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A CHINESE INHERITANCE

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The cultural values of a society are often discernable in its laws of succession and intestacy. These laws govern the distribution of a decedent's estate when there is no an estate plan in place. Intestacy schemes typically reflect basic societal values. Yet, perhaps remarkably, the laws of intestacy bear consistency across various countries, continents, and cultures, rewarding the closest surviving family members. Upon closer examination, unique characteristics also emerge. The most startling characteristic of Chinese inheritance law is its willingness to invoke judicial review of an heir's conduct in settling upon distribution percentages to govern intestacy. American succession law also considers an heir's conduct in this context, but it does so sparingly and formalistically while Chinese conduct-based intestacy is widespread and fluid. This article contrasts the American and Chinese approaches to conduct-based intestacy, identifies the underlying competing policies and values in play, and summarizes five recent Chinese judicial opinions as a way of assessing the operation of Chinese conduct-dependent intestacy formulas and America's counterparts.

INTRODUCTION

The legal history of China extends over thousands of years. China long enjoyed "ethics based law that blended dynastic codes with Confucian ethical principles."[1] The contemporary laws of inheritance in China are, by contrast, quite fresh. In 1949, the Chinese Communist Party founded the People's Republic of China.[2] The country started with a clean legal slate and eliminated all regulations and laws.[3] Roy Girasa encapsulates the legal history of China

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[1] Roy J. Girasa, *Legal Aspects of Doing Business in China*, 20 WESTCHESTER B.J. 305, 305 (1993).

[2] M. Ulric Killion, *Three Represents and China's Constitution: Presaging Cultural Relativistic Asian Realism*, 13 CURRENTS: INT'L TRADE L.J. 23, 24 (2004).

[3] Stephen L. McPherson, *Crossing the River by Feeling the Stones: The Path to Judicial Independence in*

following the Communists' victory:

> From 1949 to 1957, after abolishing all laws enacted by the previous government, a few laws were passed dealing with law reform, marriage and trade unions. Judges had to decide cases in accordance with governmental policy. Between 1958 to 1966, no laws were passed; rather 420 decrees were enacted. Anarchy reigned during the Cultural Revolution in the late 1960s and early 1970s. The death of Mao in 1976 led to significant reforms. The People's Congress, which previously merely approved pre-ordained mandates, became invigorated. Legislation was drafted and enacted that lent some credibility to the rule of law within China. The Ministry of Justice, which had ceased to exist in 1959, was re-established in 1979.[4]

China's Chairman, Mao Tse-Tung, died in 1976, and after China was opened to the outside world in 1979, a period of brisk legal reform ensued.[5] In 1982, a new constitution was adopted that emphasized the rule of law.[6] The People's Republic of China enacted its contemporary Law of Succession in 1985.[7] That law has remained unchanged ever since.

To the American lawyer, the most striking aspect of Chinese succession laws are intestacy provisions that vary the amount of an intestate share depending on whether an individual supported the decedent or relied upon the decedent for support. Article Fourteen of the Chinese Law of Succession ("Article Fourteen") states:

> An appropriate share of the [intestate] estate may be given to a person, other than a successor, who depended on the support of

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China, 26 PENN ST. INT'L L. REV. 787, 792 (2008).

[4] Girasa, *supra* note 1, at 305.

[5] Mo Zhang, *The Socialist Legal Tradition with Chinese Characteristics: China's Discourse for the Rule of Law and a Bitter Experience*, 24 TEMP. INT'L & COMP. L.J. 1, 13 (2010). Zhang explains:

> Mao's death in 1976 made it possible for China to move in a different direction. Most striking were the abandonment of Mao's class struggle theory and the re-positioning of China to focus on 'economic development' rather than 'political movements.' In 1978, a nationwide economic reform to modernize the country was initiated. Along with the economic reform there was an explosion of legislation resulting in numerous laws and regulations.

Id. at 13.

[6] XIANFA art. 1, § 1 (1982) (China); *see also* M. Ulric Killion, *China's Amended Constitution: Quest for Liberty and Independent Judicial Review*, 4 WASH. U. GLOBAL STUD. L. REV. 43, 52-9 (2005) (summarizing and contextualizing China's 1982 Constitution); *see also* Zhang, *supra* note 5, at 4 ("[s]ince 1999, when the Constitution of 1982 was amended to mandate that the country be governed according to law, the phrase 'ruled by law' has been used more frequently than 'rule of law.'")

[7] Law of Succession of the People's Republic of China (promulgated by Order No. 24 of the President of the People's Republic of China on April 10, 1985, effective October 1, 1985) P.R.C. Laws *available at* http://www.fmprc.gov.cn/ce/cgny/eng/lsqz/laws/t42224.htm [hereinafter "PRC Succession Law"].

> the decedent and who neither can work nor has a source of income, or to a person, other than a successor, who was largely responsible for supporting the decedent.[8]

Thus, Article Fourteen invites the court to 'place its finger on the scale' of intestacy due to support provided to or received by the decedent, even when that person is unrelated to the decedent. Similar provisions allow Chinese courts to expand or contract the amount passing to an intestate successor, such as a child, based on the same factors.[9] Contraction of a family member's intestate share due to lack of support also depends upon whether the person had the means to offer support to the decedent.[10] Consistent with the general tenor of civil law jurisdictions, the Chinese Law of Succession states general principles and lacks, for example, a statutory definition of the term "support" or any other guidance.[11]

The amount of judicial discretion invoked by these support-dependent intestacy rights is unsettling. By introducing a consideration of support or lack thereof, an outcome in an intestate estate proceeding is made less formalized and more unpredictable. Grieving family members may become adversaries, asserting or challenging the quality of support provided. Rulings by different judges are less likely to be consistent, making amicable settlements uncommon, or at least less efficient. Moreover, the lack of *stare decisis* due to China's civil law jurisdiction heritage, would seem to only exacerbate the problems inherent in a support-based intestacy scheme.[12] However, if intestacy outcomes in China

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[8] PRC Succession Law Art. 14.

[9] PRC Succession Law Art. 13; *see also* PRC Succession Law Art. 10 (expanding the definitions of "parents" and "children" to include stepparents and stepchildren if they provided or received support from the decedent).

[10] *See* PRC Succession Law Art. 13 (providing that "successors who had the ability and were in a position to maintain the decedent but failed to fulfill their duties shall be given no share or a smaller share....")

[11] *See* Sabrina DeFabritiis, *Lost in Translation: Oral Advocacy in a Land without Binding Precedent*, 35 SUFFOLK TRANSNAT'L L. REV. 301, 309-10 (2012) (describing the primary characteristics of civil law systems as contrasted with common law systems). DeFabritiis writes:

> Civil law is highly systematized and structured. It relies on declarations of broad, general principles and often ignores details. There are five basic codes typically found in a civil law jurisdiction: the civil code, the commercial code, the code of civil procedure, the penal code, and the code of criminal procedure. Civil law codes, as they have evolved from the *Corpus Juris Civilis*, provide the core of the law. General principles are systematically and exhaustively exposed in the codes while particular statutes complete them. But civil law statutes do not provide specific definitions; instead, they state principles in broad, general phrases. Code principles are not explained precisely. Rather, they are stated concisely so that they may be exhaustive.

Id. at 309, 310. At the same time, civil codes "were never intended to be a gapless system of legal rules, to comprise such a system in latent form, or to be treated as such a system for purposes of applying the law." *Id.* at 311.

[12] In China, even published judicial decisions are not governed by the outcome or reasoning of prior court decisions—nor vested with the power to influence future judicial outcomes—by means of *stare decisis*. *See* DeFabritiis, *supra* note 11, at 313 (recalling that in a "civil law system, judicial decisions are not a source of law.") Chinese judges, as civil law jurists, are not bound to follow precedent. In France,

are less predictable, and–by design–more litigious, are they necessarily less principled? Perhaps more importantly, are they less just? Is uncertainty too dear a price to justify laws that encourage and reward support?

Recent opinions from Chinese courts provide a lens through which we can examine these questions. Professor Francis Foster conducted a similar inquiry nearly twenty years ago.[13] She concluded that, by comparison, American inheritance laws were "embarrassing."[14] Professor Foster asserted that "[f]rom China we [ ] can draw a moral for our own country about the value of a more flexible, individualized approach to inheritance."[15] How is China faring with its Confucian-esque model of judicial adjustments to intestacy rights today? A handful of published decisions may provide a partial answer.

Before considering those decisions, however, an outline of American inheritance paradigms is required. In sketching American inheritance paradigms, which do consider conduct in the application of intestacy rules, we can also consider how conduct-sensitive intestacy rubrics (limited though they are) are faring in the United States jurisdictions that have adopted them. American jurisdictions increasingly inject heirs' conduct into the otherwise inflexible intestacy dogma of formulas and equal shares. Although support and conduct considerations in American intestacy are still rare, American lawmakers seem increasingly willing, like the Chinese National People's Congress, to direct judges to assess the relative worthiness of an heir.[16] Thus, any lessons from China's conduct-sensitive jurisprudence may also inform our own.

DISCUSSION

I. CONDUCT-BASED INTESTACY IN THE UNITED STATES

For the most part, intestacy rubrics in the United States are predictable, formulaic, and efficient, insofar as one-size-fits-all approaches can be.[17] The

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another civil law country, for example: "[o]ne might even argue that there is an opposite rule: that it is *forbidden* to follow a precedent only because it is a precedent." MICHEL TROPER & CHRISTOPHE GRZEGORCZYK, *Precedent in France*, in INTERPRETING PRECEDENTS: A COMPARATIVE STUDY, 115 (D. Neil MacCormick & Robert S. Summers eds., 1997) (emphasis added). However, "like many other contemporary civil law countries, the Chinese courts have developed a form of practical *stare decisis*. The Supreme People's Court, the country's highest court, provides descriptions to the lower courts on how law should be interpreted and applied." John J. Capowski, *China's Evidentiary and Procedural Reforms, the Federal Rules of Evidence, and the Harmonization of Civil and Common Law*, 47 TEX. INT'L L.J. 455, 473 (2012).

[13] Frances H. Foster, *Linking Support and Inheritance: A New Model from China*, 1999 WIS. L. REV. 1199 (1999).

[14] *Id.* at 1256.

[15] *Id.* at 1258.

[16] *See infra* part I(B).

[17] *See* Susan N. Gary, *The Probate Definition of Family: A Proposal for Guided Discretion in Intestacy*, 45 U. MICH. J.L. REFORM 787, 787 (2012) (noting that "[t]he default rules–intestacy statutes–give the decedent's property to members of the decedent's family, following rigid relationship rules based on legal status.")

schemes are based primarily upon presumed majoritarian intent: intestacy answers the question, 'what would most people want in terms of a testamentary plan based on the family members of the decedent surviving?'[18] U.S. lawmakers believe that most individuals would want their assets to pass to their spouse, but if their spouse has predeceased them, then to their children in equal shares.[19] If the decedent was not survived by a spouse or any descendants, then intestacy law assumes that she would want her assets to be distributed to her parents, or to her siblings, and so on, stopping short when only 'laughing heirs' remain and, in that case, requiring an escheat to the government.[20]

Decedents are presumed to want equal shares for relatives of equal degrees of consanguinity.[21] Historically, the Uniform Probate Code extended the reach of intestacy as far as the descendants of a decedent's grandparents.[22] Under this rubric, when an intestate decedent is not survived by a spouse, issue, grandparents, or any of the descendants of her grandparents, her estate escheats.[23]

The settlement of an estate under intestacy is intended to be predictable.[24] With predictable, mathematical outcomes, estate administration should achieve savings in time and attorney's fees, as well as emotional cost savings for family members who avoid litigation. These are particularly salient considerations in view of the circumstances of estate administration: the death of a loved one. Grief coupled with adversarial proceedings involving family members makes for disagreeable and, some would argue, undesirable quarrels. Although we may get closer to the decedent's probable testamentary intent by considering which of the decedent's children she liked best, the inefficiencies and variable outcomes this scheme would produce weigh against asking those

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[18] *See* Reid Kress Weisbord, *Wills for Everyone: Helping Individuals Opt Out of Intestacy*, 53 B.C. L. REV. 877, 884 (2012) (observing that "the rules of intestacy generally reflect the probable intent of the typical decedent.")

[19] *See, e.g.*, UNIF. PROB. CODE §§ 2-102, 2-103.

[20] UNIF. PROB. CODE §§ 2-103, 2-105 (2010). With certain exceptions, the surviving spouse takes the entire intestate share. UNIF. PROB. CODE § 2-103(a). Otherwise, if there is no surviving spouse, the estate passes in an order of surviving descendants. UNIF. PROB. CODE §§ 2-103(a)-(b); *see also* David V. DeRosa, Note, *Intestate Succession and the Laughing Heir: Who Do We Want to Get the Last Laugh?*, 12 QUINNIPIAC PROB. L.J. 153, 158 (1997) (explaining that "reformers believe that states should reform the law of intestacy granting the property to remote descendants who suffer no sense of loss or bereavement at the death of the decedent.") DeRosa also notes that "[t]wenty-two states have adopted an intestacy scheme that limits intestacy to the decedent's grandparents or the grandparent's descendants." *Id.* at 168.

[21] *See generally* UNIF. PROB. CODE §§ 2-101-14.

[22] *But see* UNIF. PROB. CODE § 2-103(b).

[23] UNIF. PROB. CODE § 2-105.

[24] *See* Alyssa A. DiRusso, *Testacy and Intestacy: The Dynamics of Wills and Demographic Status*, 23 QUINNIPIAC PROB. L.J. 36, 55 (2009) ("[a]s a solution to provide for the *orderly* disposition of property in the absence of a will, all states have intestacy statutes that govern who shall receive a decedent's property.") *Id.* (emphasis added). *See also* UNIF. PROB. CODE § 1-102 (b)(3) (2010) (identifying one of the purposes of probate as being "to promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to his successors...").

kinds of questions. Fairness gives way to efficiency. If a widow dies intestate leaving behind three children, each child will get an equal share. Rigidity is favored. The conduct, relative worth, and behavior of those children toward their mother is irrelevant in nearly all contexts.

Jurisdictions in the United States, however, do share with China a willingness to take conduct into account in certain narrowly defined circumstances. That willingness seems to be growing. The "slayer rule" bans inheritance of a killer from the killer's victim.[25] A parent's failure to support a child can be a trigger for statutory disinheritance.[26] Cruel behavior may eliminate a child's right to a forced share in Louisiana.[27] Additionally, in a wrongful death context, the amount of a claimant's recovery depends upon the maintenance and support she received from the deceased.[28] This occasional willingness to deviate from rigidity and comparative certainty in intestate proceedings represents important exceptions to the general rule in American succession law. Each exception is explored below.

A. *The Slayer Rule*

The first exception to the general rule of disinterestedness in the heir's conduct in American succession law is the slayer rule. Under slayer statutes, if an heir takes the decedent's life, the heir's status as an heir is erased.[29] Murderers cannot be successors to their victim, whether in intestacy or testacy. Note the relatively straightforward application of the slayer rule: we do not consider why the heir killed; whether it was with an eye towards inheriting, or borne of hatred or mercy. Note further the narrow application of the slayer rule: the heir who ridiculed, libeled, or even tortured the decedent, so long as the torturing did not result in death, is undisturbed from his status.[30] Only the intentional killing of the decedent results in disinheritance of the killer. The Uniform Probate Code formulates the slayer rule as follows:

> An individual who feloniously and intentionally kills the decedent forfeits all benefits under this [article] with respect to

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[25] RESTATEMENT (THIRD) OF PROP. WILLS AND OTHER DONATIVE TRANSFERS § 8.4 (2003); *supra* part I(A).

[26] *See generally* 26B C.J.S. *Descent and Distribution* § 41 (2016); *supra* part I(B).

[27] EDWARD E. CHASE, JR., 11 LA. CIV. L. TREATISE, *Trusts* § 11:1 (2nd ed. 2015); *supra* part I(C).

[28] *See* RESTATEMENT OF THE LAW OF TORTS § 925 cmt. b(1) (1979) (explaining that an element of damages in a wrongful death claim is represented by "an amount to compensate them for the loss of the advice, assistance, training and companionship that [the survivors] probably would have received"); *supra* part I(D).

[29] Every U.S. state has a "slayer rule" – three by case law, the rest by statute. Marie Rhodes, *Consequences of Heirs' Misconduct: Moving from Rules to Discretion*, 33 OHIO N.U. L. REV. 975, 979 (2007). For the Chinese codification of the slayer rule see *infra* note 112.

[30] *But see* Lisa C. Dumond, Note, *The Undeserving Heir: Domestic Elder Abuser's Right to Inherit*, 23 QUINNIPIAC PROB. L.J. 214 (2010) (proposing that perpetrators of elder abuse be disinherited by statute); *see also In re Estate of Haviland*, 177 Wash. 2d 68, 76-78, 301 P.3d 31, 36 (2015) (en banc) (refusing retroactive application of a statute which prevents financial abusers from inheriting).

> the decedent's estate, including an intestate share, an elective share, an omitted spouse's or child's share, a homestead allowance, exempt property, and a family allowance. If the decedent died intestate, the decedent's intestate estate passes as if the killer disclaimed his [or her] intestate share.[31]

The slayer rule allows for a factual determination: Did the heir kill the decedent? Yet the rule still retains a formalistic flavor as an all-or-nothing proposition. Still, legal nuances manage to occasionally permeate its application, and thereby frustrate the aim of prompt and predictable distributions of estates.[32] Some level of litigiousness on account of the slayer rule is an acceptable price to pay for ensuring that slayers do not benefit financially from their wrongful act.[33]

It might be assumed that the public policy rationale for slayer legislation is deterrence of murder, or at least to ensure that a killer does not reap the benefit of a particularly heinous criminal act.[34] Seen in this light, the slayer rule partakes of equitable rules such as the doctrine of unclean hands.[35] Perhaps, the slayer rule functions on some level to disincentivize a murderous heir who wishes to accelerate her right to inherit by killing. However, it seems that the more accepted rationale for the slayer rule is simply to not indirectly reward a particular criminal act.[36] Probate as a system may wish to avoid being despoiled

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[31] UNIF. PROB. CODE § 2-803(b) (2010). The slayer rule operates both in intestate and testate proceedings. *Id.*

[32] *See, e.g.*, *In re Estate of Blodgett*, 147 P.3d 702, 706 (Alaska 2006) (considering the "manifest injustice" statutory exception to Alaska's slayer rule); *Diep v. Rivas*, 357 Md. 668, 679, 745 A.2d 1098, 1103-04 (2000) (holding that Maryland's slayer rule does not prohibit a killer's siblings from inheriting); *see In re Estate of Schunk*, 314 Wis.2d 483, 760 N.W.2d 446 (Wis. Ct. App. 2008) (considering whether heirs who allegedly assisted the decedent commit suicide would have committed a "killing" under Wisconsin's slayer statute).

[33] Even when the slayer rule is invoked, it is justified as being part of an "orderly" system of estate administration. *See Riggs v. Palmer*, 70 Sickels 506, 511, 22 N.E. 188, 190 (Ct. App. N.Y. 1889). In *Riggs*, the court asked, rhetorically:

> What could be more unreasonable than to suppose that it was the legislative intention in the general laws passed for the orderly, peaceable, and just devolution of property that they should have operation in favor of one who murdered his ancestor that he might speedily come into the possession of his estate? Such an intention is inconceivable.

Id.

[34] *See* Joseph T. Latronica, 8 MARYLAND LAW ENCYCLOPEDIA, *Descent and Distribution* § 7 (2016) (observing that the public policy behind the slayer rule and suggesting that the rule was "designed to prevent one from taking advantage of his or her own wrong...").

[35] *See* Mary Louise Fellows, *The Slayer Rule: Not Solely a Matter of Equity*, 71 IOWA L. REV. 489, 550-51 (1986) (criticizing the imposition of equitable principles in a slayer rule context).

[36] *See Price v. Hitaffer*, 164 Md. 505, 165 A. 470, 470 (Ct. App. Md. 1933). There, the court held:

> [T]he common-law principle of equity [holds] that no one shall be permitted to profit by his own fraud, to take advantage of his own wrong, to found any claim upon his own iniquity, or to acquire property by his own crime, and hold[s] that provisions of a will and the statutes of descent and distribution should be interpreted

with inheritors receiving wealth from those they have killed.[37] Still another potential rationale for the slayer rule is simply presumed majoritarian intent: Legislators might reasonably assume that most people would not desire that their killer inherit part or all of their estate.[38] All of these aims may coalesce in the slayer rule to affect the disinheritance of an heir deemed unworthy to receive their bequest or intestate share on account of their conduct.[39]

B. *Nonsupport of a Child*

In three separate contexts, American jurisdictions are willing to consider the conduct or relative worth of heirs in determining the distribution of an estate. First, 'deadbeat dads' of illegitimate children may face disinheritance by judicial decree.[40] Second, children born of reproductive technology whose parents never in fact 'functioned as a parent,' such as mere surrogates or sperm donors, avoid characterization as parents for purposes of intestacy, despite their biological connection to a child.[41] Third, a parent's parental rights that could have been terminated on account of abuse or neglect during the child's lifetime can have their parental status severed in a kind of post-mortem termination of rights proceeding before the probate court.[42] Each of these three subtypes is explored below.

1. The Illegitimacy Context

Illegitimacy is another context where we find an exception to the generally applicable rubric in which intestacy ignores the conduct and relative merit of heirs. Generally, the penalization of illegitimacy in older intestacy frameworks has been undone.[43] Certain outmoded intestacy rules penalized

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> in the light of those universally recognized principles of justice and morality; that such interpretation is justified and compelled by the public policy embraced in those principles or maxims, which must control the interpretation of law, statutes, and contracts.

Id. In most cases, however, courts are reluctant to graft equitable principles onto intestate distribution statutes unless the legislature has done so. *See, e.g.*, *Pogue v. Pogue*, 434 So.2d 262, 263-64 (Ala. Civ. App. 1983) (rejecting a mother's contention that a father's share of a child's estate should be subjected to a constructive trust in order to avoid unjust enrichment when the father had failed to support his son).

[37] *See* Karen J. Sneddon, *Should Cain's Children Inherit Abel's Property?: Wading into the Extended Slayer Rule Quagmire*, 76 UMKC L. REV. 101, 102 (2007) (explaining that the slayer rule is "driven by a jumble of moral, equitable, and legal principles.")

[38] *See* Kevin Bennardo, *Slaying Contingent Beneficiaries*, 24 U. MIAMI BUS. L. REV. 31, 37 (2015) (noting that since, when an unlawful killing takes place "a victim usually will lack an opportunity to update her estate plan" so as to disinherit the killer, "the law intervenes to carry out the victim's likely wishes.")

[39] *See also Estate of Foleno v. Estate of Foleno*, 772 N.E.2d 490, 493-94 (Ct. App. Ind. 2002) (describing the feudal origins of the slayer rule).

[40] *See infra* part I(B)(1).

[41] *See infra* part I(B)(2).

[42] *See infra* part I(B)(3).

[43] UNIF. PROB. CODE § 2-117 (2010) (explaining that "a parent-child relationship exists between a child and the child's genetic parents regardless of their marital status"); *but see* N.C. ESTATE SETTLEMENT

illegitimacy as an attempt to shape behavior of heirs (or at least their parents).[44] The reasoning may have been that by withholding intestate status from illegitimate issue, the state felt it could incentivize parents to marry. But the rules are also aimed at increasing the likelihood that will probating is accomplished without any factual issues, such as doubt as to male parentage. The presumption that a child born to a married couple was sired by the husband was a convenient evidentiary rule that bypassed the path of factual questions and made probate more likely to be free of evidentiary hearings.

Modern reforms are linked to the constitutional recognition of illegitimate children as a quasi-suspect class. As a result, intestacy penalties against illegitimates are typically invalid.[45] The Uniform Probate Code proclaims, "a parent-child relationship exists between a child and the child's genetic parents, regardless of the parents' marital status."[46] An intestate inheritance, however, "from or through the [illegitimate] child by a birth parent or that birth parent's kindred is precluded unless that birth parent has openly treated the child as kindred, and has not refused to support the child."[47] In other words, a parent may not inherit from an illegitimate child when the parent has been derelict in his support duties to that child.

The State of North Carolina extended this deadbeat parent rule to legitimate children in 1927, and a few other states followed.[48] In 2013, California expanded the rule to legitimate children as well.[49] Thus, in North

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PRACTICE GUIDE § 20:20 (2d ed. 2016) (stating that except in four delineated circumstances, "the intestacy laws [of North Carolina] treat an illegitimate and his putative father, and the putative father's family, as complete strangers.")

[44] *See, e.g.*, *Levy v. State Through Charity Hosp. of La. at New Orleans Bd. of Admin.*, 192 So.2d 193, 195 (Ct. App. La. 1966) (stating: "[d]enying illegitimate children the right to recover in such a case is actually based on morals and general welfare because it discourages bringing children into the world out of wedlock") *rev'd*, *Levy v. Louisiana*, 391 U.S. 68 (1968).

[45] *See Mathews v. Lucas*, 427 U.S. 495, 505, 96 S.Ct. 2755, 2762 (1976); *Mills v. Habluetzel*, 456 U.S. 91, 99, 102 S.Ct. 1549, 1554-55 (1982) (citations omitted). Classifications based on illegitimacy "will survive equal protection scrutiny to the extent they are substantially related to a legitimate state interest." *Id.*

[46] UNIF. PROB. CODE § 2-117.

[47] S.D. CODIFIED LAWS § 29A-2-114(a) (1995).

[48] Child's Estate, ch. 231, sec. 1-3, § 37(6), 591-92 (1927). "[A] parent, or parents, who has willfully abandoned the care, custody, nurture and maintenance of such child to its kindred, relatives or other person, shall forfeit all and every right to participate in any part of said child's estate...." *Id.* The other states that extended the deadbeat parent rule to legitimate children are: Connecticut, Montana, New York, Pennsylvania, and Virginia. *See infra* note 50.

[49] CAL. PROB. CODE § 6452 (2014). A parent may not inherit from a child (or through the child) "on the basis of the parent and child relationship" when:

> The parent did not acknowledge the child. [Or] [t]he parent left the child during the child's minority without an effort to provide for the child's support or without communication from the parent, for at least seven consecutive years that continued until the end of the child's minority, with the intent on the part of the parent to abandon the child. The failure to provide support or to communicate for the prescribed period is presumptive evidence of an intent to abandon.

Carolina, California, and a few other states, parents' inheritance rights can be voided by a parent's failure to support the child; this is an all-or-nothing proposition.[50] Inheritance is either preserved or eliminated based upon this factual contingency.[51]

One case involving a contemporary statute which penalizes a parent's failure to support a child, whether the child is legitimate or illegitimate, is *Estate of Pessoni*.[52] There, a mother argued successfully that the father of her child should be declassified as an intestate heir of the child under a statute banning inheritance if the parent "abandoned" his child.[53] The father had separated from the mother when the boy was very young. Within a few years, he had remarried and had a son with his new wife. With the exception of a few letters, he never saw or spoke with his son from the time the son was fifteen years old through his death. He did meet his child support obligations, and asserted that his estrangement was the fault of the mother, who "poisoned" the son against him.[54] The court rejected his arguments, noting: "Justice is not fostered by rewarding in any fashion a parent who purposefully fails to provide any emotional or nurturing support to a child. No dividend should be permitted to flow from the dereliction of that duty."[55]

Id.

[50] *See* CONN. GEN. STAT. § 45a-439(a)(1) (2016) (providing that a "parent who has abandoned a minor child and continued such abandonment until the time of death of such child" may not receive an inheritance in intestacy); MONT. CODE ANN. § 72-2-124(3) (2016) (precluding intestate inheritance "unless that natural parent has openly treated the child as the parent's and has not refused to support the child"); N.Y. EST. POWERS & TRUSTS LAW § 4-1.4 (McKinney 2016) (withholding intestate rights by a parent when, while his child was under the age of twenty-one, the parent "has failed or refused to provide for the child or has abandoned such child, whether or not such child dies before having attained the age of twenty-one years, unless the parental relationship and duties are subsequently resumed and continue until the death of the child"); OHIO REV. CODE ANN. § 2105.10 (West 2016) (barring a parent who "failed without justifiable cause to communicate with the minor, care for the minor, and provide for the minor's maintenance or support . . . for a period of at least one year immediately prior to the date of the death of the minor" from receiving an intestate share); 20 PA. STAT. AND CONS. STAT. ANN § 2106(b) (West 2016) (providing: "[a]ny parent who, for one year or upwards previous to the death of the parent's minor or dependent child, has: (1) failed to perform the duty to support the minor or dependent child or who, for one year, has deserted the minor or dependent child... shall have no right or interest" to inherit via intestacy); VA. CODE ANN. § 64.1-16.3(B) (West 2016) (removing intestacy rights for a parent who "willfully deserts or abandons his minor or incapacitated child and such desertion or abandonment continues until the death of the child"). *See also* V.I. CODE ANN. tit. 15, § 87 (2016) (omitting intestate shares from children for "a parent who has neglected or refused to provide for such child during infancy or who has abandoned such child during infancy whether or not such child dies during infancy, unless the parental relationship and duties are subsequently resumed and continue until the" child's death).

[51] *See also* CONN. GEN. STAT. § 45a-436(g) (2016) (providing that a "*spouse* shall not be entitled to . . . an intestate share . . . if such surviving spouse, without sufficient cause, abandoned the other and continued such abandonment to the time of the other's death.") (emphasis added).

[52] *In re Estate of Pessoni*, 810 N.Y.S.2d 296, 11 Misc.3d 245 (2005).

[53] *Id.* at 299, 11 Misc.3d at 245-46 (citing N.Y. EST. POWERS & TRUSTS § 4-1.4).

[54] *Pessoni*, 810 N.Y.S.2d at 301, 11 Misc.3d at 249.

[55] *Id.* at 302, 11 Misc.3d at 250 (citing *Mtr. of Caldwell v. Alliance Consulting Group, Inc.*, 775 N.Y.S.2d 92, 95, 6 A.D.3d 761, 764 (Ct. App. N.Y. 3rd Dept. 2004)) (internal citation omitted).

2. The Surrogate and Related Contexts

Amendments to the Uniform Probate Code now expand the reach of intestacy to include stepchildren.[56] The stepchild expansion reflects the greater frequency of 'blended families' in contemporary American society.[57] Amendments also expanded intestacy to certain children born of reproductive technology.[58] Older rules may have generated unjust outcomes when applied to contemporary scenarios involving surrogates, stepparents who bond with their stepchildren, and reproductive advances. When a man's sperm and a woman's eggs form a child, that child may technically be the biological issue of the genetic donor even though that donor did not act or function in the role of a parent. Similarly, a surrogate who carries a child may or may not *really* be the child's mother, while a stepfather may be much more of a father than the biological dad.[59] In updating the Uniform Probate Code to account for children born of reproductive technology, a test for whether a parent was, in fact, a parent was needed.[60] That test came in definitional format. The phrase "functioned as a parent of the child" was defined as:

> [B]ehaving toward a child in a manner consistent with being the child's parent and performing functions that are customarily performed by a parent, including fulfilling parental responsibilities toward the child, recognizing or holding out the child as the individual's child, materially participating in the child's upbringing, and residing with the child in the same household as a regular member of that household.[61]

A genetic parent can establish a parent-child relationship for purposes of intestacy, *inter alia*, by proving that he "functioned as a parent of the child no later than two years after the child's birth."[62] While these surrogate rules do not directly test parental support, the inquiry into whether the individual "perform[ed] functions that are customarily performed by a parent" considers the same kind of evidence as an inquiry into whether a parent supported his child.[63]

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[56] *See generally* Terin Barbas Cremer, *Reforming Intestate Inheritance for Stepchildren and Stepparents*, 18 CARDOZO J.L. & GENDER 89 (2001); *see also* UNIF. PROB. CODE § 2-103(b) (now providing for intestate rights for "[deceased] spouse's descendants by representation").

[57] *Id.* at 89.

[58] *Id.* at 93.

[59] *But see Arredondo v. Nodelman*, 622 N.Y.S.2d 181, 182, 163 Misc.2d 757, 759 (1994) (holding, where husband's sperm and wife's egg were implanted in gestational carrier, intent controls to find husband and wife are the parents).

[60] *See generally* Kristine S. Knaplund, *Children of Assisted Reproduction*, 45 U. MICH. J.L. REFORM 899 (2010).

[61] UNIF. PROB. CODE § 2-115(4) (2010).

[62] UNIF. PROB. CODE § 2-120(f)(2)(A) (2010).

[63] UNIF. PROB. CODE § 2-115(4).

3. The Abandonment or Abuse Context

The contemporary Uniform Probate Code also describes a scenario in which a parent could be removed as an intestate heir of a minor child. When a child dies as a minor "and there is clear and convincing evidence that immediately before the child's death the parental rights of the parent *could* have been terminated. . .on the basis of nonsupport, abandonment, abuse, neglect, or other actions or inactions of the parent toward the child" then that parent may not inherit from or through the child.[64] The pre-mortem termination of parental rights must be supported by clear and convincing evidence as a matter of constitutional law.[65] The Uniform Probate Code carries this heightened burden of proof forward into the postmortem intestacy parental status context.[66] Any termination of parental rights carries with it the legal destruction of the parent-child relationship for purposes of intestacy.[67] However, absent statutory authority, postmortem termination of parental rights is not an option.[68] Under the Uniform Probate Code rule, parents may not inherit from or through children they abandoned to such a degree that their legal status as parent *could* have been terminated prior to the child's death, even where such a judicial finding is not entered until after the child's demise.[69]

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[64] UNIF. PROB. CODE § 2-114(a)(2) (emphasis added). "[A] parent who is barred from inheriting under this section is treated as if the parent predeceased the child." UNIF. PROBATE CODE § 2-114(b).

[65] *Santosky v. Kramer*, 455 U.S. 745, 769-70 (1982).

[66] *See* UNIF. PROB. CODE § 2-114(a)(2) (requiring "clear and convincing evidence"); *but see In re Estate of Fisher*, 443 N.J. Super 180, 198, 128 A.3d 203, 215 (2015) (applying a preponderance of the evidence standard and rejecting any "best interests" considerations in deciding that a father's inheritance rights were lost when he abandoned his child). *Fisher* applied a New Jersey statute which lacked an evidentiary standard and withheld a parent's intestate succession rights if the parent "abandoned the decedent when the decedent was a minor by willfully forsaking" the child. N.J. STAT. ANN. § 3B:5-14.1(b)(1)(West 2016).

[67] *See* UNIF. PROB. CODE §§ 2-114(a), (a)(1) (providing that "[a] parent is barred from inheriting from or through a child" when "the parent's parental rights were terminated and the parent-child relationship was not judicially reestablished"); *see also In re Estate of Fleming*, 98 Wash. App. 915, 921, 991 P.2d 128, 132 (2000) (holding that an order which a mother was divested of all parental rights permanently divested her of right to intestate inheritance from her biological son despite the fact that he was never adopted).

[68] *See Crosby v. Corley*, 528 So.2d 1141, 1144 (Ala. 1988) (reversing a trial court's postmortem termination of parental rights for intestacy purposes because the applicable Child Protection Act "is simply not applicable in postmortem situations.")

[69] Section 2-114(a)(2) of the Uniform Probate Code bites off a great deal when it incorporates other state law provisions which permit postmortem termination of parental rights fact-finding, perhaps more than it can chew. Arizona, for example, allows for the termination of parental rights on a number of grounds. The Uniform Probate Code § 2-114(a)(2) only permits postmortem termination of parental rights for purposes of inheritance on account of four enumerated grounds and one catch-all: "nonsupport, abandonment, abuse, neglect, or other actions or inactions of the parents toward the child." UNIF. PROBATE CODE § 2-114(a)(2). Yet, all eleven enumerated grounds in the Arizona statute would arguably fall within the catch-all, including felony convictions or chronic abuse, except for the parent who is unknown. ARIZ. REV. STAT. ANN. §§ 8-533(B)(3), (4), (9) (2016)(West). It is also not entirely clear how a probate court would apply all of the relevant termination considerations from the parental rights termination statutes. For example, under Arizona law, "the court shall consider the availability of reunification services to the parent and the participation of the parent in these services." ARIZ. REV. STAT.

C. Unsavory Conduct and Intentional Disinheritance

Among state probate codes, only the State of Louisiana provides statutory protection for the intentional disinheritance of a child. Forced heirship for children, derived originally from French law, is called a *legitime*.[70] Thus, a child whose parent executed a will disinheriting the child may petition for *legitime*. Since 1995, *legitime* has been limited to children that are under age twenty-four or permanently disabled.[71] Thus, only disinherited children with disabilities or those who are twenty-three years of age or under may petition for a forced share when a parent disinherits them. An exception for forced heirship rights is recognized when a child is disinherited for "just cause", which includes when:

ANN. § 8-533(D) (2016) (West). Reunification services would be unavailable as a practical matter after the death of the child. Should a parent be permitted to testify about their hypothetical participation in reunification services, or is reunification simply unavailable as a consideration as a matter of law in a postmortem parental inheritance rights termination context? *See, e.g.*, *In re Estate of Koehler*, 314 Mich. App. 667 (2016) (ruling that inheritance rights are not terminated when an unmarried father dies before his child is born, even though no evidence shows he would have willingly supported the child). The Uniform Probate Code does not answer these kinds of questions.

[70] JESSE DUKEMINIER AND ROBERT H. SITKOFF, WILLS, TRUSTS, AND ESTATES 556 (9th ed. 2013). *Legitime* was ultimately derived from Roman law:

> France was, in its early period, a land of written and unwritten (or customary) law. The southern portion of France, lying closest to Rome, and greatly influenced thereby, derived its law from the written law of the Romans. In the northern portion the law sprang from the customs of the people settling there from Germany and other countries. Consequently, the doctrines of legitime and disinherison formed a part of the written law of southern France and were interpreted in the light of the Roman concept. These doctrines, on the other hand, being foreign to the customary law of northern France, formed no part thereof. We do find, however, a provision very similar to those which established the 'legitime' in southern France, called in the customary law the 'reserve.' We also find that heirs who were deprived of this 'reserve' were able to bring an action called 'ab irato' and prove this deprivation arose from motives of hatred.

Successions of Lissa, 198 La. 129, 137, 3 S.2d 534, 536 (1941). *See also* Paula A. Monopoli, *"Deadbeat Dads": Should Support and Inheritance be Linked?*, 49 U. MIAMI L. REV. 257, 259 n.8 (1994) ("civil law systems have a much richer tradition of unworthy heir litigation due to forced heirship provisions in their inheritance schemes."); P.R. LAWS ANN. tit. 31 § 2261 (2016) (banning intestate inheritance by parents from children on account of "unworthiness" such as parents who have "prostituted their daughters or made attempts against their chastity.")

[71] *See In re Succession of Boyter*, 756 So.2d 1122, 1125 (La. 2000) (narrating how after the voters of Louisiana approved a state constitutional amendment, the legislature passed a statute–re-enacted, to be more precise–that abolished forced heirship except when the child was "age 23 or younger or permanently disabled when the testator died.") Since forced heirship was limited to individuals who may be immature, whether on account of age or impairment, the Louisiana Legislature was concerned that the children may not appreciate the seriousness of actions giving rise to just cause for a parent deciding to disinherit them. KATHRYN VENTURATOS LORIO, 10 LA. CIV. L. TREATISE, *Successions and Donations* § 10.14 (2nd ed. 2015). Therefore:

> [A] new provision was added to the Code, providing a defense against disinherison for a forced heir who, because of his age or mental capacity, was not 'capable of understanding the impropriety of his behavior,' or who could show that the behavior was either 'unintentional or justified under the circumstances.'

Id. (quoting LA. CIV. CODE ANN. art. 1626 (2016)).

> (1) The child has raised his hand to strike a parent, or has actually struck a parent [ ]; (2) The child has been guilty, towards a parent, of cruel treatment, crime, or grievous injury; (3) The child has attempted to take the life of a parent; (4) The child, without reasonable basis, has accused a parent of committing a crime for which the law provides that the punishment could be life imprisonment or death; (5) The child has used any act of violence or coercion to hinder a parent from making a testament; (6) The child, being a minor, has married without the consent of the parent; (7) The child has been convicted of a crime for which the law provides that the punishment could be life imprisonment or death; (8) The child, after attaining the age of majority and knowing how to contact the parent, has failed to communicate with the parent without just cause for a period of two years, unless the child was on active duty in any of the military forces of the United States at the time.[72]

The incident or occurrence validating a child's disinheritance must have occurred prior to the parent's act of disinheritance, not after.[73] Thus, Louisiana considers a child's conduct when determining whether to honor a parent's intentional disinheritance of that child. The testator must articulate her reasons for choosing to disinherit the child in the will or codicil.[74] Ultimately, a judge must agree with the testator's decision to disinherit the wayward son or daughter based upon the child's conduct.[75] Judges, it seems, do so with reluctance.[76] In Louisiana, attempts to intentionally disinherit a child ("disinherison") are rarely successful due to a failure to adhere to the formalities of a disinherison or because of parent-child reconciliation.[77]

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[72] LA. CIV. CODE ANN. art. 1621(A) (2016).

[73] LA. CIV. CODE. ANN. art. 1621(B).

[74] *See* LA. CIV. CODE ANN. art. 1619 (2016) (stating that "[t]he disinherison must be made expressly and for a just cause; otherwise, it is null. The person who is disinherited must be either identified by name or otherwise identifiable from the instrument that disinherits him.")

[75] *See* LA. CIV. CODE ANN. art. 1617 (2016) (providing that "[a] forced heir shall be deprived of his legitime if he is disinherited by the testator, for just cause"); *Successions of Lissa*, 198 La. 129, 152, 3 So.2d 534, 542 (noting that disinherison is not a self-operative testamentary disposition; the testator "must mention the cause for the disinherison, and the other heirs, under penalty of nullity, must prove the facts on which the disinherison is founded.")

[76] *See* LORIO, *supra* note 71, at § 10.14 (observing: "Over the years, disinherison was hardly ever successful.")

[77] *Id.* One exception to the general rule of ineffective disinherison cited by Lorio is the 1982 *Chaney* case, *Succession of Chaney*, 413 So.2d 936, 941 (La. Ct. App. 1st Cir. 1982). There, the cause for a father's disinherison, as recited in the will, was his son's striking and cursing him. *Id.* at 937-38. The son defended unsuccessfully on the basis of reconciliation, pointing out that his father had permitted him to visit him in the nursing home. *Id.* at 941. The court rejected the son's assertions, concluding that: "The evidence offered by plaintiff does not establish his father forgave him for the striking." *Id. See also Succession of Vincent v. Vincent*, 527 So.2d 23, 24-5 (La. Ct. App. 3d Cir. 1988) (upholding disinherison

For example, in *Successions of Lissa*, an adult daughter, Adele Spiro, was disinherited by both her mother and father's wills.[78] She was disinherited because, as a minor, she married without parental consent.[79] Following the deaths of her parents, Adele Spiro's three siblings were required to "prove the facts on which the disinherison [was] founded."[80] Spiro resisted, claiming that her parents had, in fact, given consent to her marriage, and alternatively, that her parents forgave her and she reconciled with them, thereby nullifying the disinherison.[81]

The trial court found ample evidence to support a finding that just cause was established for Spiro's disinherison; that she had, in fact, married her husband without her parents' consent.[82] The Louisiana Supreme Court affirmed this finding.[83] However, the trial court's rejection of Spiro's evidence on the issue of reconciliation was reversed.[84] Her mother had attended celebrations with her daughter over the years, and the court felt that the two had reconciled.[85] Her father, while slower to forgive, "did become reconciled to his daughter's marriage during the period of approximately thirty years intervening between 1905, the year of her marriage, and 1934, when she again lost the good grace of her father because of some difficulty had with her sister...."[86] The court, therefore, allowed Spiro her forced share from both estates.

D. Wrongful Death

Finally, one of the state approaches to examining lifetime support that merits mention is the wrongful death cause of action. Wrongful death is a statutory creation of relatively recent vintage.[87] When a wrongdoer causes a death, the law permits recovery under tort law to compensate certain surviving family members for the support and companionship that they lost. The wrongdoer might be liable for negligence or an intentional tort. Because recovery is for the loss of support and companionship that the decedent would otherwise have provided, the degree to which family members received support becomes a relevant consideration.

Importantly, the relevancy of support in a wrongful death context is

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where the will recited that "my son struck me three (3) times and fired at me with a .22 caliber automatic rifle...").

[78] *Successions of Lissa*, 198 La. 129, 131, 3 So.2d 534, 535.

[79] *Id.* at 132, 3 So.2d at 535.

[80] *Id.* (citing *Succession of Lissa*, 195 La. 438, 196 So. 924 (1940)).

[81] *Id.* at 133, 3 So.2d at 535.

[82] *Successions of Lissa,* 198 La. at 133, 3 So.2d at 535.

[83] *Id.*

[84] *Succession of Lissa*, 198 La. at 149, 3 So.2d at 541.

[85] *Id.* at 148, 3 So.2d at 540.

[86] *Id.* at 149-50, 3 So.2d at 541.

[87] *See Cummins v. Kansas City Public Service Co.,* 334 Mo. 672, 676-78 66 S.W.2d 920, 922-23 (Mo. 1933) (en banc) (identifying the first wrongful death statute dated 1848).

framed differently than support in an intestacy context. In a wrongful death context, the degree of support is relevant to proving the loss caused by the wrongdoer.[88] These damages are paid by the wrongdoer. In an intestacy context, support may be relevant according to a particular statute in dividing up the decedent's estate. The matters are distinct, yet the type of evidence relevant to either is typically very similar.[89] When a wrongdoer settles for a certain sum in a wrongful death lawsuit, a dispute among family members as to how to allocate those settlement proceeds may play out in court. These disputes may be resolved nearly identically to the way we would expect Chinese courts to allocate estate assets based upon support or the lack thereof. We turn now to Chinese models of conduct-based inheritance.

II. CONDUCT-BASED INTESTACY IN CHINA

Chapter Two of the Chinese Probate Code provides the rules of intestacy or "statutory succession." Article Ten sets forth the general scheme. It provides that a decedent's estate will be distributed as follows:

> First in order: spouse, children, parents. Second in order: brothers and sisters, paternal grandparents, maternal grandparents. When succession opens, the successor(s) first in order shall inherit to the exclusion of the successor(s) second in order. The successor(s) second in order shall inherit in default of any successor first in order. The 'children' referred to in this Law include legitimate children, illegitimate children and adopted children, as well as step[ ]children who supported or were supported by the decedent.[90]

A separate article confirms that if a child of the decedent has predeceased the decedent, the predeceasing child's issue inherits by right of representation.[91] Adoptive children and illegitimate children are encompassed

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[88] *See generally* Emile F. Short, *Parent's desertion, abandonment, or failure to support minor child as affecting right or measure of recovery for wrongful death of child*, 53 A.L.R.3d 566 (1973).

[89] *See generally* L.S. Tellier, *Division among beneficiaries of amount awarded by jury or received in settlement upon account of wrongful death*, 171 A.L.R. 204 (1947); *Hurley v. Hurley*, 191 Okla. 194, 195, 127 P.2d 147, 149 (Okla. 1942) (holding a father entitled to one-fourth and mother three-fourths of settlement proceeds from the wrongful death of their child, where the father had abandoned his family and, while an insane asylum inmate, had escaped therefrom). *See also In re Estate of Pessoni*, 810 N.Y.S.2d at 303 n.3, 11 Misc.3d at 251 n.3 (noting, in a case involving both estate assets and a wrongful death claim, after concluding that a father was disinherited from the estate because he abandoned his child under a New York statute, that because "a wrongful death award is divided between the eligible distributes in proportion to their pecuniary loss" that "even if the father were eligible to share a distributive award, it would appear that his share would be negligible, if any") (internal citation omitted). *Pessoni* is discussed *supra* at the text accompanying notes 52-55.

[90] PRC Succession Law Art. 10; PRC Succession Law Art. 13 ("[s]uccessors same in order shall, in general, inherit in equal shares").

[91] PRC Succession Law Art. 11.

within the definition of "children."[92] Parents may also inherit from or through an adopted or illegitimate child.[93] Within this basic framework, the Chinese intestacy rules share commonality with American states' general approaches to intestacy laws.

At this juncture, however, the Chinese law of intestate succession diverges and introduces the notion of support as a determinative factor in several broad contexts. First, as provided by Article Thirteen, any intestate successor may have his or her share increased due to support of the decedent, or decreased due to a failure to fulfill a duty of support when the successor had the ability to do so:

> [S]uccessors who have made the predominant contributions in maintaining the decedent or have lived with the decedent may be given a larger share. . . .[S]uccessors who had the ability and were in a position to maintain the decedent but failed to fulfil their duties shall be given no share or a smaller share of the estate.[94]

Second, under Article Fourteen, non-heirs may be treated as intestate successors if he or she gave support to, or depended on the support of, the decedent:

> An appropriate share of the estate may be given to a person, other than a successor, who depended on the support of the decedent and who neither can work nor has a source of income, or to a person, other than a successor, who was largely responsible for supporting the decedent.[95]

Thus, a generous paramour could be held to exclude a surviving spouse; an attentive caregiver could take priority over surviving children; a nanny might be elevated over a surviving mother if they were "largely responsible for supporting the decedent."[96]

Third, Article Ten defines the term "parents" in the Chinese succession code to include "step[]parents who supported or were supported by the decedent" and siblings include "step[ ]brothers and step[]sisters who supported or were supported by the decedent" as well.[97] And fourth: "Widowed daughters-

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[92] PRC Succession Law Art. 10.

[93] *See id.*

[94] PRC Succession Law Art. 13. ("At the time of distributing the estate, due consideration shall be given to successors who are unable to work and have special financial difficulties"); *see also* PRC Succession Law Art. 19 (providing: "[r]eservation of a necessary portion of an estate shall be made in a will for a successor who neither can work nor has a source of income.")

[95] PRC Succession Law Art. 14.

[96] *Id.*

[97] PRC Succession Law Art. 10.

in-law or sons-in-law who have made the predominant contributions in maintaining their parents-in-law shall, in relationship to their parents-in-law, be regarded as successors first in order."[98] Consequently, relative support, maintenance, and dependence are potential factual issues in every Chinese intestate estate administration.[99] We now turn to examining these rules in operation within five Chinese judicial opinions.

III. FIVE RECENT REPORTED DECISIONS FROM THE PEOPLE'S REPUBLIC OF CHINA[100]

A. *Estate of Zhang*

Estate of Zhang, involved the unique situation of a claim based on support against the possibility of an escheat, since the decedent left no statutory intestate heirs.[101] Mr. Zhang and Miss Xu married in 1977. It was Mr. Zhang's first marriage and he was childless; Miss Xu had an adult son from a prior relationship, Xu Hua. Their marriage lasted ten years and ended in divorce. In 2011, Mr. Zhang died intestate without having remarried.

Mr. Zhang had no children or siblings. Only children are not uncommon under China's "One Child Policy."[102] His parents and grandparents had predeceased him, raising the possibility of an escheat under Chinese intestacy law.[103] Although, as outlined above, stepchildren can qualify as intestate heirs in China if they contributed to their stepparent's support, the court reasoned that Xu Hua's status as a stepchild terminated upon the divorce of his mother from decedent Zhang in 1988. Xu Hua's assertion of inheritance rights from his former stepfather's estate thus depended entirely upon his ability to demonstrate a support relationship with Mr. Zhang.

When his mother married Mr. Zhang, Xu Hua was twenty-six years old, but he continued to live with the couple. Evidence of the close relationship between Xu Hua and Mr. Zhang during this time was shown by the fact that Xu

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[98] PRC Succession Law Art. 12.

[99] A support-sensitive inquiry can also surface in Chinese testate proceedings. *See supra* note 95.

[100] These five probate cases from China came to the Quinnipiac Probate Law Journal through the author, Professor Simmons. The Editors were able to obtain the original copies of these opinions and have them on file for reference. In checking these cases, the Editors relied on the translated copies that one of Professor Simmons' students created for use in his research. There are no pin cites for these opinions as a result.

[101] *Case No. 02053* (Beijing First Intermediate People's Court, Apr. 20, 2015). (It is unclear from the appellate decision whether the government of China was a party to the proceeding.)

[102] *See generally* Tamika S. Laldee, Note, *A Proposal for Change in Immigration Policy: Asylum for Traditionally Married Spouses*, 41 CASE W. RES. J. INT'L L. 149, 152-56 (2009) (outlining China's One Child Policy). The policy was relaxed in 2015. Louise Watt, *China's repeal of one-child policy praised*, NORTHJERSEY.COM (Oct. 29, 2015, 7:50 a.m.), http://www.northjersey.com/news/china-to-end-decades-old-1-child-policy-allow-2-children-1.1444165.

[103] PRC Succession Law, Art. 32. ("An estate which is left with neither a successor nor a legatee shall belong to the state or, where the decedent was a member of an organization under collective ownership before his or her death, to such an organization.")

Hua merged his hukuo with Mr. Zhang's family hukuo.[104] Following the divorce, Xu Hua and Mr. Zhang remained in close contact. Xu Hua visited Mr. Zhang frequently, providing him with emotional comfort until his death. Following Mr. Zhang's death, Xu Hua made all the funeral arrangements and paid for them. The Beijing First Intermediate People's Court held that Xu Hua qualified under Article Fourteen and deserved an appropriate share of Mr. Zhang's estate, at least when an escheat would otherwise have resulted. In this case, that share amounted to the entire estate.[105]

B. *Estate of Wang*

In *Estate of Wang*, an adult son opposed his father's second wife.[106] Following his father's remarriage and death, this adult son claimed a share of the estate. The decedent and the son's mother had divorced in 1984. Mr. Wang died soon after his remarriage to Mrs. Dai. Although Mrs. Dai was the sole heir in intestacy as the decedent's surviving spouse, the surviving adult son claimed a share of the estate, arguing that he had supported his father.

Key to the court's decision was a writing from the decedent introduced into evidence by Mrs. Dai. Mr. Wang wrote that his adult son had not cared for him following the divorce because he had not fulfilled his own post-divorce financial obligations to his adult son's mother. Testimony revealed that Mrs. Dai had taken good care of Mr. Wang, but that his adult son had seldom visited. Other evidence suggested that the son had, in fact, lived with his father during his last years and had discharged maintenance obligations to his father. After considering this conflicting evidence, the court held that the estate should be divided seventy percent to Mrs. Dai and thirty percent to the adult son. A retrial later reached the same conclusion.[107]

C. *Estate of HuaBing*

Estate of HuaBing involved litigation between two surviving adult children.[108] Mr. HuaBing and his wife had two children: a son, HuaJia, and a daughter, HuaYi. In 2001, Mr. HuaBing suffered a major stroke. HuaJia moved in and helped care for him. HuaYi, Mr. HuaBing's daughter, had also lived with

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[104] *See* Kam Wing Chan and Will Buckingham, *Is China Abolishing the* Hukou *System?*, CHINA QUARTERLY 582, 587 (2008), *available at* http://faculty.washington.edu/kwchan/Chan-WSB-Hukou-Abolition-CQ2008.pdf. (*Hukuo* is a household registration system with roots in imperial China; an important state institution which regulates population mobility and entitlement to public benefits.) *Id.*

[105] *See Board of Educ. of Montgomery Co. v. Browning*, 635 A.2d 373, 381, 333 Md. 281, 295 (Md. 1994) (Eldridge, J., dissenting) (emphasizing that, under American law, "[b]ecause 'society prefers to keep . . . property within the family *as most broadly defined,* or within the hands of those whom the deceased has designated,' escheat is disfavored and is enforced only as a last resort.") (citation omitted) (emphasis in original).

[106] *Case No. 02053* (First Middle People's Court, Beijing, Apr. 20, 2015).

[107] *Id.*

[108] *Case No. 175* (ZheJiang Province Hangzhou Intermediate People's Court, Mar. 3, 2015).

her parents during her adulthood, but only when they were both healthy. After Mr. HuaBing's stroke, he was permanently impaired and was unable to live independently. In 2004, Mr. HuaBing's wife died of cancer. HuaJia continued to live with his father until 2011. In December of 2012, Mr. HuaBing died without a will.

HuaJia claimed a greater share of his father's estate under Article Thirteen.[109] He introduced evidence that his sister had purchased a home in 2004, and argued that she had the financial ability to support her father, but had failed to do so.[110] His sister countered that she got along well with her father and contributed to his maintenance. HuaJia identified one witness who claimed that HuaYi had once forced her mother to "do something unpleasant with a knife" and had burnt her clothes. A second witness would have testified that she had been paid by the son to assist with caregiving for his parents and had never seen HuaYi visit her parents. Both of these witnesses failed to appear, however. Accordingly, the court discounted their allegations. The court accepted evidence from a community council that showed that HuaJia had lived with his ill parents and provided good care for them. It also considered conflicting evidence that HuaJia had helped his parents purchase their home in 1994.

The court held that Mr. HuaBing's estate should be divided equally between his son and his daughter. The holding was affirmed on appeal. Although seemingly irrelevant for purposes of Article Thirteen, the court may have been influenced by the fact that the son had collected rents from his father's house for two years after his father's death without sharing them with his sister.[111] The Chinese succession laws make no reference to the relevance of post-death heir conduct, aside from destroying a will or killing another successor in fighting over the estate.[112]

D. *Estate of Xue*

Estate of Xue involved a support claim asserted by an unmarried surviving partner who had provided caregiving services to the decedent.[113] Mr. Xue died in 2013, survived by his daughter, Miss He, and a stepson from another marriage, Guo. Mr. Xue had been married twice to Miss He's mother, but both marriages ended in divorce. His third marriage to a Mrs. Zhao ended when he became a widower in 2008. Mrs. Zhao had a son, Guo, from a prior relationship.

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[109] PRC Succession Law Art. 13 (quoted *supra* at the text accompanying note 94).

[110] *See* PRC Succession Law Art. 13 (allowing for adjustment to successors' shares if they "were in a position to maintain the decedent but failed to fulfill their duties.")

[111] *Case No. 175.*

[112] Article 7 of the Chinese succession law provides for a successor's disinheritance on account of an: (1) intentional killing of the decedent; (2) killing any other successor in fighting over the estate; (3) a serious act of abandoning or maltreating the decedent; or (4) a serious act of forging, tampering with or destroying the will. PRC Law of Succession Art. 7.

[113] *Case No. 00590* (Second Middle People's Court, Beijing, Feb. 11, 2015).

Beginning in 2009, and continuing until Mr. Xue's death, Mr. Xue lived with Ms. Yan. The two became close. Although they never married, Ms. Yan claimed that she had supported Mr. Xue for four years prior to his death.

The court identified the decedent's daughter as his sole statutory heir. It rejected a claim to successor rights by Guo, the stepson, since there was no evidence that a support relationship had ever formed between Mr. Xue and Guo. Here, the court assumed that stepchild status was not terminated by the death of the child's mother. The court allocated approximately seventy percent of the estate (71,557 RMB, or about $11,000 U.S.) to Miss He, the decedent's daughter, and the remaining thirty percent to Ms. Yan, based upon her having provided four years of support prior to Mr. Xue's death.[114]

E. *Estate of HuMoumou*

Finally, in *Estate of HuMoumou*, an adoptive grandson, an unrelated caregiver, and a caregiver-sibling all claimed a share of an estate.[115] Mr. HuMoumou was unmarried and his only child had predeceased him without issue. His closest living relatives were his brother, Mr. HuYi, and his nephew, HuBing. Some twelve years before his death, Mr. HuMoumou legally adopted his grandnephew HuJia as his grandson, a procedure recognized under Chinese family law. Under Chinese intestacy law, HuJia was the sole heir in intestacy, at least without regard to support considerations. HuJia lived with his adoptive grandfather for many years.

After Mr. HuMoumou's death, a Mr. Zhang came forward and claimed that he had cared for Mr. HuMoumou in his final days. The brother, Mr. HuYi, and the adoptive grandson, HuJia, both asserted that they had provided care and support to the decedent as well. One witness testified that HuJia had provided poor care to the decedent and that the two did not always get along. Other evidence was admitted relating to support and assistance provided on behalf of the three claimants at one time or another.[116]

After accounting for certain administrative expenses and costs of the estate, the court determined that the adoptive grandson HuJia should inherit the entire estate. No serious analysis was devoted to the fact that both Mr. Zhang and Mr. HuYi had seemingly also provided some level of maintenance and support. Implicit in the court's conclusion is a rejection of Mr. Zhang's and Mr. HuYi's credibility.

IV. ASSESSMENT

Occasionally, an individual will intentionally structure her estate plan to

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[114] *Id.*

[115] *Case No. 511* (HeNan Sheng Luo Yang City JianXi District People's Court, Mar. 3, 2015).

[116] *Id.*

encourage and reward support. Often elderly persons will structure their estate plans in order to encourage their heirs to offer support. An example can be found in the estate plan of Emily Shull.[117] In 1889, Shull, a resident of Indiana, made her will. Omitting the attestation clause, it read, in its entirety:

> The following is the last will and testament of Emily J. Shull of Salem, Indiana, to wit: So far as my property which I leave at my death is concerned, I declare the following to be my desire and will: 1st. Any valid debts due from me at my death shall be paid. 2nd. I command that my funeral at my death shall be decent, and rendered in a proper manner. 3rd. Also I direct my executor to erect at my grave a proper monument not to cost less than seventy-five dollars ($75.00). 4th. Whoever shall take good care of me, and maintain, nurse, clothe, and furnish me with proper medical treatment at my request, during the time of my life yet when I shall need the same, shall have all of my property of every name, kind, and description left at my death. 5th. The person or persons whom shall be selected by me to earn my estate, as provided in 4th clause, shall have a written statement signed by me to that effect, to entitle her, him, or them to my estate. 6th. Samuel B. Voyles of Salem is nominated for my executor of this will. [Signed] Emily J. Shull.[118]

Six years passed. Then Emily Shull wrote a letter to her adult granddaughter, Ella Holsapple:

> Well, Ella, I am sick. I want you to come, and stay with me. I don't think I can live many weeks. If you don't come, I will try and get some of Lina Clark's to stay. If you don't come, you will rue it. I have made my will, and whoever stays with me at my last hours gets everything I leave except funeral expenses paid. I don't want your father or the Shulls to have a cent of my earnings, and want you to have everything I have after my death and funeral expenses are paid. Don't fail to come. Emily J. Shull.[119]

Ella Holsapple came as she was bid, and she cared for her grandmother, who died several months later.[120] Objections that the will was invalid for failure to name a devisee were rejected. The opinion noted that courts "in the main

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[117] *Dennis v. Holsapple*, 148 Ind. 297, 47 N.E. 631 (Ind. 1897).

[118] *Id.*

[119] *Id.*

[120] *Id.* (The opinion does not list the decedent's date of death but the letter is dated January 6, 1895, and the will was probated a year and a day later).

entertain great respect for the will of those who are dead...."[121] Emily Shull succeeded in crafting a will that accomplished the same aims as the support-dependent provisions of Chinese intestacy law. As in Chinese support-dependent intestacy law, a contested evidentiary hearing was a prerequisite to a final determination of heirship.

The primary method by which intestate schemes in the United States are crafted is presumed majoritarian intent. The drafters of intestate rules try to guess how most people would have wanted to dispose of their assets after death. Since most married persons who make wills leave their entire estate to their spouse, most intestacy schemes provide for this outcome. Since most unmarried persons with children who make wills dispose of their estates to their children in equal shares, this is the default outcome in intestacy. Very few individuals make wills like Emily Shull, linking inheritance rights to a performance of support obligations. This observation suggests that an intestacy scheme modeled on a plan that very few individuals adopt consciously should be rejected.

There are, however, other societal and policy justifications for modeling intestacy schemes than simply matching majoritarian intent.[122] Although very few wills dispose of property to the government, a legislature could enact an intestacy scheme that provided for escheat when a decedent was not survived by a spouse or issue. Indeed, a statute could conceivably provide for escheat in any intestacy proceeding.[123] These kinds of proposals would not be justified by presumed majoritarian intent, since an infinitesimal number of wills are intentionally devised to the government.[124] Rather, justifications for widespread escheat would rest on achieving societal benefits in the form of increased government revenues which could then be devoted to public ends. That this kind of a proposal would undoubtedly be controversial is beside the point. The point is that intestacy schemes *can* be created with the goal of achieving what lawmakers believe most individuals would have intended if their intent had been preserved in an enforceable testamentary instrument.[125] However, intestacy schemes—like support-dependent intestacy provisions—can also derive from objectives of social good, irrespective of presumed majoritarian intent.[126] The

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[121] *Id.*

[122] Ronald J. Scalise, Jr., *Honor Thy Father and Mother?: How Intestacy Law Goes Too Far in Protecting Parents*, 37 SETON HALL L. REV. 171, 173-76 (2006).

[123] Exceptions could be considered for minors or individuals with severe impairments who never achieved the ability to exercise testamentary freedom.

[124] One example of an individual who did intend to leave their estate to the government (although not a state government, as required by state probate codes), was United States Supreme Court Justice Oliver Wendell Holmes. *See* Richard A. Paschal, *Constitutional Birth Pains*, 10 GREEN BAG 2d 125, 125 (2006) (noting that Holmes' will "contained numerous bequests but the residuary clause left all remaining assets to the United States.")

[125] "[T]he [U.S.] Constitution does not require that intestacy statutes distribute property according to principles of probable intent." Weisbord, *supra* note 18, at 884.

[126] For example, given the world's aging population, an intestate share–or even 'forced shares' in testate proceedings–could be enacted for elderly parents as a means to arrest the runaway costs of long term care

primary social good, presumably advanced by support-dependent intestacy provisions, is to encourage and reward adult children who support their parents, financially or emotionally.

To be sure, there are costs to intestacy formulas with fact-dependent outcomes. Litigation in the aftermath of a family member's death can be expensive and unsettling. Grief coupled with a contested court proceeding where family members vie against one another for a share of an estate carry significant costs. Those costs can include delays, financial and emotional costs to survivors, and additional demands on our courts and judges. Judicial decisions in China may lack the same level of consistency that American lawyers would expect and American families may demand.[127] John Capowski has observed: "Chinese courts are more concerned with substantive justice than with consistent results."[128] American lawyers, by contrast, are accustomed to consistency as represented by the doctrine of *stare decisis*. That *stare decisis* can, in fact, interfere with the aim of justice can be seen in a judicial decision applying a statutory intestacy-adjustment formula.

In *Estate of Moyer*, a tragic car accident resulted in the death of a toddler.[129] The child's grieving mother then battled in court against her own mother over an intestate inheritance.[130] The grandmother asserted that the mother's failure to support her young son should result in her disinheritance. Indeed, the mother had largely failed in her financial and moral obligations of support. The trial court, despite feeling that the child himself would have desired that his grandmother inherit to the exclusion of his biological parent, felt bound by precedent. The trial court wrote: "[i]f this court were free to base its decision on fairness and common sense rather than appellant precedent, we would sign a forfeiture order as soon as it could be prepared."[131] Instead, the trial court found itself constrained by precedent, which had interpreted the legislative phrase "failed to provide any duty of support" in a strictly literal sense and acknowledged "any crumb a parent throws in front of a child."[132] *Moyer* illustrates the distasteful, unseemly, and costly spectacle of estate litigation encouraged by support-dependent formulas. It also illustrates the point that if American jurisdictions do invoke support factors in settling intestacy rights, that they might achieve fairer outcomes by relaxing some of the requirements of

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otherwise borne by taxpayers when individual resources are exhausted. Elevating elderly parents' intestate shares above that of children or even spouses of the decedent would seldom square with majoritarian intent, but it would advance a particular social agenda.

[127] *Compare Estate of Wang* with *Estate of HuMoumou*, discussed *supra* part III(B), (E).

[128] Capowski, *supra* note 12, at 473. Capowski asserts: "[w]hile a focus on substantive justice may create inconsistency, in a moral and ideally functioning legal system, correct outcomes should merge with consistency." *Id.* at n. 142.

[129] *In re Estate of Moyer*, 2000 Pa. Super 227, 758 A.2d 206 (2000).

[130] *Id.*

[131] *Id.* at 210 (quoting the lower court's opinion).

[132] *Id.* (quoting the lower court's characterization of precedent).

rigidity and consistency.

CONCLUSION

Whether courts are appropriate mediums to discharge family responsibilities after a death should be explored and argued, no one should doubt the primal importance of family duties, regardless of nationality. The legal expression of those values takes various forms in China, the United States, and elsewhere. On balance, China's support-dependent intestacy rules appear functional to perhaps a surprising degree, suggesting that the costs associated with greater uncertainty and postmortem squabbles are offset by an ability to reward the expression of support. As United States' jurisdictions inch towards greater tolerance of fact-dependent intestacy rubrics, these costs should not be ignored.