PART ONE

MODEL PROBATE CODE
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Prepared for the Probate Law Division
of the Section of Real Property, Probate and Trust Law
of the
American Bar Association
by its Model Probate Code Committee
in cooperation with the Research Staff of
the University of Michigan Law School
Committee on the Model Probate Code, Probate Division, Section of Real Property, Probate and Trust Law, American Bar Association:

*R. G. Patton, Chairman, Minneapolis, Minn.
*Thomas E. Atkinson, New York University.
*Paul E. Basye, San Francisco, Cal.
   Edgar M. Bowker, Whitefield, N. H.
   Eleanor S. Burr, Boston, Mass.
   William H. Faust, Indianapolis, Ind.
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*Members of sub-committee on drafting.

The following participated in the preparation of this Code as members of the research staff of the University of Michigan Law School:

Lewis M. Simes, Professor of Law and Director of Legal Research.
Thomas E. Atkinson, Visiting Research Professor (summer of 1945).
Paul E. Basye, Research Associate (1943-44).
Elizabeth Durfee, Research Assistant.
Presentation of the Report of the Committee on Model Probate Code

To the Probate Law Division, Section of Real Property, Probate and Trust Law, American Bar Association:

Your Committee on Model Probate Code presents here-with its final report, consisting of a Model Probate Code of 260 sections, with introduction and critical comments.

In view of the extent and nature of the task, it may not be inappropriate to recount briefly the history of this project in legislative drafting. During the years 1939 and 1940 the Journal of the American Judicature Society carried a series of articles by Professor Thomas E. Atkinson on probate courts and procedure which was concluded in the issue of February, 1940, under the heading "Wanted—A Model Probate Code." 1 After pointing out a few of the archaic and inconsistent provisions of the codes of some states, Professor Atkinson called attention to the fact that in recent years several states had enacted new probate codes, all of them undoubted improvements over their previous codes. The drafting was done by committees, councils or commissions and the new acts indicate the borrowing of provisions from other states. However, as pointed out by the author, it is important for such draftsmen to consult and fully consider the statutes of all the other states so as to select the best ideas and the most appropriate phraseology. He raised the question, is the remedy a uniform probate act; and if so, under whose auspices should it be prepared? He concluded that such an act would be an improvement upon the best of existing probate codes and called

attention to various organizations which have been interested in the improvement of statutes: The National Conference of Commissioners on Uniform Laws, The American Judicature Society, The American Law Institute, The National Conference of Judicial Councils and the Committees on Improvement in Probate Practice and on Uniformity in Probate Codes, of the Section of Real Property, Probate and Trust Law of the American Bar Association.

At the meeting of the American Bar Association held in Philadelphia in September, 1940, the Section of Real Property, Probate and Trust Law included in its program a discussion of the proposal for a Model Probate Code. At this meeting of the section the foregoing discussion of Professor Atkinson was reviewed and as a result a committee was appointed which has since then been actively engaged upon the project.

In addition to work by the section's committee, the latter has had the assistance of advisory committees appointed by the state bar associations of most of the states. The initial work consisted in the preparation of a list of proposed general headings of matters which should be included in a Model Probate Code and the order of classification. Most of the consultation was of necessity by correspondence but the committee has held open meetings during the subsequent annual sessions of the American Bar Association. On account of the distance separating the committee from its advisory committees, the initial work proceeded slowly. Nevertheless, by the time of the Indianapolis meeting (1941) there had been compiled a tentative but fairly definite classification of major titles and subtitles.

Having completed this initial work of classification, inclusion and exclusion, the committee was squarely faced with the problem of finding members or others who could give the nec-

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2 Section Proceedings, 1940, p. 17.
necessary time to examining the existing probate statutes of all the states, of selecting from them the best worded sections for inclusion as the section or as an alternative section of the proposed model. The committee had arrived at the same stone wall which has faced state groups charged with the duty of proposing a draft which would be superior to the existing law. It had no members who could spare the necessary time to make the research which the importance of the subject demanded; nor did the committee know of any foundation or endowment to which it might appeal for financial assistance. At this critical point it received the suggestion that the University of Michigan was carrying on a number of legal research projects and that a program might be worked out by which its assistance to the committee could be procured. From that beginning a plan was formulated under which the research could be made under the supervision of our own member, Professor Lewis M. Simes, and, as a result, a Model Probate Code could be promulgated jointly by the section and by the university. Commencing late in 1942, this research has been in progress.

A sub-committee on drafting was set up consisting of three persons: the Chairman, Professor Simes and Professor Atkinson. Mr. Paul E. Basye, now of the San Francisco bar, who was formerly a research associate at the University of Michigan Law School, was subsequently added to the sub-committee. In the preparation of the Model Probate Code, six conferences, either of the sub-committee or of the entire committee, have been held since 1942, four at Ann Arbor, Michigan, and two at Chicago at the time of American Bar Association meetings. In carrying on the research incident to the drafting of the code at Ann Arbor, Professor Simes was assisted for approximately a year by Mr. Basye, as research associate, and for the entire period since the University of Michigan Law School undertook to cooperate in the project by Miss Elizabeth Durfee, as research assistant. During the academic year
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1944–45, arrangement was made for Professor Simes to be relieved of half his teaching duties so that he could devote the remainder of his time to research and drafting in connection with the Model Code. In the summer of 1945 Professor Atkinson was appointed visiting research professor at the University of Michigan Law School for a term of six weeks, and devoted his entire time to the completion of the Model Code.

In addition to the assistance of research staff and state advisers, the committee has had the benefit of valuable advice from other experts. Two members of the legal staff of the United States Veterans Administration gave extensive critical comments on a draft of the subdivision of the code dealing with guardianship, as did also the consultant on guardianship of the Children's Bureau of the United States Department of Labor. Other helpful criticisms were received from experts on suretyship and on corporate fiduciaries, as well as from leading probate judges and other experts on the whole field of probate law.

In presenting this Code as the product of five years of preparation and unremitting toil, it is believed that the viewpoint of no important social group has been overlooked and that the content of every important probate statute now on the books has been considered. It would be too much to say that the Code is free from all imperfection. Yet in presenting it to the Section in its final form, it is the belief of your Committee that either as a code complete in itself, or as a fundamental probate law on which to build a larger legislative superstructure, it can be recommended without qualification to the legislative authorities of any jurisdiction in which probate reform is sought.

Respectfully submitted,

R. G. PATTON, Chairman