptance of property by an heir, devisee,
person succeeding to a renounced interest, beneficiary or person designated to take pursuant
to a power of appointment exercised by testamentary instrument, or (3) sale or other dis-
position of property pursuant to judicial process, made before the expiration of the period in
which he is permitted to renounce, bars the right to renounce as to the property."
72 See Brooks v. Paine's Ex'rs, 123 Ky. 271, 90 S.W. 600 (1906).
property is assigned or sold. The most convincing argument for denying general creditors the right to contest is that their claims have not yet been proven. A rule allowing standing to creditors with unproven claims could lead to harassment. Likewise, the settlement of some estates could be held up by unfounded claims. If general creditors were made proper contestants, the probate court would have to determine the validity of their claims in order to avoid spurious litigation. Thus, a court traditionally created to probate a will would have to decide the validity of a claim. This would have adverse effects on the efficiency of estate settlement. But more importantly, the debtor heir who does not wish to contest the will may perhaps not even be present to dispute the claim against him. So, while there are persuasive reasons for allowing creditors of an heir to contest a will, there are countervailing reasons for not giving this right to general creditors.

One case which has granted the right to contest to judgment creditors only, however, has required additionally that the judgment creditor have a lien on the heir's property. This requirement is unnecessary and illogical. First, since a lien attaches to realty but not personalty, a lien requirement would have the anomalous result of allowing a judgment creditor standing when the estate contains realty but not when it contains only personalty. This distinction makes no sense. Second, if the judgment had been docketed in a county other than the one where the probate proceedings were held, the lien would not be effective on real estate in the county of the probate court. Thus the standing of a judgment creditor would turn on the precise location of the property, which also appears to make little sense.

VI. Conclusion

The conclusion emerging from the preceding analysis is that the best rule would be one which allows judgment creditors of disinherited debtor heirs the right to challenge the probate of a will, whether or not such creditor has perfected a lien. This rule should apply both to those states which have adopted the Uniform Probate Code and those which have not. However, the preferable solution would be to amend the Code in accordance with this conclusion in order to preclude further litigation on this issue. Such clarification would be a sensible step toward efficiency and uniformity, and thus make the application of the Code congruent with its purposes.

James R. Hellige

73 In re Harootenian's Estate, 38 Cal. 2d 242, 238 P. 2d 992 (1951).