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OKLAHOMA'S ARCHAIC HALF-BLOOD INHERITANCE STATUTE — STILL GOING:* A PLEA FOR REPEAL

NANCY I. KENDERDINE**

Title 84, section 222 of the Oklahoma Statutes provides:

Kindred of the half-blood inherit equally with those of the whole blood in the same degree, unless the inheritance come to the intestate by descent, devise or gift of some one of his ancestors, in which case all those who are not of the blood of such ancestors must be excluded from such inheritance.¹

At first blush the "half-blood" statute, or, as it is frequently labeled, the "ancestral property" statute,² appears to be very logical. As divorce and remarriage have become common, the number of blended families has greatly increased the probability that a decedent will have either half-blood siblings or other half-blood collateral relatives.³ What could be more rational than a statute that keeps the decedent's inherited property on the side of the family from which it came? If, for example, decedent was devised real property by her mother, excluding decedent's paternal half brother from his normal intestate share of this asset will keep that property in the bloodline.

Further examination, however, reveals that even this most justifiable application of section 222 can yield irrational results in many circumstances. The statute completely ignores, for example, the fact that decedent's mother is very likely to have received that property she devised to decedent from decedent's father,⁴ who

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* With apologies to the Energizer Bunny.
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2. See, e.g., In re Long's Estate, 67 P.2d 41, 49 (Okla. 1937).
3. A half-blood relative is one that shares only one common ancestor with the decedent, while a whole blood relative shares two common ancestors. Thus, two persons with the same mother but different fathers would be maternal half-blood siblings. The term has no relevance, whatsoever, to lineal relatives (children, grandchildren, parents, grandparents, and the like); it applies only to collateral relatives. It is very important to realize, however, that while all second line collaterals (aunts, uncles, cousins and the like) are all related to the decedent only through either the maternal or paternal line, they are not half-blood relatives since they share two common ancestors — the paternal (or maternal) grandmother and the paternal (or maternal) grandfather. These second line collaterals are half-blood relatives only if they share one grandparent with decedent but not the other.
4. Many studies have shown that the surviving spouse is the preferred devisee in the vast majority of wills of the first spouse to die. Further, under modern intestate succession law, the surviving spouse will always receive some portion of the property of the first to die, frequently at least half. See generally
was the parent of the half brother being excluded. This is one of several interpretations of the statute that often reduce section 222 to an illogical absurdity.

When the decedent's surviving relatives are collateral relatives other than merely whole and half brothers and sisters, the illogical results that can occur when section 222 is invoked increase dramatically.  

Since 1969, primarily because of the influence of the Uniform Probate Code (UPC), many states have revised their intestate succession statutes to more accurately reflect current preferences for distribution of property at death. The repeal of statutes that provided different treatment for half-blood relatives has been part of this reform movement. In the last twenty-five years, most states, if they had not already done so, have adopted equal treatment statutes for half-blood relatives based on the UPC provision. These states have recognized that the inherent bias against half-blood relatives is an anachronistic vestige of the common law that has no place in modern society. They have also recognized that the still-disputed issues about the proper application of these statutes, as well as the results that often occur when the statutes are applied, far outweigh any value that these statutes might have in certain specific instances when they might achieve a result that some would view as "proper."  

Oklahoma, on the other hand, still retains its half-blood statute. The legislature appears to have been oblivious to the almost universal rejection of these unworkable statutes. Oklahoma seems to be unaware that the statute is even controversial. In 1984, the state adopted a modern intestate succession statute that was clearly based on the UPC provision, yet Oklahoma completely ignored section 222. As it has been interpreted, section 222 is almost totally incompatible with the inheritance scheme of the revised statute. Problems that rarely arose when the half-blood statute was used in connection with the original intestate succession statute will now occur on a regular basis.  

84 OKLA. STAT. § 213(B) (1991). The precise share depends on the decedent's relative pattern and, sometimes, on whether the property was separate or coverture.  

5. See infra text accompanying notes 163-64.  


7. UNIF. PROBATE CODE § 2-107 (1993). See infra note 79 for the list of states currently treating half-blood relatives equally in all circumstances.  

8. See, e.g., Wis. Stat. § 852.03 historical cmt. (3) (Supp. 1995) (the statute repealed the state's half-blood statute). See infra Part I.A for a discussion of the common law roots of half-blood statutes. It is also often pointed out that these statutes lost their only possible justification when adopted children (who share no blood) were granted full inheritance rights. A further change in the inheritance scheme that undermines the blood-line justification occurred when the surviving spouse was made a principal heir-at-law.  

9. As will be further explained in infra Part III, as interpreted, the statutes are not true ancestral property statutes, nor do they necessarily keep the property in the blood line.  


11. See infra text accompanying notes 252-65.
The major theme of this article is that section 222 should be repealed. It is the author's belief that the section is frequently misapplied and often ignored when estates are distributed, thus causing unequal treatment of identically situated heirs. Further, it is a major premise of this article that section 222 is an archaic common law vestige that seldom accomplishes any valid purpose and frequently causes results for which there can be no rational justification.

Part I of the article first explores the common law roots of half-blood statutes in the United States and then examines the wide variety of half-blood statutes that were, at one time, in effect in this country. Part II reviews the current status of half-blood statutes in the United States. Part III explores the Oklahoma statute in detail, critically examining both its current interpretations and the large number of fundamental questions about its application that are still unanswered. Part IV analyzes the additional problems that occur when section 222 is applied to the revised Oklahoma intestate succession statute. The article concludes with a plea to the legislature for the statute's immediate repeal.

I. A Brief History of Half-Blood Statutes

A. English Common Law Roots

Under the English common law, succession to realty and distribution of personalty were governed by separate rules. One difference was the treatment of half-blood relatives when there were no issue and the property passed to collateral relatives. Collateral relatives of the half blood were entitled to share in the distribution of personal property. However, by about A.D. 1350, collateral relatives of the half blood were totally excluded from succession to real property.

Two distinct early common law rules of succession to real property influenced the design of most half-blood statutes in the United States. The first relevant

12. Although there is no empirical data to support this statement, the author, as a teacher of trusts and estates law, has been consulted on proper distribution under section 213 for over twenty years. From the many questions asked, it is very clear that many members of the practicing bar in Oklahoma are not familiar with the current constructions of section 222, nor do they understand when it does and does not apply.

13. Personalty was distributed to the next of kin determined by the civil law method. Land descended to heirs determined by a parentelic system of computation. The latter scheme was further complicated by rules of primogeniture and a general preference of males over females. See, e.g., 2 WILLIAM BLACKSTONE, COMMENTARIES *212-14, *504. In 1925, the Administration of Estates Act modernized much of the English inheritance scheme, providing, among other things, that the same persons would take the realty and personalty. This act also abolished previous gender preferences. Administration Estates Act, 1925, 15 Geo. 5, ch. 23 (Eng.).

14. 2 BLACKSTONE, supra note 13, at *505.

15. 2 id. at *224. Prior to this time the rights of half bloods were very unsettled. Pollock and Maitland note that Bracton (mid-1200s) held that the half-blood relation could inherit, although postponed in favor of the whole blood. 2 FREDERICK POLLOCK & FREDERIC W. MAITLAND, THE HISTORY OF ENGLISH LAW 303 (1895). The rule absolutely excluding half bloods was changed in England in 1833. Inheritance Act of 1833, 3 & 4 Will. 4, ch. 106 (Eng.).
inheritance rule provided that on failure of issue the property descended to collateral relatives who were of the blood of the first purchaser, that is, a lineal descendant of the first purchaser.\textsuperscript{15}

The first purchaser was the individual who first acquired the estate for his family other than by descent.\textsuperscript{17} Thus, paraphrasing the example given by Blackstone:\textsuperscript{18} if Albert purchased land and it descended first to his son Bob, then to Bob's son Carl. then, if Carl died without issue, the property had to pass to a collateral relative who was a lineal descendant of Albert, the first purchaser. The property could never, under any circumstances, descend to a maternal collateral relative of Carl — not even a maternal relative of the whole blood.\textsuperscript{19} It also could not descend to a paternal collateral relative of Carl who was not a lineal descendant of Albert.\textsuperscript{20} This was a pure ancestral property rule designed to keep the property in the direct bloodline of the first purchaser. It applied to both whole and half-blood relatives and was not per se a half-blood rule.

Blackstone described the ancestral property rule (\textit{feudum antiquum}) as being unique to England and Normandy, and he attributed it to the feudal system.\textsuperscript{21} He stated that the feudal reason for the rule was "that which was given to a man, for his personal service, and personal merit, ought not to descend to any but the heirs of his person."\textsuperscript{22} Pollock and Maitland, on the other hand, rejected the idea that the rule was of feudal origin, believing instead that "a rule whose main effect is that of keeping a woman's land in her own family is not unnatural and may be very ancient."\textsuperscript{23}

Regardless of its origins, this rule of ancestral property created some obvious problems for the early common law judges. First, if property could only descend to lineal descendants of the first purchaser, what did one do when the first purchaser died without issue? Quite clearly, technically, collateral relatives could not inherit this \textit{feudum novum}. While apparently that was, in fact, the outcome in some very early cases, a method was soon devised which allowed the collateral relatives to take the inheritance. They were allowed to hold the new estate \textit{ut feudum antiquum}, that is, with all the qualities attached as if it were a \textit{feudum antiquum}.\textsuperscript{24}

There was a second problem situation: what happened when it was impossible to establish with certainty who the first purchaser was? According to Blackstone,

\begin{itemize}
  \item 16. 2 \textsc{blackstone}, \textit{supra} note 13, at *220. This restricted definition of "of the blood" would also disqualify collateral relatives of the first purchaser.
  \item 17. 2 \textit{id}.
  \item 18. 2 \textit{id}.
  \item 19. 2 \textit{id}.
  \item 20. For example, the property could not descend to a lineal descendant of Albert's brother. Under this fascinating canon of descent, the common ancestor could not be more remote than the first purchaser. This limited definition of "of the blood" may well be connected to another early common law rule of succession which provided that property would never lineally ascend. \textit{See} 2 \textit{id}.
  \item 21. 2 \textit{id}.
  \item 22. 2 \textit{id}.
  \item 23. 2 \textsc{pollock \& maitland}, \textit{supra} note 15, at 300.
  \item 24. 2 \textsc{blackstone}, \textit{supra} note 13, at *221.
\end{itemize}
the common law's solution to this problem was to substitute "reasonable proof" for "impossible proof"; that is, the law required only that the claimant be the "next of the whole blood to the person last in possession" in those cases in which the first purchaser could not be traced.\textsuperscript{25} The theory behind this approach was that the "next of the whole blood" claimant was "very likely" to be in the direct line of the first purchaser.\textsuperscript{26}

Both of these wonderfully convoluted solutions from the simplistically logical minds of the early common law judges resulted in situations in which both maternal and paternal collateral relatives were entitled to inherit the land, subject, of course, to the same priorities regarding gender, primogeniture, and representation which were inherent in the entire inheritance scheme.\textsuperscript{27}

The "reasonable proof" substitute for the identity of the actual first purchaser of the ancestral property may have given us another legacy. This "rule of proof" has often been identified as the source of the rule completely excluding half-blood relatives from the common law scheme of succession.\textsuperscript{28} This is the second inheritance rule from the common law that has influenced the half-blood statutes.

According to Blackstone, the common law judges who created the "reasonable proof" rule were applying some early probability theory.\textsuperscript{29} By definition, whole blood collaterals share twice as many common ancestors with the decedent as do half-blood collaterals. Accordingly, the odds that the shared ancestor was the unknown first purchaser were much greater if inheritance was limited to the whole blood relatives. This was especially true when, as was frequently the case, the heir and the decedent were siblings, since whole blood siblings share all ancestors.\textsuperscript{30} The probability that the whole blood ancestor would be of the blood of the first purchaser was further increased because it was coupled with the common law rule that those collaterals of the male stock were preferred to those of the female.\textsuperscript{31} Since the relatives on the father's side were admitted \textit{ad infinitum} before any from the mother's side, unless the land was proved to have descended from the mother's

\textsuperscript{25} 2 \textit{id.} at *228.
\textsuperscript{26} 2 \textit{id.}
\textsuperscript{27} A thorough discussion of the complete inheritance scheme of the common law is beyond the scope of this article. Blackstone's "seven canons of inheritance" outline the general scheme: (1) inheritances lineally descend to the issue . . . \textit{ad infinitum}, but shall never lineally ascend; (2) the male issue shall be admitted before the female; (3) where there are two or more males of equal degree, the eldest only shall inherit; but the females altogether; (4) the lineal descendants of any person deceased shall represent their ancestor; (5) on failure of issue, the inheritance shall descend to the blood of the first purchaser, subject to the three preceding rules; (6) the collateral heirs must be his next collateral kinsman of the whole blood; (7) in collateral inheritances, the male stock shall be preferred to the female . . . unless the lands have in fact descended from a female. 2 \textit{id.} at *208-41 (ch. 14). For further explanation of the complete operation of these seven canons the reader is referred to the fourteenth chapter of Blackstone. 2 \textit{id.}
\textsuperscript{28} 2 \textit{id.} at *228, *230.
\textsuperscript{29} 2 \textit{id.} at *229.
\textsuperscript{30} 2 \textit{id.} at *230, *231, *236.
\textsuperscript{31} \textit{Id.} at *234.
side, the odds were very good that the collateral heir of the whole blood would actually be of the blood of the first purchaser.32

If the half-blood exclusion had been applied only to the unidentifiable first purchaser situation, Blackstone's explanation would probably be all that was needed. However, the exclusion of half-blood relatives was total. Half-blood collateral relatives simply did not participate in the succession to land under any circumstances. For example, if Carl were the first purchaser, and he died without issue, leaving only his half brother David surviving, the property would escheat.33 Even Blackstone admitted that this particular application of the rule went beyond the principle on which it rested.34 He, nevertheless, traced even this prohibition to the "reasonable proof" rule applied to the feudal ancestral estate.35

Pollock and Maitland, as they were often inclined to do, disagreed with Blackstone. They contended that there was nothing in the early feudal scheme that supported the total exclusion of half-blood relatives. They argued that the exclusion was not of ancient origin, and that as late as the reign of Edward II some cases supported the right of half bloods to inherit if there were no whole blood collaterals.36 They further noted that German and French customs had a confusing variety of rules on the rights of half-blood relatives.37 It was their contention that thirteenth and fourteenth century English lawyers had no easy solution to the issue of the rights of half-blood relatives and desired a clear rule, regardless of its logic.38 Pollock and Maitland's ultimate justification was simply that "[o]ur rule was one eminently favorable to the king; it gave him escheats; we are not sure that any profounder explanation of it would be true."39

Given the propensity of the fourteenth century courts to reify the doctrine of estates in land, it is easy to visualize their ability to move from the "reasonable proof" probabilities concept applied to a true untraceable feudum antiquum to the idea that the same half-blood total exclusion rule should apply to the feudum novum. The feudum antiquum was, after all, fictitiously being held as if it were a feudum antiquum so that the collateral relative could inherit; therefore, the same rules applied to the feudum antiquum should apply. At the same time, as will be further discussed in later sections, there is much to be said for certainty and clarity in the law. While it sometimes yielded irrational results, the rule totally excluding half-blood relatives from inheritance in all circumstances was exceedingly clear. Regardless of the true reason for this particular canon of inheritance, it, along with the ancestral property rule itself, provided the roots from which the large majority of half-blood statutes in the United States were derived.

32. 2 id. See also supra note 27.
33. 2 BLACKSTONE, supra note 13, at *230.
34. 2 id.
35. 2 id.
36. 2 POLLOCK & MAITLAND, supra note 15, at 304. Edward II reigned from 1307 to 1327.
37. 2 id. at 303.
38. 2 id. at 305.
39. 2 id.
B. Inheritance by Half-Blood Relatives in the United States: Traditional Rules

The common law canon that prohibited half-blood relatives from inheriting under any circumstances was never really accepted in the United States.\(^{40}\) In a few jurisdictions, half-blood relatives were always treated equally with whole bloods.\(^{41}\) In the majority of jurisdictions, half-blood relatives were treated equally in most circumstances.\(^{42}\) It is, however, the exceptions to that general rule which created the uncertainty and the frequently illogical results which have plagued the law of collateral inheritance for nearly two hundred years.

The American situation was perhaps best summarized by Chancellor Kent when he stated that the laws "are so different from each other that they seem to be the result of accident or caprice rather than the dictates of principle."\(^{43}\) Kent also noted that "the laws on this . . . are not constant but exposed to the restless love of change which seems to be inherent in American policy . . . ."\(^{44}\) Because of the constant change noted by Chancellor Kent, as well as the endless variations of interpretation on certain details, it is impossible to summarize a traditional American approach. However, several major statutory patterns were prevalent.

1. Pure Half-Blood Statutes

Six states traditionally gave the half-blood collateral relatives one-half as much as the whole blood relatives.\(^{45}\) This particular approach is unique in that it applies to all property of the decedent, real and personal, regardless of how or from whom it was acquired. This rule is usually said to be of Scottish origin, although its earliest roots were probably in the civil law.\(^{46}\)

Two additional states, Kansas and Louisiana, had statutes that achieved a result that was very similar to the one-half as much provisions in that the half-blood

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40. See generally, e.g., Cook v. Hammond, 6 F. Cas. 399, 403 (C.C.D. Mass. 1827). Prior to the American Revolution, many of the colonies' charters provided that the common law of descents would prevail. During this early period, the issue of whether the prohibition against inheritance by half bloods was part of this tradition was frequently debated with inconsistent results. Even in more modern times, those jurisdictions which rely on the common law of descents to fill in the holes in their statutory scheme have found this issue to be unclear. As a result, early in their history most states adopted statutes modifying the common law rights of half-blood relatives.

41. See, e.g., id. at 403.

42. See, e.g., Lynch v. Lynch, 64 P. 284 (Cal. 1901) (the term 'brothers and sisters' and other terms denoting kindred must be held to include those of the half as well as the whole blood when used without limitation).

43. 4 JAMES KENT, COMMENTARIES ON AMERICAN LAW 406 (John Gould ed., 14th ed. 1896).

44. 4 id.

45. See FLA. STAT. ch. 732.105 (1974); KY. REV. STAT. ANN. § 391.050 (Baldwin 1947); MO. REV. STAT. § 474.040 (1985); TEX. PROB. CODE ANN. art. 41 (West 1991); VA. CODE ANN. § 64.1-2 (Michie 1995); W. VA. CODE § 42-1-3e (1849) (repealed 1992). These six states' statutes specifically provided that the half-blood relatives received half as much as the whole bloods.

46. E.g., THOMAS E. ATKINSON, THE LAW OF WILLS 52 (2d ed. 1953). Almost all modern treatises attribute this approach to ancient Scottish law. All treatises cite as their authority, Crooke v. Watt, 23 Eng. Rep. 689, 690 (1690). In Crooke v. Watt, the reporter does mention that one attorney commented that this was the approach in Scotland, but no authority is given. Id.
relatives would receive a lesser percentage of the estate than the whole bloods, at least among first line collateral relatives. For collateral inheritance, both states, by slightly different methods, first split the estate into two equal shares and sent one share down each line (maternal and paternal). Whole blood relatives related through both sides would take from both sides; half-blood relatives would take only from the side through which they were related, unless there were no relatives in the other line.

In nine states, either always or under certain circumstances, half-blood relatives were postponed in favor of whole blood relatives. Under this rule, whole blood relatives and their issue took the estate to the exclusion of any half-blood relatives; however, unlike at common law, the half-blood relative took if there were no whole bloods.

There were several different variations of this general postponement concept. For example, in Mississippi the rule was applied only when the whole and half bloods were in the same degree. In several other states, half-blood sisters and brothers and their issue were postponed in favor of whole blood brothers and sisters and their issue, but the half blood in this group would take before more remote parentelic "next of kin" of the whole blood. Several eastern states applied the postponement rule to property acquired by purchase but applied an exclusionary rule when the property was "ancestral." Early Georgia law incorporated into its half-blood postponement scheme the common law rule that the paternal line was preferred to the maternal line. At one time, Georgia treated all paternal collateral relatives equally when the property was not ancestral; however, the half bloods in the maternal line were postponed.

2. Ancestral Property Exceptions

As previously mentioned, several states that postponed the half-blood relatives when the property was acquired by purchase also totally excluded those collaterals who were not of the blood from sharing in property that the decedent had

47. See KAN. STAT. ANN. § 59-508 (1991); LA. CIV. CODE ANN. art. 893 (West 1991). This scheme did not always result in the half blood receiving half as much. For example, among first line collaterals (brothers and sisters and their issue), if there were only one whole blood relative and one half blood maternal relative, the whole blood relative would take three-fourths of the estate (the entire paternal one-half and one-half of the maternal share). Among second line collaterals (aunts, uncles, and their issue), the shares of the whole and half-blood relatives would be equal unless the statute further divided the property.


50. E.g., DEL. REV. CODE § 3731 (1935). This is the rule adopted in England under a series of reforms that culminated in the Administration of Estates Act of 1925, 15 Geo. 5, ch. 23 (Eng.).

51. These states included Delaware, Maryland, New Jersey, Ohio, and Pennsylvania.

52. GA. CODE § 3931 (1910) (repealed 1931).
inherited. Most of the states with this pattern had statutes that kept the inherited property on the maternal or paternal side from which it came, and whole blood relatives not of the blood would be excluded as well as half-blood relatives. In that respect, this particular statutory scheme closely tracked the common law ancestral property rule from which it was derived.

The primary difference in this ancestral property approach and the common law rule that applied to the *feudum antiquum* was the rejection by most states of the first purchaser concept. The property was considered ancestral if it came to the decedent by devise, descent, or gift from a relative. The collateral heir had only to be of the blood of the relative from whom the decedent directly acquired the property; how or from whom the relative acquired it was irrelevant. The second major difference was that half-blood relatives who were of the blood could participate, although they were sometimes postponed in favor of the whole bloods.

Arkansas, which had a very complex inheritance pattern, had an ancestral property statute that always kept inherited property in the line from which it came. Arkansas was among a small minority that continued to trace this property to the first purchaser.

3. Combined Ancestral Property — Half-Blood Statutes

The most prevalent approach to the rights of half-blood relatives in this country was some form of a statute that treated the half-blood relatives equally with the whole bloods unless the property was "ancestral." In the case of ancestral property, the statute excluded those half bloods who were not of the blood of the ancestor. These statutes are a hybrid combination of two separate common law canons of inheritance: the common law ancestral property rule and the common law prohibition against inheritance by half-blood relatives. The attempt to combine these two distinct canons resulted in statutes that, as interpreted by the

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53. See supra text accompanying note 51.
57. Under the common law definition of the *feudum antiquum*, the property was acquired by purchase unless it descended to the heir. This was later expanded to include property that was devised to the recipient in the same share that he would have received through descent. If the property was given to the decedent during his lifetime, it was not treated as "ancestral property." The "ancestral property" statutes in the United States apply to any real property acquired by the decedent from a relative either by inter vivos gift, devise, or descent. Additionally, in this country the statutes were usually interpreted to refer to the relative from whom the decedent directly acquired the property; we do not look to the "first purchaser." But see supra text accompanying note 56. Nevertheless, this type of American statute is generally referred to as an "ancestral property statute," just as the English canon of inheritance was labeled an ancestral property rule.
59. See generally supra Part I.A.
courts, frequently neither kept inherited property in the bloodline nor prohibited the half-blood relatives who were not of the blood from taking.\textsuperscript{60}

The language of these combination statutes varied greatly, but two models were common. The first model, which is the older of the two types, appears to be an adaptation of the ancestral property statutes used by the several eastern states that had both an ancestral property statute and a separate half-blood statute addressing property acquired by purchase.\textsuperscript{61} The Tennessee statute, now repealed, was typical of this pattern:

(3) [W]here the land came to the intestate by gift devise or descent from a parent, or the ancestor of a parent, and he dies without issue —

(a) If he have brothers or sisters of the parental line of the half blood, and brothers or sisters of the maternal line of the half blood, then the land shall be inherited by such brother or sister on the part of the parent from whom the estate came, in the same manner as by brothers and sisters of the whole blood, until the line of such parent is exhausted of the half blood to the exclusion of the other line.\textsuperscript{62}

The second, newer model, which can be traced back through the Territorial Civil Code of 1877,\textsuperscript{63} is exemplified by the Oklahoma statute:

Kindred of the half blood inherit equally with those of the whole blood in the same degree, unless the inheritance come to the intestate by descent, devise or gift of some one of his ancestors, in which case all those who are not of the blood of such ancestors must be excluded from such inheritance.\textsuperscript{64}

This particular model was adopted in more states than any other half-blood or ancestral statute. At one time, it was in effect in sixteen states.\textsuperscript{65} It is also the

\textsuperscript{60} See generally infra Part III.

\textsuperscript{61} See supra text accompanying notes 51-52. The particular states with the two separate statutes are among the earliest admitted to the Union, and these statutes represent one of the very earliest statutory modifications of the total prohibition of the common law. These would appear to be the states that, prior to adopting their statutes, had struggled most frequently with the half-blood prohibitions under the English common law. Their two separate statutes combine to impose stricter limitations on the inheritance rights of half-blood relatives than most other states; however, when viewed in their historical perspective, they represent a major reform.

\textsuperscript{62} TENN. CODE § 8380 (1934) (repealed 1977).

\textsuperscript{63} DAKOTA TERR. CIV. CODE § 778 (1877). See the discussion of the origin of this model in In re Estate of Jensen, 162 N.W.2d 861, 866-67 (N.D. 1968).

\textsuperscript{64} 84 OKLA. STAT. § 222 (1991).

statute that has been most litigated, and it represents the type of statute that has produced the most controversy. Cogent arguments have been made that the statute: (1) always excludes the half-blood relatives not of the blood and, conversely, only excludes half-blood relatives in the same degree as the whole blood relatives;{66} (2) only excludes the half blood in the same degree as the actual whole blood claimant and, conversely, excludes even when the whole blood is more remote but is claiming by representation through one in the same degree;{69} (3) only operates when there are whole blood claimants and, conversely, excludes half bloods not of the blood when the only other claimants are half bloods of the blood of the ancestor;{71} (4) only excludes half bloods not of the blood and never excludes whole bloods not of the blood and, conversely, also excludes whole blood collaterals who are not of the blood of the ancestor;{73} (5) operates only when the half-blood relatives are in the same statutory inheritance class preference as the whole bloods and, conversely, excludes the half bloods in favor of whole bloods in a lesser inheritance class;{75} and (6) only excludes half bloods not of the blood when there is some heir of the blood and, conversely, excludes the half blood not of the blood in favor of whole bloods not of the blood.{77}

These combination-type statutes, especially those of the Oklahoma type, are the statutes that were most often labeled by the unfortunate courts faced with the task of interpreting them as "without reason" and in need of repeal. Finally, in the 1970s, many legislatures began to hear the pleas for reform.

II. Current Status in the United States

Today, in all but twelve states, half-blood relatives inherit equally with whole blood relatives under all circumstances. Of the remaining twelve states, seven


66. See Amy v. Amy, 42 P. 1121 (Utah 1895).
67. See In re Smith's Estate, 63 P. 729, 730 (Cal. 1901).
69. See id.
70. See generally Thompson v. Smith, 227 P. 77, 80 (Okla. 1924) (the effect of limiting the statute to same degree situations is that the statute doesn't apply "where the decedent leaves half brothers or sisters, but no full brothers or sisters"). See also infra text accompanying notes 225-40.
71. In re Ryan's Estate, 133 P.2d 626, 632 (Cal. 1943) (dictum only).
72. See DeRoin v. Whitetail, 312 P.2d 967, 970 (Okla. 1957).
73. See In re Wortmann's Estate, 177 N.W. 967, 967 (Mich. 1920).
74. See McDonnell v. Dwarz, 3 N.W.2d 419, 421 (Minn. 1942).
75. See In re Little, 721 P.2d 950, 958 (Wash. 1986).
76. See In re Edwards' Estate, 259 P. 440, 441 (Cal. 1927).
77. Cf. In re Long's Estate, 67 P.2d 41, 44 (1937) (the statute is triggered by the presence of a half-blood relative not of the blood).
78. E.g., DeRoin v. Whitetail, 312 P.2d 967, 975 (Okla. 1957) (Halley, J., dissenting).
are those whose statutes give the half-blood relatives a lesser percentage than the whole blood relatives, usually one-half as much.\textsuperscript{80}

It is the author's belief that this lesser percentage pattern has survived the widespread attack on half-blood statutes both because of its clarity and ease in application and also because it is based on a simple logic that the other statutes did not possess. The underlying premise of this particular type of statute is that a collateral relative who shares only one common ancestor with the decedent is not related to the decedent to the same extent as a relative of the same degree who shares two common ancestors with the decedent. The statute avoids all the controversies inherent in the hybrid ancestral property statutes.\textsuperscript{81}

Since both the nature and source of the property are irrelevant under this pattern, it does not produce the illogical result of excluding half-blood relatives in favor of whole blood relatives who are also not of the blood of the ancestor.\textsuperscript{82} It

\textsuperscript{80} See Fla. Stat. § 732.105 (1974); Kan. Stat. Ann. § 59-508 (1991); Ky. Rev. Stat. Ann. § 391.050 (Banks-Baldwin 1990); La. Civ. Code Ann. art. 893 (West Supp. 1996); Mo. Rev. Stat. § 474.040 (1990); Tex. Prob. Code Ann. art. 41 (West 1990); Va. Code Ann. § 64.1-2 (Michie 1990). Florida, Kentucky, Missouri, Texas, and Virginia all provide that the half-blood relatives take one-half as much. The other two states are Kansas and Louisiana. They are not true one-half-as-much jurisdictions; they have been included among these states since the effect of their statutes is to give a lesser percentage to the half-blood relatives, at least among first line collaterals. See supra note 47. The Kansas statute is actually silent as to half-blood relatives; the Louisiana statute states:

\begin{quote}
The property that devolves to the brothers or sisters is divided among them equally, if they are all born of the same parents. If they are born of different unions, it is equally divided between the paternal and maternal lines of the deceased: brothers and sisters fully related by blood take in both lines and those related by half-blood take each in his own line. . . .
\end{quote}


\textsuperscript{81} The sole except to this statement is, of course, the fact that adopted children are now treated equally with birth children. The argument is sometimes made that this change in treatment of adopted children undermines the last remaining reason for any distinctions based on blood. It is clearly an incongruity in the half-blood statutes. However, there are valid reasons for treating the adopted child equally that do not rest on preserving the blood line. When this is the only argument against the half-blood statutes, it does not seem to carry the weight it carries when coupled with the other cogent
addresses only the heirs' relation to the decedent. It is certainly simple to apply and would be properly and equally applied in all estates in which there are half-blood relatives. Based on the dearth of case law involving the statutes from these jurisdictions, they would appear to be fairly noncontroversial, unlike their ancestral property and hybrid cousins. 83

Of the other five states that retain some half-blood relative distinctions, Oklahoma, Hawaii, Nevada, and Washington still have the hybrid combination statutes. 84 Mississippi continues to follow its scheme of postponing half-blood relatives in the same degree in favor of whole blood relatives. 85

Although a few states have always treated half-blood relatives equally 86 and a few others have done so for many years, 87 it has been in the last twenty-five years that most states repealed their half-blood statutes and replaced them with statutes providing for equal treatment. The influence of the UPC provided much of the impetus for this widespread reform. Many states adopted verbatim the UPC provision that "relatives of the half blood inherit the same share they would inherit if they were of the whole blood." 88

In those states that were the vanguard of the reform movement, which provided the precedents for the UPC provision, two different justifications for repeal were frequently mentioned. One rationale was the absurd, illogical results often reached under the hybrid statutes. 89 The second justification was the change that had occurred in the law regarding the inheritance rights of adopted children. When adopted children, who obviously shared no blood with the decedent, were accorded full rights, this was viewed as a further indication that the "ancestral property" limitations on half-blood collaterals were an archaic anomaly in present day society. 90

Unfortunately, while most states were seeing the logic of these and other arguments and adopting equal treatment statutes, Oklahoma remained oblivious to the whole debate. The pleas for reform that had been sounded in several Oklahoma

arguments against retaining the confusing Oklahoma type half-blood statute.

83. The half-as-much statutes, admittedly, do not solve the "adopted relatives are treated equally, even though they share no blood" argument, which has frequently been raised against half-blood statutes. But see supra note 82.


86. Massachusetts, for example, has treated half-blood relatives equal to whole blood relatives since 1748. The provision is now codified at MASS. GEN. LAWS ch. 190, § 4 (1991).

87. Georgia, for example, adopted its equal treatment statute in 1931. See GA. CODE ANN. § 53-4-2 (1985).


89. E.g., In re Ryan's Estate, 133 P.2d 626, 629-30 (Cal. 1943).

90. See, e.g., WIS. STAT. § 852.03, cmt. 3 (1991).
cases and articles nearly forty years ago were not renewed.91 Even when the Oklahoma intestate succession statute was "modernized" in 1984,92 the separate half-blood statute was ignored, and it remains intact.

III. The Oklahoma Approach to Inheritance by Half-Blood Relatives

Oklahoma has consistently been among those jurisdictions that interpret their general intestate statutes to include both whole blood and half-blood relatives. In the absence of some special limiting statutory provision, whole blood and half-blood collaterals share equally in section 213 distributions.93

In 1916, the court in Hill v. Hill94 emphatically adopted the California position that the terms "brothers and sisters" and "next of kin" used in the statute of descent and distribution "include[] those of the half blood as well as those of the whole blood."95 In In re Robbs Estate, the latest important half blood case in Oklahoma, the fact that half blood relatives are within the purview of section 213 is affirmed.96 The court in Robbs stated that the rule was of feudal origin and had no place in Oklahoma law unless the legislature had specifically dealt with the issue.97

The one special limiting statute in Oklahoma is title 84, section 222. As discussed in Part I of this article,98 this is the combination-type statute that includes elements of the common law ancestral property doctrine and elements of the common law rule regarding inheritance by half-blood relatives. The Oklahoma statute, like its counterpart in other jurisdictions, has been subject to all the questions about proper application that are raised by the attempt to combine two separate doctrines into one limiting statute.

A. The History of Section 222

The current Oklahoma half-blood statute has always been part of the state's inheritance law.99 The Oklahoma territorial legislature adopted the identical statute for use in the Oklahoma Territory, and it became part of the Oklahoma state law under the Enabling Act.100 Prior to statehood, an almost identical statute, which was part of the law of Arkansas, was in force in that part of Oklahoma that was then the Indian Territory.101

91. E.g., In re Estate of Robbs, 504 P.2d 1228, 1233 (Okla. 1972) (Jackson, J., dissenting).
94. 160 P. 1116 (Okla. 1916).
95. Id. at 1116 (citing In re Smith's Estate, 63 P. 729 (Cal. 1901)).
96. Robbs, 504 P.2d at 1229.
97. Id.
98. See supra text accompanying notes 57-77.
99. 84 OKLA. STAT. § 222 (1991) (originally codified as R.L. § 8427 (1910)).
The language of section 222 was originally drafted as part of the Field Code.\textsuperscript{102} The Field Code was the basis for the Territorial Civil Code of 1877, which, in turn, was adopted by South Dakota.\textsuperscript{103} The South Dakota statutes and the Territorial Civil Code were adopted by several other states. According to the Oklahoma court, the statutes came to Oklahoma directly from California; history, however, does not support that conclusion.\textsuperscript{104}

One major premise of this article is that the Oklahoma court's interpretation of several key provisions of section 222 has left us with a statute that has no rational basis. The circuitous history of the Oklahoma statute has frequently been relevant in the court's interpretation of section 222, and, in the author's opinion, this fact has contributed to some of the illogical results.

While recognizing that the statute came originally from South Dakota,\textsuperscript{105} the Oklahoma Supreme Court has tended to give great weight to California interpretations. The court has relied on the general rule of statutory construction that a state that adopts a statute from another jurisdiction is presumed to have also adopted that state's construction of its statute.\textsuperscript{106} Even when rejecting a California construction, the court has felt obliged to justify its rejection.\textsuperscript{107} In subsequent cases involving the same issue, the later court has carefully scrutinized the justifications for rejecting California and has often used its disagreement with those justifications as the basis for overruling the earlier case. As a result, rather than exercising its independent judgment and deciding for itself the better reasoned construction, the court has appeared to decide many of these questions on the collateral question of which state's rules Oklahoma should be following.

This collateral debate has been exacerbated by frequent references in the early cases to the Arkansas law, which was in effect in the Indian Territory.\textsuperscript{108} While the Arkansas half-blood statute was very similar to section 222,\textsuperscript{109} Arkansas also

\begin{thebibliography}{99}
\bibitem{102} In re Long's Estate, 67 P.2d 41, 48 (Okla. 1936).
\bibitem{103} COMP. LAWS OF DAKOTA § 3410 (1887). The origin of the statute is traced in \textit{Thompson v. Smith}, 227 P. 77, 79-81 (Okla. 1924).
\bibitem{104} The Oklahoma Supreme Court in several cases states that the Oklahoma statutes were adopted directly from California. \textit{E.g.}, \textit{Thompson}, 227 P. at 81. The Organic Act that established the Oklahoma Territory, however, states that the laws of Nebraska were to be in effect. Organic Act of 1889, § 11, 26 Stat. 87. These statutes were carried into statehood under the Enabling Act of June 16, 1906, ch. 3335, § 13, 34 Stat. 275.
\bibitem{105} \textit{Thompson}, 227 P. at 79.
\bibitem{106} \textit{id.} at 81. The more familiar the author becomes with the legislative process, the more she doubts the validity of this rule of construction, at least in the situation in which an entire code is being "borrowed" from another state. In her cynical opinion, we are very fortunate if the legislature has even read the statute, let alone understands its interpretation. Additionally, there is the unanswered question of exactly how the California statutes were adopted when the enabling act specified the laws of Nebraska. \textit{See supra} note 104.
\bibitem{107} \textit{Thompson}, 227 P. at 81, 82. The court justifies the rejection on the basis of two exceptions to the general rule of construction: when the construction is contrary to well-defined state policy and when the identical statute exists in many jurisdictions and the construction is contrary to the weight of authority.
\bibitem{108} See, \textit{e.g.}, \textit{id.} at 80.
\end{thebibliography}
had, at the time, a separate statute that kept ancestral property in the bloodline.\(^{110}\)

The total, complex Arkansas scheme was very different from the general Oklahoma inheritance scheme. The court was not always careful to make certain that the Arkansas precedent being discussed actually dealt with the half-blood statute rather than the ancestral property statute or the combination of the two.\(^{111}\)

Once again, in subsequent cases, these differences could always be emphasized and used to justify overruling prior constructions of the language of section 222. The collateral issue clouded the picture, even when the prior construction had really been reached by independent analysis.\(^{112}\)

A third historical collateral issue has further complicated the interpretation of section 222. Many of the early Oklahoma cases dealt specifically with the issue of whether an individual allotment of a member of a Native American tribe was an "ancestral estate" governed by section 222.\(^{113}\) Answering that particular question involved only a construction of the meaning of the "come to the decedent by descent, devise or gift from some one of his ancestors" language of the statute.

Unfortunately, these allotment cases were also the first to address many of the other elements of the statute such as, for example, whether the statute excluded all half-blood relatives not of the blood or only those in the same degree as the whole blood relatives.\(^{114}\) The allotment issue, if the property was determined to be ancestral, was irrelevant to the degree question, which involved construction of a different phrase in the statute.\(^{115}\) However, in \textit{In re Estate of Robbs},\(^{116}\) in which the Oklahoma court overruled the prior holding in \textit{Thompson} on the degree question,\(^{117}\) the court emphasized the fact that the \textit{Thompson} case had involved an allotment. The court stated: "[T]his court's decisions construing our half blood statute were perhaps unduly influenced by the Indian allotments question which was usually presented in the same cases (there being more reason to preserve the Indian allotment in the Indian bloodline)."\(^{118}\)

In fact, in \textit{Robbs}, all three of the justifications that the court used to overrule \textit{Thompson} were collateral to the question of the better interpretation of the statute.

\begin{footnotes}
\item 110. \textit{Id.} \S 61-110 (repealed 1969).
\item 111. \textit{See Thompson}, 227 P. at 81 (discussing Kelly's Heirs v. McGuire, 15 Ark. 555 (1885) (invoking construction of both the Arkansas ancestral property statute and the half-blood statute)).
\item 112. \textit{Compare Thompson}, 227 P. at 80 (determining that the California rule places an artificial construction upon the plain language of the statute and the legislative intent) with \textit{In re Estate of Robbs}, 504 P.2d 1228 (Okla. 1972) (holding that the conclusion in \textit{Thompson} rejecting California law was erroneous).
\item 113. \textit{See, e.g., In re Yahola's Heirship}, 285 P. 946 (Okla. 1930); Zweigal v. Lewis, 281 P. 787 (Okla. 1929); Gray v. Chapman, 243 P. 522 (Okla. 1926); Thompson v. Smith, 227 P. 77 (Okla. 1924); Hill v. Hill, 160 P. 1116 (Okla. 1916).
\item 114. \textit{See Thompson}, 227 P. at 81.
\item 115. The degree issue involves construction of the first phrase of section 222, i.e., "kindred of the half blood inherit equally with those of the whole blood in the same degree"; the allotment issue turns merely on whether the property came to decedent from an "ancestor." \textit{See 84 Okla. Stat.} \S 222 (1991).
\item 116. 504 P.2d 1228 (Okla. 1972).
\item 117. \textit{Id.} at 1231.
\item 118. \textit{Id.} at 1232.
\end{footnotes}
given its purpose. In addition to the allotment rationale, the Robbs court listed as its reasons both the fact that the court in Thompson had mistakenly interpreted California precedent in rejecting the California rule and the fact that the court in Thompson was mistaken in thinking that the Arkansas statute was "identical in material parts." 119 Nowhere in the opinion did the court in Robbs address Justice Kennamer's analysis in Thompson of the two constructions of the degree language, nor did the Robbs court refute Justice Kennamer's independent conclusion that the California interpretation was illogical.

B. The Current Construction of Section 222

1. Property Covered by the Statute

The only property whose distribution will ever be affected by section 222 is real property that the decedent acquired by descent, gift, or devise from an ancestor. Frequently, the normal intestate distribution under section 213 of even this "ancestral" property will not fall under section 222 because the other requirements of that statute are not met. However, if the specific property does not fall within the "ancestral" definition, further analysis is unnecessary. 120 The property is then distributed solely on the basis of section 213, and half-blood relatives share equally with whole blood relatives.

There are three separate elements involved in the question of whether the property is potentially affected by section 222. First, Oklahoma has always accepted the majority interpretation that the statute only applies to real property. 121 This interpretation is based both on the historical origin of the rule treating half-blood relatives differently 122 and on a construction of the language of the statute itself. "Descent" and "devise" are terms that traditionally applied only to real property. 123 Second, the decedent must have received the property either by intestate succession or by devise in a will or by inter vivos gift. 124 If the decedent purchased the property, it is not section 222 property. Third, the property must have been received from an "ancestor." 125

The requirement that the property must have come to the decedent from an "ancestor" is the first trap in the statute for the unwary. The term, as used in section 222, does not refer merely to a lineal descendant of the decedent nor does it refer merely to any relative who was of an earlier generation. 126 For section 222 purposes, an ancestor is any blood relative of the decedent. 127 Accordingly, brothers and sisters, uncles and aunts, nephews and nieces, and issue are all

119. Id.
120. Id. 227 P. at 80.
121. See In re Long's Estate, 67 P.2d 41, 50 (Okla. 1936).
122. See supra text accompanying notes 26-39.
123. In re Ryan's Estate, 133 P.2d 626, 634 (Cal. 1943).
125. Id.
126. Id. at 44, 51.
127. Id. at 44.
"ancestors" under section 222. As the Oklahoma court stated in Long's Estate, "[t]o accomplish the purpose of such statutes, grandsons have frequently been held the ancestors of their grandfathers . . . ." If the decedent inherited the property from anyone other than his or her spouse, it will be covered by section 222. Spouses, since they are not blood relatives, are not "ancestors." Additionally, if the property was either devised to the decedent by a nonrelative or given inter vivos to the decedent by a nonrelative, it, along with property which the decedent purchased, would not be within the purview of the statute.

The nature of the property that is covered by section 222 has been, with one exception, the least controversial part of the statute. The one exception was the question of whether individual allotments to members of Native American tribes were "ancestral" within the meaning of the statute. The Oklahoma rule since 1930 has been that the allotment, when the decedent is the original allottee, is not covered by the statute. Obviously, once the allotment has passed by inheritance or devise to the heir or devisee of the original allottee, the property would fit under section 222; the controversy over the allotment arose only when the original allottee died.

Prior to 1930, Oklahoma had held that such property was within the purview of section 222. In Hill v. Hill, in 1916, the Oklahoma Supreme Court had accepted the reasoning applied by the United States Supreme Court in a case which arose in Indian Territory and as decided under Arkansas law. In McDougal v. McKay, the Court had admitted that the allotted land was actually neither purchased nor inherited from a parent, and it did not actually fit under either provision of the Arkansas statutes. The Court concluded that the property had come to the allottees from their "tribal parents," and that, by analogy, it could fit under the ancestral rule. The Court further stated that Congress' purpose (in adopting the allotment scheme) would be served by treating the allotment as ancestral. The Oklahoma court in Hill actually felt that the issue was "well-settled."

If the issue was well settled in 1916, it was very unsettled in 1930. In a series of cases culminating with Yahola's Heirship, the Oklahoma court rejected the rule that the property was ancestral in the hands of the original allottee. In Yahola's

128. \textit{Id.}
129. \textit{Id.} at 51. The \textit{Long's Estate} case contains an excellent explanation of the reason that a spouse is not considered a relative or "ancestor" under most inheritance statutes and also contains an excellent historical explanation of many of the factors involved in section 222. See \textit{id.} at 47-51.
131. 160 P. 1116 (Okla. 1916), \textit{overruled by In re Yahola's Heirship}, 285 P. 946 (Okla. 1930).
133. \textit{Id.} at 384, 385.
134. \textit{Id.}
137. \textit{See Yahola's Heirship}, 285 P.2d at 949. This case is often cited as the case in Oklahoma that changed the allotment rule; and it did expressly overrule the \textit{Hill} case. However, the court also
Heirship, the court refused to expand section 222 by using the analogy of the tribal parent; instead, the court based its decision on the very technical fact that this allotment could not have come to the decedent by descent from his parents because they were still alive.\textsuperscript{138}

In rejecting the inclusion by analogy argument, the court stated a rule that has often been used to limit the application of section 222 and its counterpart in other states. The court said: "[W]here property would be cast upon a member of a certain class save and except for a definite exception made by statute, it is necessary that the facts justifying such exception must be specific and certain and not be merely analogous thereto . . . ."\textsuperscript{139} Since the Yahola's Heirship decision, the rule that the property is not ancestral property in the estate of the original allottee has been consistently followed without further legal debate.\textsuperscript{140}

In the author's opinion, however, the concern that Native American allotments will ultimately pass to persons not of the original allottee's blood is one factor that may have stifled a movement to repeal section 222. This argument was made to the author in 1987 in a discussion with several Native American law students.\textsuperscript{141} Clearly, after the property is inherited from the original allottee by his or her issue, it would be section 222 property when those successors died. The students' position was that section 222 was the only law that helped keep the property in the Native American bloodline.

While the goal of keeping the allotments in the Native American bloodline is both understandable and meritorious, section 222 will seldom assist in accomplishing this goal. As will be further demonstrated below,\textsuperscript{142} at least five factors totally dilute that desired effect: (1) the statute does not exclude whole blood collateral relatives who are not of the blood of the ancestor; (2) the statute does not prevent non-Indian spouses from inheriting and then subsequently passing the property to their heirs; (3) the statute does not exclude half-blood relatives who are not of the blood of the ancestor if they are a closer degree of relation than relatives of the blood; (4) the ancestor whose blood they must share will not necessarily be either the original allottee or someone of his blood; and (5) adopted children, who share no blood, are never excluded.

If there is a need to address the unique subject of allotted land, a special statute applying only to allotted land that is still in the bloodline is needed. Such a statute would need to address, among other problems, the five limiting factors that prevent

\begin{footnotes}
\item[138] Yahola's Heirship, 285 P. at 948.
\item[139] Id.
\item[140] No reported cases since Yahola have addressed the allotment issue.
\item[141] Informal discussion in Spring 1987 at the University of Oklahoma College of Law on the need to repeal section 222 between the author and the late Professor Joseph Rarick, a recognized authority on Indian property law (taking the repeal position), and several Native American law students from the university (defending the statute because of the allotment issue).
\item[142] See infra Part III.
\end{footnotes}
section 222 from achieving the goal. There is no justification for retaining section 222 for this purpose.

2. Who Is the Relevant Ancestor?

Oklahoma has never followed the "first purchaser" rule of the common law. Oklahoma has always held that the ancestor referred to in the section 222 phrase "all those who are not of the blood of such ancestors must be excluded," is the immediate ancestor from whom the decedent received the property.\(^{143}\) How, or from whom, that proximate ancestor received the property is of no importance. This interpretation is consistent with the construction applied by the vast majority of jurisdictions in this country.\(^{144}\)

This interpretation, which is the only legitimate way to read the clear language of the Oklahoma statute, leads to the first of many examples of why the statute often causes results which have no possible rational basis:

Adam marries Belle, and they have a child, AB. Adam dies, leaving all his property in his will to Belle. Subsequently, Belle marries Carl, and they have two children, BC and BD. Belle dies intestate. One-fourth of the property she received from Adam will go to Carl, and one-fourth will go to each of her children: BC, BD, and AB (it is not ancestral property at Belle's death because a husband is not an ancestor).\(^{145}\) Carl dies intestate. All of Carl's property, including the one-fourth interest in the property he received from Belle, will go to his children, BC and BD. If BC then dies without issue, AB will be able to share in the distribution of the one-fourth interest BC received from Belle (she is a half-blood sister of the blood of Belle). However, AB cannot share in the one-eighth interest in the property that BC received from Carl (she is not of the blood of Carl, the immediate ancestor from whom BC inherited the property). All of BC's interest that was received from Carl will go to BD. The fact that the property originally came to Carl from AB's mother, Belle (who, in this example, actually received it from AB's father, Able), is irrelevant. Even more ironically, if Carl had a child of a previous marriage, that paternal half-blood sibling would share with BD.\(^{146}\)

In today's society, as numerous studies have shown, the surviving spouse is the preferred devisee of most married decedents.\(^{147}\) The spouse is also the primary heir under modern intestate succession schemes.\(^{148}\) Thus, it is quite probable that

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143. E.g., Gray v. Chapman, 243 P. 522, 523 (Okla. 1926), overruled on other grounds by In re Yahola's Heirship, 285 P. 946 (Okla. 1930).
144. See supra text accompanying note 54.
146. This example is not as convoluted as it may seem at first glance. The deaths are all in the natural generational order in which they would be expected to occur. Additionally, the pattern of leaving all property by will to the surviving spouse is very typical. Finally, the majority of people in this country still die intestate.
148. Compare, e.g., 84 OKLA. STAT. § 213(B)(1) (Supp. 1995) (surviving spouse gets at least half of the estate under most circumstances even when there are issue) and UNIF. PROBATE CODE § 2-102 (1991) (surviving spouse gets at least the first $200,000 and three-fourths of the rest of the estate even
property that was devised to, or inherited by, the first spouse to die will go to the surviving spouse; the survivor then becomes the "ancestor from whence it came" in later successions. The true common law ancestral nature of the property is already lost.

This one factor, the modern preference for the surviving spouse, may in fact prevent the half-blood statute from achieving its original purpose more often than any other factor. Clearly, if the alleged purpose of section 222 is to keep the property in the bloodline from whence it came, this statute does not achieve that purpose. The bloodline from whence it came can change with each generation. The definition of "ancestral property" under section 222 is far removed from the common law "ancestral estate."\(^{149}\)

If the "modern" purpose is to keep the property in the bloodline for at least one generation, the statute achieves that goal only when there are half-blood collateral relatives. Even then, as will be discussed in the next subsection, the purpose is only sometimes achieved.

3. The Relatives Affected by Section 222

There are several different issues concerning exactly which relatives can be excluded by section 222. Some of these issues have been addressed in the Oklahoma cases; others, although never specifically addressed, have fairly clear answers, at least inferentially. A third group of questions that are very relevant to the proper application of section 222 have never been addressed.

a) Decided Questions

(1) Whole Blood Relatives Are Never Excluded

First, and perhaps most important, given the alleged "ancestral" purpose of the statute, section 222 only affects the inheritance rights of half-blood relatives. It never operates to exclude whole blood collateral relatives who are not of the blood of the ancestor.\(^ {150}\) Thus, if Dee dies owing real property that she inherited from her father and her only surviving relatives are some paternal and maternal cousins of the whole blood, the property will descend one-half to the maternal cousins and one-half to the paternal cousins under section 213.\(^ {151}\) Even though the maternal cousins are not of the blood of the father, they are whole blood collateral relatives because they share two common ancestors with Dee (the maternal grandfather and the maternal grandmother).\(^ {152}\) Section 222 does not come into play.

In DeRoin v. Whitetail,\(^ {153}\) the argument was made that section 222 should also exclude the maternal whole blood collaterals not of the blood, either always or at

\(^{149}\) See supra text accompanying notes 15-22.

\(^{150}\) DeRoin v. Whitetail, 312 P.2d 967, 972 (Okla. 1957).

\(^{151}\) See 84 OKLA. STAT. § 213(B)(2)(d) (Supp. 1995).

\(^{152}\) See supra note 3.

\(^{153}\) 312 P.2d 967 (Okla. 1957).
least when there were some half-blood relatives in the picture to trigger the application of section 222.154 (In the above example, if Dee also had a half-blood maternal cousin, he would be excluded by section 222, even though the whole blood maternal cousins were not excluded. Further, if there were a half-blood paternal cousin, the statute would at least be triggered by his presence, even though he would not be excluded because he is of the blood of the father. The argument in DeRoin was that whole bloods not of the blood should always be excluded; but, if not always excluded, the presence of the half bloods would trigger section 222, and then whole bloods not of the blood would be excluded). The court in DeRoin rejected both arguments.155

Relying on California precedent and decisions from several other jurisdictions with identical statutes,156 the court in DeRoin adopted the construction that the phrase "all those who are not of the blood" referred only to the subject of the statute, i.e., "kindred of the half blood."157 The court rejected the argument vigorously supported by the dissent that "all those" referred to the entire first phrase of the statute, i.e., "kindred of the half blood inherit equally with those of the whole blood," and, accordingly, would exclude both groups.158

The basic difference in the rationale of the majority and dissent in DeRoin, other than a disagreement over the literal subject of the statute, appears to be the result of an underlying difference of opinion about the nature of the statute and its primary purpose. The dissent views the statute as an ancestral property statute, designed to keep ancestral property in the bloodline.159 The majority accepts the view of the Wisconsin court in In re Estate of Kirkendall,160 from which they quoted extensively that:

[Its leading controlling principle is not that an ancestral estate shall descend only to those who are of the blood of the ancestor from whom it came, but it is that, where no other provision is made, the same shall descend to the next of kin of the intestate, whether of the blood of such ancestor or not.161](

The Wisconsin court goes on to conclude that the only other provision made is the limitation which applies only to the kindred of the half blood not of the blood of the ancestor.162

The DeRoin debate is another clear indication of the problem with the Oklahoma combination-type statute. Even the court cannot agree on what its fundamental

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154. Id. at 972-73.
155. Id.
156. Id. at 971-72 (citing In re Pearson's Estate, 42 P. 960 (Cal. 1895); Caffee v. Thompson, 81 So. 2d 358 (Ala. 1955); In re Estate of Kirkendall, 43 Wis. 167 (1877)).
157. Id. at 970.
158. Id. at 975 (Halley, J., dissenting).
159. Id. at 974-75 (Halley, J., dissenting).
160. 43 Wis. 167 (1877).
161. DeRoin, 312 P.2d at 971 (quoting In re Estate of Kirkendall, 43 Wis. 167 (1877)).
162. Estate of Kirkendall, 43 Wis. at 167, 168, quoted in DeRoin, 312 P.2d at 970, 971.
purpose really is. As a result of the interpretation adopted in DeRoin, it fails miserably as a statute designed to keep ancestral property in the bloodline, if in fact that was its purpose. Further, the only thing it often does accomplish is discrimination against half-blood relatives for no rational reason. As Justice Halley pointed out in his dissent in DeRoin, "[I]t is unreasonable to think that the Legislature intended to adopt a statute that would put a grandfather ahead of a decedent's half brother when clearly the half brother carried more of the blood of the decedent than did the grandfather." That was the result on the facts in DeRoin, and neither the grandfather nor the half brother were related to the ancestor from whom the decedent inherited the property.

If there is some rational basis for a statute that bars a half-blood relative not of the blood, while at the same time allowing a whole blood collateral not of the blood to share in the property, this author is too dense to see it.

Clearly, if the statute were limited to first line collaterals — brothers and sisters and their issue — the particular problem of whole bloods not of the blood would not occur. The only persons not of the blood of the ancestor would have to be half-blood siblings related through the other line. In that case, the statute would have a rational basis, even though possibly an outdated purpose when one considers that adopted children are not of the blood, yet they share equally.

If one ignores the separate problem caused by the abandonment of the first purchaser rule, an argument can even be made that there is a modern justification for such a statute despite the equal treatment of adopted children — if it were limited to first line collaterals. Given today's many blended families, such a statute would keep the property within the family from whence it came, if not the bloodline.

However, section 222 is not limited to first line collaterals. In today's society, the child with no siblings is much more common than he was historically. The occasions when second line collaterals will inherit continue to increase accordingly. Increased inheritance by second line collaterals will only increase the opportunity for the totally unjustifiable section 222 exclusion of half-blood relatives not of the blood in favor of whole blood relatives not of the blood. When there are so many different situations in which the statute discriminates for no reason, the fact that the statute will sometimes work as it was intended is not a sufficient justification for its continued existence.

(2) Half-Blood Relatives of the Blood Are Never Excluded

Half-blood relatives who are related through the line of the ancestor from whom the decedent received the property always inherit along with whole blood relatives. The only half-blood relatives ever excluded by section 222 are those who are not of the blood of the ancestor.

163. DeRoin, 312 P.2d at 975 (Halley, J., dissenting).
164. See supra text accompanying notes 143-47.
This is one of the few certainties of section 222, and it has never really been disputed. Regardless of whether the statute is viewed as an enabling statute that confers inheritance rights on the half-blood relatives in derogation of the common law rule or whether it is viewed as limiting their equal inheritance rights that are inherent in section 213, the language of the statute is clear in this regard. The only limit applies only to persons who are not of the blood of the immediate ancestor.166

(3) Half-Blood Relatives in a Nearer Degree of Relationship than the Whole Bloods Are Not Excluded

The one most significant Oklahoma case interpreting section 222 is In re Estate of Robbs,167 which was decided in 1972. In the Robbs case, the property in question was paternal ancestral property; the surviving relatives were a maternal half brother, the children of deceased maternal half brothers and sisters, and whole blood paternal cousins.168 The trial court and court of appeals excluded the maternal half-blood relatives on the authority of section 222 as it had been construed in Thompson v. Smith169 and In re Long's Estate.170 Those cases held that section 222 always excluded half-blood relatives not of the blood of the ancestor.171

The Oklahoma Supreme Court in Robbs held that the statute disqualified half-blood heirs not of the blood only when they were in the same degree of relationship as the deceased as the whole blood relatives.172 If the whole blood relative is more remote, the half-blood relative is not excluded. Accordingly, in Robbs, the maternal half-blood relatives were not excluded because they were second and third degree relations compared to the fourth degree paternal cousins.173

In the Robbs decision, the court determined that the Oklahoma court had erred nearly fifty years before in Thompson when the court rejected the California construction that the Robbs decision adopts.174 The court, accordingly, overruled that portion of Thompson, and later cases that had restated the Thompson holding, which applied section 222 to all half-blood relatives not of the blood.175

166. E.g., DeRoin, 312 P.2d at 971; In re Long's Estate, 67 P.2d 41, 43 (Okla. 1936); Zweigel v. Lewis, 281 P. 787, 791 (Okla. 1929).


168. Id. at 1129.

169. 227 P. 77 (Okla. 1929).


171. See id. at 43; Thompson, 227 P. at 81.

172. Estate of Robbs, 504 P.2d at 1232. Although most Oklahoma cases speak of the relationship between the "whole blood relatives" and the "half blood relatives," it is clear from the context that the complete comparison they are making is between whole-blood relatives and half-blood relatives of the blood on the one hand and half-blood relatives not of the blood on the other hand. See, e.g., DeRoin, 312 P.2d at 970; Hill v. Hill, 160 P. 1116, 1116 (Okla. 1916).

173. Estate of Robbs, 504 P.2d at 1230.

174. See supra text accompanying note 118. The California case limiting its identical statute to same degree situations was In re Smith's Estate, 63 P. 729 (Cal. 1901) (per curiam).

175. Estate of Robbs, 504 P.2d at 1231. Specifically mentioned in addition to Thompson was In re
Five brief examples will demonstrate the impact of the Robbs limitation on section 222. In each example, the property was devised to the decedent, $D$, by his mother:

(1) $D$ is survived by his whole brother, $A$, and his paternal half brother, $B$. $A$ will take the property to the exclusion of his half brother $B$ because they are both second degree relations of $D$ and $B$ is not of the blood of the mother.

(2) $D$'s relatives are his whole blood nieces, $C$ and $E$ (the children of deceased brother $A$), and his paternal half brother, $B$. $B$ will share in the distribution of the maternal property. Although he is not of the blood of the mother, $B$ is a closer degree of relation (2nd) than the nieces (3rd). Section 222 does not apply.

(3) $D$'s relatives are two whole blood nieces and two paternal half-blood nieces. The paternal half-blood nieces are excluded because they are not of the blood of the mother, and they are the same degree of relation as the whole blood nieces.

(4) $D$'s relatives are a maternal uncle and a paternal half brother, $B$. $B$ will take the property under section 213. He is not excluded by section 222 because he is a closer degree of relation (2nd) than the uncle (3rd).

(5) $D$'s relatives are a maternal whole blood uncle and two paternal half-blood nieces (the children of his deceased half brother). The nieces will be excluded by section 222 because they are the same degree of relation as the uncle.

The key difference in the Thompson and Robbs approaches is in the construction of the meaning of "in the same degree" in the first phrase of section 222, which reads in its entirety: "[K]indred of the half blood inherit equally with those of the whole blood in the same degree . . . ." Unfortunately, in overruling Thompson, as Justice Jackson pointed out in his dissenting opinion in Robbs, the court spent its time "interpreting former decisions of this court as distinguished from interpreting the statute."177

The majority opinion carefully discussed exactly how the earlier court erred both in refusing to accept the California interpretation and in following Arkansas construction.178 The majority even enlightened us on the "correct" way to construe the Arkansas statute while, ironically, admitting that Arkansas has not so construed its statute.179

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177. Estate of Robbs, 504 P.2d at 1232 (Jackson, J., dissenting).
178. Id. at 1231. See supra text accompanying note 119.
179. Estate of Robbs, 504 P.2d at 1231-32. The Arkansas statute contained an additional phrase not present in the Oklahoma statute. Section 61-112 of the 1947 Arkansas Code read in relevant part: "Relatives of the half blood shall inherit equally with those of the whole blood in the same degree; and descendants of such relatives shall inherit in the same manner as the descendants of the whole blood, unless . . . ." Ark. Code Ann. § 61-112 (1947) (repealed 1969) (emphasis added). The Oklahoma court thought that the exception in the Arkansas statute applied "only to the descendants of the half blood relations, not the half blood relations themselves." Estate of Robbs, 504 P.2d at 1233. This logic(?) by the Oklahoma court, perhaps more than anything else in the Estate of Robbs case, undermines the entire decision. If anything, that additional phrase further emphasizes the fact that the purpose of the "same degree" language was not to limit the statute's applicability to same degree situations.
However, nowhere in the opinion is there any discussion that would help the reader understand why the majority felt that the California interpretation was the more rational construction of the statute. Further, the majority does not even attempt to refute the very rational analysis of the purpose of the same degree language that the Oklahoma Supreme Court in Long's Estate used to affirm the Thompson ruling on the issue.\(^{180}\) One can only assume either that the court found the California court's reasoning in Smith's Estate very persuasive, or else the court felt bound by California precedent.

In In re Smith's Estate,\(^{181}\) the California court read the entire first phrase of its identical statute as defining the heirs to whom the statute applied, i.e., half-blood relatives in the same degree as whole blood relatives.\(^{182}\) The effect was to turn their statute into a postponement statute rather than an exclusion statute. The California rule is one of two common constructions of the statute.

The second construction, which results in always excluding the half-blood relatives not of the blood, is discussed in both Thompson and Long.\(^{183}\) This approach reasons that the first phrase of the statute is merely a reiteration of the general inheritance right provided in section 213. "The words preserve the same equality of distribution" as is provided under the general inheritance law;\(^{184}\) the second phrase of the statute then states the exception. Under this view, "all those not of the blood" refers to the subject of the statute, which, it will be recalled, the court in DeRoin found to be "kindred of the half blood." The court in DeRoin rejected the argument that the entire first phrase defined the subject of the statute.\(^{185}\)

It is interesting that the court in DeRoin determined that the subject of section 222 was only kindred of the half blood, while the court in Robbs implicitly, by relying on the Smith's Estate case, made the entire first phrase part of the definition of the subject to which the limitation applies. It would seem that the subject of the statute can change depending on the issue that the court is addressing.

Two important factors that have been consistently overlooked by the courts of both California and Oklahoma in the construction of the first phrase of the statute are the location of the half-blood statute within the general arrangement of the probate code and the circumstances existing at the time the statute was drafted.

The half-blood statute is not a subsection of the general inheritance statute, nor does it immediately follow the general statute. Rather, it immediately follows five sections that deal with the definition and proper method of calculating degrees of kindred.\(^{186}\) The immediately preceding section codifies the rule for calculating

\(^{180}\) The court in Long's Estate stated that the Thompson case "correctly refused" the California construction. Long's Estate, 67 P.2d at 43.

\(^{181}\) 63 P. 729 (Cal. 1901) (per curiam).

\(^{182}\) Id. at 730.

\(^{183}\) See Long's Estate, 67 P.2d at 43; Thompson, 227 P. at 80.

\(^{184}\) Long's Estate, 67 P.2d at 43.

\(^{185}\) DeRoin, 312 P.2d at 970. See also supra text accompanying notes 153-57.

collateral degrees. The organization of the Territorial Code was such that it reflected a natural progression through the various topics in the subject of succession.

When examined in the broader context of its location within the Code, it is very easy to conclude that the first phrase of section 222 was designed to clarify the idea that half-blood relatives usually were treated just like whole blood relatives under the Code unless the property was ancestral. The only persons who ever inherit equally under the traditional succession pattern are those in the same degree. Having just explained how degrees are determined, the Code goes on to say in effect, "and this includes half blood relatives unless ...."

While it is true that some jurisdictions had always held that the common law prohibition against half-blood relatives was not part of their law, even in the absence of a statute, this was certainly not a universal rule. The issue was very much in doubt in many jurisdictions at the time the Territorial Code was drafted. The model for section 222 could well have been intended by the drafters of the original statute as an enabling statute that would settle the question once and for all.

It is one thing to "have always held" that half-blood relatives are covered by the general inheritance statute; thus, they do not need section 222 to "enable" them to take. It is quite another thing to attribute that interpretation and intention to the drafters of the statute. When one is trying to construe the meaning of a "borrowed" statute that existed prior to the existence of the construing state, perhaps one should concentrate more on the purpose of the language from the perspective of the drafters. The original statute was drafted in an environment that did need a statement giving half blood relatives equal inheritance rights.

If the original intent was not to create an "enabling" statute, perhaps the drafters at least meant it to be a "clarifying" statute that would end the debate in any state adopting the code. One must consider the wide variety of treatment of half-bloods that existed at the time, including statutes that gave the half-blood relatives one-half as much. It would be truly ironic if a phrase designed solely to clarify the issue has, instead, been the source of most of the conflicts over the meaning and purpose of the half-blood statute.

187. The subject of section 221 is: "Collateral degrees, how reckoned."

188. The original version of section 213 refers several times to relatives in the same degree and their right to share equally. In the context of the inheritance statute, it is clear that the language is being used to change the common law rule that inheritance in more remote generations was always by representation through the root ancestor (classic per stirpes), even when all were in the same degree. For example, prior to the 1984 amendment, section 213 (first) stated in part that, "if there be no child of the decedent living .... the remainder goes to all of his lineal descendants; and if all the descendants are in the same degree .... they share equally, otherwise they take by representation." 84 OKLA. STAT. § 213 (1981) (amended 1984).

189. See supra text accompanying notes 40-41.

190. See, e.g., Cupp v. Frazier's Heirs, 387 S.W.2d 328 (Ark. 1965).


192. See supra text accompanying notes 45-46.
A very strong argument can be made that Robbs itself needs to be overruled. However, rather than forcing Oklahoma to endure another round of cases in which the "proper" construction is debated, the Oklahoma legislature should solve the problem by repealing the statute. Each construction of the first phrase of section 222 causes its own set of problems. While in the author's opinion there are fewer irrational results if the half-blood relatives are always excluded, neither construction solves the very major problem of excluding half-blood relatives not of the blood in favor of whole blood relatives not of the blood.

The Robbs interpretation at least limits the circumstances under which section 222 will apply. Perhaps, given all the outdated unfairness inherent in the statute, any interpretation that limits its application is a good result. However, at the same time, the decision severely undermines any remaining possible reasonable basis for the occasions when the half-blood relative will be excluded. Further, the Robbs decision created an entirely new set of unanswered questions that only serve to increase the confusion and increase the opportunity for misapplication of the statute. As will be discussed in the next parts, these problems have increased tenfold under the parentelic preference system of the amended version of section 213.193

Clearly, as will be further discussed below, when faced with a case involving certain relative patterns, the court will have to apply section 222 when the half-blood relatives are not in the same degree as the whole blood relatives.194 When that case is heard, the reasoning underlying the Robbs decision will be totally undermined. Twenty-four years ago, Justice Jackson in his dissenting opinion in Robbs stated the obvious solution when he said:

Former decisions of this court and the history of section 222 are thoroughly discussed by Albert R. Matthews . . . in 13 Oklahoma Law Review 440-445. He appears to be of the view that the doctrine of ancestral property should be abolished by the legislature. I agree that the problem should be reviewed by our legislature.195

b) Questions Probably Settled by Inference

(1) The Statute Will Be Applied Even in the Absence of Relatives of the Blood of the Ancestor

If the purpose of section 222 is to postpone inheritance by half-blood relatives not of the blood in favor of relatives of the blood when ancestral property is involved, logic would dictate that the statute would not come into play when the only relatives are both whole and half-blood relatives of the other line. If, for example, decedent's only relatives are a half-blood maternal cousin and a whole

193. 84 OKLA. STAT. § 213(B) (Supp. 1995). See infra text accompanying notes 258-64.
194. See infra text accompanying notes 241-47.
195. Estate of Robbs, 504 P.2d at 1233 (Jackson, J., dissenting). Justice Jackson was referring to a 1960 student case comment on the DeRoin decision.
blood maternal aunt, there would be no valid reason to give paternal property to the aunt and exclude the cousin.\textsuperscript{196}

Unfortunately, logic has seldom had any role in the interpretation of section 222. It is fairly clear that the statute would exclude the half-blood cousin in the above example. Indeed, the court so applied the statute in DeRoin v. Whitetail,\textsuperscript{197} although this precise issue was not before the court.\textsuperscript{198}

The conclusion that the Oklahoma court would apply section 222 to the "none of the blood" situation is drawn by combining the court's ruling on the statute's inapplicability to whole blood relatives and the language of the statute itself. In In re Long's Estate,\textsuperscript{199} the court stated as dictum:

\begin{quote}
It is important to observe that there is no requirement in the section that the whole blood kindred to decedent must, in order to inherit, be of the blood of decedent's ancestor; for the devolution to those of the whole blood is governed by section 1617 [(current section 213)] which section does not look to the source of decedent's title.\textsuperscript{200}
\end{quote}

This statement from the Long's Estate case was quoted with approval in DeRoin.\textsuperscript{201} The result in DeRoin was to give the property to the paternal grandfather and exclude the paternal half brother.

The first phrase of section 222 says that "kindred of half blood inherit equally with those of the whole blood... unless..." Since whole blood relatives are not required to be of the blood of the ancestor and since the statutory language itself does not so limit them, there is nothing in section 222 to prevent the statute from operating in this situation. It is the presence of the half-blood relative that triggers the section. This is the very result that Justice Halley in his dissent in DeRoin found so unreasonable.\textsuperscript{202}

Admittedly, in DeRoin there was a half-blood uncle of the blood who was a more remote degree of relation than the grandfather. He did not take when the half brother was excluded, however, because the grandfather was the heir under the statutory preference of section 213.\textsuperscript{203} The uncle's existence was really irrelevant


\textsuperscript{197} 312 P.2d 967 (Okla. 1957).

\textsuperscript{198} The issue in DeRoin was whether section 222 excluded whole blood relatives not of the blood. There was a half-blood maternal relative, but he was not the heir when the paternal half blood relative was excluded.

\textsuperscript{199} 67 P.2d 41 (Okla. 1936).

\textsuperscript{200} Id. at 44.

\textsuperscript{201} DeRoin, 312 P.2d at 969.

\textsuperscript{202} Id. at 975 (Halley, J., dissenting).

once the court decided that section 222 did not exclude whole blood relatives who were not of the blood. Under that ruling, the grandfather could take. Nevertheless, the uncle's presence in the case does give the court an escape route when it is faced with the "no relatives of the blood" issue, if the court chooses to distinguish DeRoim. It would be regrettable if the court did choose to rely on that distinction because doing so would only add another distinction without a rational difference to a statute that already has proved to be irrational in far too many circumstances.

Interestingly, California did not apply its comparable statute in the absence of some relative of the blood. California's rationale was that the purpose of the statute was to favor those of the blood (at least in this instance). In 1931, California amended its half-blood statute to reflect this construction. The amendment added the language "in favor of those who are" to the phrase "all those not of the blood must be excluded." In subsequent cases, the California court interpreted that additional language as merely codifying the prior interpretation that there must be someone of the blood before the statute would apply. The amendment did not mean that whole blood relatives not of the blood would not share in the property from which the half-blood relatives not of the blood were excluded by the existence of a relative of the blood.

Accordingly, even though it is the author's opinion that it would be a distinction without a difference, and the issue has been decided by inference, the Oklahoma court could rely on California and distinguish away the prior answer. The court has certainly done this when it changed its mind on other section 222 issues. It is another example of the confusion and uncertainty surrounding section 222 that underscores the need for its repeal.

(2) Section 222 Transcends Section 213 Preferences

Section 222 states that "kindred of the half blood inherit equally . . ." Clearly, in order to inherit, one usually has to be an heir. A decedent's heirs

in equal degree." The grandfather, a second degree relative, was the only heir after the half brother was excluded; the third degree uncle did not share.

204. In re Edwards' Estate, 259 P. 440 (Cal. 1927) (per curiam).
205. Id. at 441. In contrast, the California court severely limited the "favor the blood" purpose, both when it interpreted its statute as applying only to relatives in the same degree, In re Smith's Estate, 63 P. 729 (Cal. 1901) (per curiam), and also when it interpreted the statute as not excluding whole blood relatives who are not of the blood, In re Pearson's Estate, 42 P. 960, 961 (Cal. 1895).
207. Id.; see In re Ryan's Estate, 133 P.2d 626, 630 (Cal. 1945).
208. Ryan's Estate, 133 P.2d at 630, 631.
209. In re Sayle's Estate, 8 P.2d 1009 (Cal. 1932).
211. 84 OKLA. STAT. § 222 (1991) (emphasis added).
212. This is not merely a sarcastic statement. In several other analogous situations, Oklahoma has refused to allow relatives who were not otherwise heirs to take in place of a barred heir (or devisee under a will) because the statute (or language of the devise) did not precisely provide for their taking. See, e.g., 84 OKLA. STAT. § 231 (Supp. 1995) (providing that when killers of decedent barred, the property is distributed "among the other heirs of the deceased person according to the laws of descent . . ."); 84 OKLA. STAT. § 114 (1981) (amended 1987) (providing that divorce revokes provisions in will in favor
are simply those persons who are designated by the state statute of descent and distribution to take a decedent's intestate property. A very foundational question then is whether a half-blood heir can be excluded in favor of a whole blood relative who would not be an heir if the half-blood relative were not excluded by section 222.

The Oklahoma inheritance statute, section 213, designates the decedent's heirs at law. This statute, like all interstate statutes, designates the heirs according to a preferential scheme. Accordingly, if there are both brothers and sisters and also issue of deceased brothers and sisters, the issue would also be heirs because they are in the same statutory preference. However, if decedent's relatives were an aunt and the issue of brothers and sisters, the aunt would not be an heir. "Issue of grandparents" (the aunt) are in a later preference than "issue of parents" (the brothers' and sisters' children) under the current statute.

The section 222 question is this: if decedent's only relatives are a half-blood maternal niece (third statutory preference under section 213 and a third degree relative) and a maternal aunt (fourth statutory preference and a third degree relative), would the aunt take paternal ancestral property to the exclusion of the niece? They are in the same degree of relationship, which the Robbs case said was key, even though the aunt is not otherwise an heir.

A strong argument can be made that section 222 should not operate if the result is to "create" heirs by crossing statutory preferences. In other situations in which a specific statute bars inheriting or taking under a will, the Oklahoma court has consistently refused to treat the barred heir as predeceasing the decedent unless the statute expressly provides for such treatment (the effect of treating the barred heir as dead is often to make heirs of more remote relatives).

The Oklahoma answer regarding section 222, however, is quite clearly that the aunt would exclude the niece even though the aunt is not otherwise an heir. Although the precise issue has never been raised in a reported case, this has been the result in the majority of the reported Oklahoma cases. Oklahoma has, at least since the Robbs decision, focused solely on the degree of relationship; the court has never focused on whether the competing parties were, in fact, heirs. In the Robbs case itself, the maternal half brother and the children of deceased half...
brothers were in a higher statutory preference than the paternal cousins. Although in Robbs the maternal half-blood relatives were allowed to take, it was because they were a closer degree of kindred than the cousins. The decision did not turn on the fact that they were the only heirs based on section 213 preferences. Still that issue was not raised.

Further, prior to the Robbs decision limiting the statutes to same degree situations, the relative patterns in Hill, Zweigel, Yahola's Heirship, and DeRoin all fell across statutory heir preferences. In each case except Yahola's Heirship, the lower preference whole blood relatives excluded the higher preference heirs. In Yahola's Heirship, the property was not ancestral, so section 222 was not applied.

In none of these cases was this very foundational issue ever raised. Accordingly, once again, the Oklahoma Supreme Court could, when directly faced with the question, limit section 222 to those who are otherwise heirs under section 213. It is clear, however, that it is not currently being so limited.

The Oklahoma approach (if it can be called an approach when a basic issue has been ignored for ninety years by both the bar and the court), is consistent with that of some other jurisdictions that had the identical statute. Washington, for example, expressly held that the specific half-blood statute took precedence over the general inheritance preference statute. This approach is, however, contrary to the position taken in California. California limited the application of its identical statute to situations in which the whole blood relatives were in the same statutory heir class as the half-blood relatives not of the blood. If the Oklahoma court still considers itself bound by California precedent, it might well decide to once again carefully distinguish all those prior situations in which the issue was not decided.

c) Unanswered Issues

(1) Does Section 222 Operate When All Heirs Are of the Half Blood?

Certainly, as long as section 222 remains unrepealed, the absence of a whole blood relative should make no difference to its application. For example, if decedent has paternal ancestral property and her only relatives are a maternal half brother and a paternal half brother, the maternal half brother should be excluded from sharing in that property if the statute has any valid purpose. Perhaps, though,

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218. See supra text accompanying notes 167-75. The half brother and children of deceased half brothers in Estate of Robbs were in a higher preference (brothers and sisters and children of deceased brothers and sisters) under the original version of section 213 than were the cousins (next of kin).
219. 160 P. at 1116 (half brother and grandmother).
220. 281 P. at 788 (half brother, grandfather).
221. 285 P. at 947 (half sister, paternal cousin).
222. 312 P.2d at 968 (half brother, grandfather).
224. In re Smith's Estate, 63 P. 729, 730 (Cal. 1901).
that statement reflects the author's prejudice in favor of rational interpretations rather than reflecting the "proper" interpretation of section 222.

No Oklahoma case has ever addressed the precise issue of whether section 222 would operate to exclude the half-blood relatives not of the blood of the ancestor if the only competing claimants were half-blood relatives of the ancestor's blood. Further, no reported case involves that particular relative pattern.

Given the court's prior insistence on a literal interpretation of both the language and the punctuation of the statute, an argument can be made that the statute would not apply in the absence of a whole blood relative. However, both the Oklahoma court's reliance on California's interpretations of its statute and a similar relative pattern that has appeared in some earlier Oklahoma cases indicate that the court would probably apply the exclusion if asked to decide this issue.

In addition to the logic of its application to the situation demonstrated above, the following facts support section 222's application to this problem. In In re Ryan's Estate, the California court stated that its statute excluded half-blood relatives not of the blood in favor of both whole and half-blood relatives of the blood. The court rejected the respondents' argument that the statute would only operate in favor of whole blood relatives. While the relative pattern in the Ryan's Estate case did include both whole and half-blood relatives, and the issue before the court was different, the emphatic dicta of the case was that the presence of the whole blood relatives was not required for the statute to operate. Certainly, if Oklahoma continues to rely on California interpretations, Ryan's Estate would weigh heavily in favor of applying section 222 in the absence of whole blood relatives.

Additionally, in at least one Oklahoma case decided prior to the Robbs decision, the half-blood relative not of the blood was excluded in favor of the husband of the decedent. The Robbs decision, which emphasized degree of relationship, would change the outcome in that case. However, the conclusion in the Thompson case that it is the presence of the half-blood relative that triggers section 222, and not the presence of a whole blood claimant, would appear to still be valid.

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226. 133 P.2d 626 (Cal. 1943).
227. Id. at 631.
228. Id. at 633.
229. The convoluted argument made by plaintiff and rejected by the court in Ryan's Estate was that the statute would not exclude half-blood relatives not of the blood if there were also half-blood relatives who would take; the statute would only exclude half bloods when all others were of the whole blood. Id.
230. Id.
232. The Estate of Robbs case turned solely on degree of kinship. Since a husband is only an heir-at-law and not a blood relative, he is not related by degree. There is no way, under the rule of Estate of Robbs, that section 222 could exclude a half-blood relative in favor of a non-relative spouse.
233. Thompson, 227 P. at 81.
The argument against the application of section 222 turns on construction of the first phrase of the statute: "Kindred of the half blood inherit equally with whole bloods in the same degree unless . . . ."234 In its determination that the statute never excluded whole blood relatives, the Oklahoma court emphasized that the subject of the statute was only "kindred of the half blood."235 The court rejected the argument that the "unless" clause referred to the entire first phrase and the argument that the "all" who must be excluded included whole blood relatives not of the blood.236 Further, Oklahoma has held that section 222 is not an enabling statute.237 The court has fairly consistently stated that section 213 includes both whole and half-blood relatives.238 Rights of half-blood relatives are not dependent on section 222.239

If section 222 is a limiting statute and if it only limits the rights of half-blood relatives, it follows that it must only limit their rights in relation to whole blood relatives. Otherwise, since they are not the subject of the statute, there is no reason for the reference to whole blood relatives in the first phrase of section 222. If this statute does not limit the rights of half-blood relatives in relation to whole bloods, it should simply read: "If an inheritance came to the decedent by descent . . . , half blood relatives not of the blood of the ancestor are postponed in favor of other relatives in the same degree of relation."

In truth, the author believes that the argument against applying section 222 when there are no whole blood relatives is specious. It does, however, demonstrate the problem with overreliance on grammatical construction. If this issue is ever raised, the court may find itself having to back away from its insistence on literal construction of section 222, just as it may have to do in order to deal with the several other questions unanswered by the Robbs decision.240

This author also believes that the Oklahoma Supreme Court has more important work to do than wasting its time construing every word and phrase and comma of an archaic statute that has already proven to be lacking valid purpose. In the final analysis, regardless of which construction the court might adopt, this unanswered question serves as one more example of why section 222 needs to be repealed. The statute has been on the books since before statehood. The relative pattern used

236. Id.
237. Estate of Robbs, 504 P.2d at 1231.
238. E.g., Estate of Robbs, 504 P.2d at 1231; In re Long's Estate, 67 P.2d 41, 44 (Okla. 1936).
239. E.g., Estate of Robbs, 504 P.2d at 1231; In re Long's Estate, 67 P.2d 41, 44 (Okla. 1936). At various times, the issue of whether Section 222 is an enabling statute or a limiting statute has been central to many of the interpretations of the statute by the Oklahoma court. This topic is fascinating in itself, especially since, in the 1984 amendment to section 213, the legislature chose to alter the language of the UPC model in the issue of parents preference. Compare Unif. Probate Code § 2-103(3) (1991) (to descendants of decedent's parents or either of them) with 84 Okla. Stat. § 213(B)(2)(c) (Supp. 1995) (to issue of parents). One could argue that the only possible purpose for that alteration was deference to the existence of section 222. That, however, might force section 222 to be an enabling statute, further undermining its prior interpretations.
240. See infra text accompanying notes 241-49.
in the example is not unusual. Intestate estates are distributed every day in Oklahoma. While there are legitimate grounds for disagreement over which relatives should be given statutory inheritance preferences, surely there can be no disagreement that, when the heir patterns are identical, the property of decedents should be distributed in the same way under the statute regardless of the judge or attorneys involved. When a statute is so unclear that no one knows what it means, only one outcome is certain: the statute will simply be ignored in some cases, and in other cases it will be applied in many different ways to identically situated relatives. That result is fundamentally unfair to everyone.

(2) Does Robbs Really Mean Only the Same Degree?

The Oklahoma court in the Robbs decision stated:

We therefore hold that our half-blood statute, 84 O.S.[] § 222, is applicable only when the surviving half blood kindred and whole blood kindred are related to decedent in the same degree, and that it does not operate to disinherit nearer half blood kindred not of the blood of the ancestor in favor of more remote whole blood kindred who are of the blood of the ancestor.\(^\text{241}\)

It is clear that if the whole blood kindred are a more remote degree of relation, the nearer half-blood relatives are not excluded.\(^\text{242}\) What is not clear, literally, from the case is what happens if the half-blood relatives not of the blood are a more remote degree of relation than the whole bloods. For example:

_D_ is survived by a whole brother _X_ and two paternal half-blood nephews, _Y_ and _Z_. _Y_ and _Z_ are the issue of _D_'s deceased paternal half sister. The property was given to decedent by his mother. Brother _X_ is a second degree relation; _Y_ and _Z_ are third degree. Had _Y_'s and _Z_'s parent still been living, the paternal half-sister clearly would have been excluded because she was the same degree as _X_. _Y_ and _Z_, however, are not the same degree as _X_.

Obviously, this is another situation in which the section should be applied if there is any legitimate purpose to it whatsoever. Yet, the whole and half-blood relatives are not in the same degree, and, according to Robbs, section 222 only applies when they are in the same degree.\(^\text{243}\)

This is another of those many possible relative patterns that could force the court to say, "We didn't mean what we said." If one examines the language of the holding in Robbs, which is quoted above, the "out" that the court will use is very predictable. The second phrase of the compound sentence stating the holding says that section 222 "does not operate to disinherit nearer half blood kindred not of the blood . . . in favor of more remote whole blood kindred . . . ."\(^\text{244}\) Since the fact pattern in Robbs dealt with more remote whole blood kindred, the precise holding

\(^{241}\) Estate of Robbs, 504 P.2d at 1232 (emphasis added).

\(^{242}\) Id.

\(^{243}\) Id.

\(^{244}\) Id. at 1232 (emphasis added).
really is that section 222 does not exclude half-blood relatives that are nearer in degree.

While, analytically, the court would be correct if it adopted the nearer degree interpretation of the Robbs opinion, that interpretation would completely undermine the only reasoning that supported limiting the application of section 222 by degree of relationship in the first place. The whole rationale of In re Smith's Estate,245 the California case relied on in Robbs, was that the "in the same degree" language of section 222 limited the application of the statute to relatives in the same degree.246 Nothing in the language of the statute supports an interpretation that the statute applies unless the half-blood relatives are in a "nearer" degree. There are just two possible interpretations of the language: it either always excludes those not of the blood, or it only excludes when they are in the same degree as those of the blood.247 Yet, to not apply section 222 in a situation in which the half-blood relatives not of the blood are more remote than the whole bloods, while at the same time applying the section when they are of equal degree, would be utterly absurd.

One additional argument that could be made for applying section 222 to the more remote half-blood relatives, which possibly would not totally destroy the rationale of Robbs, is the fact that the half-blood nephews in the example are taking by representation through the deceased half sister who is of the same degree as the whole blood brother.248 On the particular facts of the example, this would result in excluding the half-blood nephews. As long as all the claimants were in the same parentelic preference, the result of this construction would be to always exclude the half-blood relatives not of the blood. When the claimants were not all in the same degree, they would always be claiming by representation through the same generation.249

Unfortunately, while the representation argument might yield a much more logical result than the result currently reached under the rule in Robbs, there is no precedent in either the prior Oklahoma cases or the California cases for this construction. Putting that blush on the statute would require an entirely new reading of section 222, and it would effectively destroy the reasoning, as well as many of the holdings, of almost every Oklahoma decision that has construed the statute. While the argument might be worth making in the appropriate case if the legislature continues to ignore the need to repeal the half-blood statute, the only truly rational solution is repeal.

245. 63 P. 729 (Cal. 1901).
246. Id. at 730.
247. See supra text accompanying notes 182-85.
249. See 84 OKLA. STAT. § 213(B)(4) (Supp. 1995). Under the current statute, the representative generation is always the first generation in which someone is still living.
IV. Additional Problems Caused by the 1985 Amendment to the Intestate Succession Statute

As this article has attempted to demonstrate, even if one supports the concept of ancestral property remaining in the bloodline or if one still supports the ancient prohibition against inheritance by half bloods, three primary factors prevent section 222 from effectively functioning as either an ancestral property statute or a half-blood statute in many cases. These factors are: (1) that the line of the ancestor can change with each inheritance; (2) that the statute never excludes whole blood relatives not of the blood of the ancestor; and (3) that the statute does not apply if the half-blood relatives not of the blood are in a nearer degree of relation.

When these factors are coupled with the many unresolved questions concerning section 222's construction, the circumstances in which section 222 will yield totally unjustifiable results far outnumber the circumstances in which its bias against half-blood relatives could possibly be justified. In the author's opinion, this was true even when section 222 was being applied to the inheritance scheme that it was designed to accompany. Many of the problems inherent in section 222, however, have been greatly exacerbated by the 1984 amendment to section 213.

The 1984 amendment completely changed the inheritance preferences among collateral heirs. Under the original statute, the only collateral heirs who were given a specific preference were brothers, sisters, and the children of deceased brothers and sisters. The children of deceased brothers and sisters were entitled to take by representation under this preference only when there was a brother or sister still living. The only other provision gave the estate to the "next of kin in equal degree."

Thus, under the traditional scheme, the only collateral relatives who ever would take by representation were the children of deceased brothers or sisters. Once all the brothers and sisters were dead, the heirs were determined solely on the basis of degree of relation, with those claiming through the ancestor nearer to the decedent given preference when relatives of the same degree were related through

250. The "justifiable" situation would be one in which the property is still in the line of the first purchaser (not having switched lines by going first to a surviving spouse), and the competing heirs are all whole and half-blood relatives of the blood in the same statutory heir preference. Almost every other imaginable circumstance leads itself to unfairness.

251. The original versions of both section 222 and section 213 were "borrowed" from the Territorial Code of 1877.


different ancestors.256 The next of kin always took per capita; there was no representation by more remote generations.

Accordingly, under the old inheritance scheme the only heir pattern in which relatives of different degrees of relationship would be competing heirs was when there were living brothers and sisters and children of deceased brothers and sisters. Within that statutory preference, only in the specific instance when nieces and nephews of the blood were opposed by decedent's half-blood brother or sister not of the blood would the statute fail to exclude the half-blood relative. Only then would taking by representation's relevance to section 222 ever come up.

Further, by definition, the brothers and sisters were in the closest degree of relation among all the possible collateral relatives. The only lower inheritance preference relative, who was also of the same degree and could exclude them under section 222, was a grandparent. In the context of a statute that placed so much emphasis on degree of relationship, the Robbs limitation of section 222 would often result in giving the property to the half-blood relatives who were the heirs under section 213. The Robbs limitation would seldom give the ancestral property to a more remote relative who was not otherwise an heir and who was possibly a whole blood relative not of the blood. Accordingly, if the goal of the court was to limit the circumstances under which section 222 would affect the inheritance,257 Robbs, in that respect, accomplished the goal.

When one attempts to apply section 222 to the new inheritance scheme, however, it is very obvious that the half-blood statute, especially with its current interpretations, is less compatible with the current inheritance statute. The 1984 version of section 213 is primarily based on parentelic preferences for collateral inheritance.258 The degree of relation is irrelevant to that scheme. Unlike the UPC provision, which is the basis of the 1984 amendment, Oklahoma did retain as a last option "next of kin in equal degree."259 That option operates, however, only if there are no issue of parents or grandparents.

It is quite possible under the current inheritance statute for a relative in the second parentelic preference to be of the same degree, or of a closer degree, of relation than the designated heirs in the first parentelic preference.260 Additionally, under the parentelic system, representation by more remote generations in the same preference is required. The preferences are given first to issue of parents and

256. See id.
257. See In re Yahola's Heirship, 285 P. 946, 948 (Okla. 1930) (holding that facts justifying exceptions must be specific and certain).
258. Under a parentelic preference scheme, priorities are based on the nearest ancestor to the decedent. If there are no issue, the parents (the first parentelic line) are the heirs. If the parents are dead, the issue of parents (the first parentela) are the heirs. The second parentelic line (grandparents or their issue) are heirs only when no one exists in the first parentelic line. It is quite possible that a person who was the "next of kin" under a degree system of collateral inheritance will not be the heir under a parentelic system. For example, an uncle is a third degree relative; a grand niece is a fourth degree relation. Under a degree system, the uncle would be the heir; under the parentelic system, the grand niece is the heir.
260. See supra note 258.
then to issue of grandparents. Both of these factors increase the potential for section 222 problem situations that were relatively rare under the original section 213.

Because representation is much more common under the amendment, it is no longer true that all those who are otherwise heirs under section 213 will usually be the same degree of relationship. Depending on whether it is a relative of the blood or a half-blood relative not of the blood who is in the more remote generation, section 222 will either exclude the half-blood heirs more often, or it will not exclude them when there are actually relatives of the blood in the same statutory preference. The unanswered question of the relevance, if any, of taking by representation through one in the same degree has now become foundational to a proper distribution of the estate among the heirs.

Further, when no brothers and sisters survive, but more remote issue of parents do exist, there will be more occasions when half-blood heirs not of the blood are being excluded by whole blood relatives not of the blood from the lower grandparental preference. This will happen because the Robbs emphasis on degree of relationship will create more occasions when the statute works across statutory inheritance preferences since there are now more relatives in the lower preference in the same degree as the section 213 heirs. Rather than limiting section 222's application, the rule of Robbs, when applied to the current statute, expands its application to favor more persons who are not otherwise heirs.

One additional perplexity created by amended section 213 demonstrates the futility of trying to construe section 222 in any way that makes it compatible with the inheritance scheme and further underscores the need for repeal. If the decedent's nearest surviving relatives are issue of grandparents, and there are issue in both the maternal and paternal lines, section 213 provides that the estate is first divided into two equal shares, and one share is sent down each line.261 Within each line, that half of the estate is distributed independently of the distribution of the other line's half share.

Assume that the decedent owns paternal ancestral property. It is very clear that whole blood relatives not of the blood are not affected by section 222.262 Thus, at least as long as there is one maternal whole blood relative, the property will have to go through the initial division into equal halves without any consideration being given to the source of the assets.263 If a half-blood maternal relative of equal or a more remote degree than any of the paternal relatives also exists,264

263. If all the maternal relatives were half bloods and if all were in the same degree or a more remote degree than the paternal relatives, then all the maternal relatives would be excluded by section 222, and all the paternal property should go down the paternal side. See 84 Okla. Stat. § 213(B)(2)(d) (Supp. 1995). However, the presence of even a half-blood maternal relative who is a closer degree of relation that the paternals (e.g., a maternal half-blood aunt and paternal cousins) will cause the property to first be split between the two lines.
264. The scenario becomes even more perplexing if it is the whole blood maternal relative who is the person of equal degree with the half-blood maternal relative. Now, the other unanswered question
section 222 will exclude the half-blood maternal relative from sharing in the paternal property. In this instance, however, none of the benefit of the exclusion will flow to the relatives of the blood, even though in this case they are also heirs. Because the distribution in each line is done independently of the distribution in the other line, the half-blood relative will be excluded solely in favor of the whole blood relative not of the blood.

Unlike the possibly unanswered question of whether section 222 would apply in the absence of some relative of the blood,265 there is very little room to argue that it does not apply on these facts. Although the precise relative pattern differs, this is very similar to the fact pattern in DeRoin. In DeRoin, there was a relative of the blood, but he did not take because the statutory preference gave the property to the grandparent who was not of the blood.266

If Oklahoma is, in fact, wedded to the ancient concepts so ineptly reflected in section 222, it needs to draft an entirely new statute that always excludes both whole and half-blood relatives not of the blood and also looks to the blood of the first purchaser rather than the immediate ancestor. That statute should also specifically state whether it is intended to apply across section 213 preferences. If, on the other hand, Oklahoma has simply slept through the debate about half-blood statutes and is not aware of the problems of section 222, the statute should be repealed.

Trying to apply an exclusion statute that turns on degrees of relationship to an inheritance statute that ignores degrees of relationship is a classic example of trying to fit the proverbial square peg into the proverbial round hole. It simply does not work! It is also an example of one of the problems that occurs when a statute is amended without any consideration being given to its relation to other statutes. In the absence of any legislative history in Oklahoma, there is no way to know if the legislature even considered section 222 when it amended section 213.267 Given the additional problems created when the two statutes collide, one would hope that retaining section 222 was not an intentional decision.

265. See supra text accompanying notes 196-209.

266. DeRoin, 312 P.2d at 971.

267. There is one slight indication in section 213 that hints that the legislature was aware of section 222. The UPC version of the first parentelic preference provides that "if there is no surviving descendant or parent, to the descendants of the parents or either of them by representation." UNIF. PROBATE CODE § 2-103(3) (1991). The Oklahoma version omits the "or either of them" language. 84 OKLA. STAT. § 213(B)(2)(6) (1991). One can speculate that this was done to acknowledge the separate half-blood statute (to prevent the argument that it was repealed by implication?); however, it can also be argued that this omission turns section 222 into a needed enabling statute. The counter argument, of course, is that it was felt that "or either of them" was unnecessary because the singular includes the plural and vice-versa. The author's skeptical speculation would be that the Oklahoma drafters never thought about section 222.
Conclusion

The Oklahoma half-blood statute is an anachronism. Even if one can identify certain situations in which it actually keeps the decedent's inherited property in the family from which it came, both the occasions in which it discriminates irrationally against half-blood relatives and also the occasions when it does not exclude them when the only justification for the statute would indicate it should are far too numerous to justify its existence. Additionally, the interpretations of the statute are so misunderstood by the practicing bar and leave so many unanswered questions that it is impractical to assume that the statute is being applied in the same manner to identical estates. Section 222 has little practical value. The Oklahoma Supreme Court should not be required to waste its time resolving the many unanswered questions about its application that the amendment to section 213 has raised. No construction that the court could adopt could possibly prevent all the irrational results. Almost every jurisdiction that has adopted a "modernized" statute of descent and distribution, especially one which is based on the UPC, has repealed the jurisdiction's archaic half-blood statute at the same time. Either those states recognized the incompatibility of the two statutes, or they recognized that the half-blood statute, regardless of the inheritance scheme to which it applied, was seldom accomplishing any valid purpose and was frequently causing absurd results. It is past time for the Oklahoma legislature to also recognize these facts and act accordingly.