

NOTES

ADULT ADOPTION

Forty-four states now permit the adoption of adults¹ in comparison to only thirty-four states twenty years ago.² Although the procedures for adoption are simple, the circumstances under which an adult may be adopted vary greatly among the states, and the adoptions that do occur tend to be controversial.³

Adult adoption has been criticized as alien to family law and as protecting immoral relationships,⁴ but no current study of the statutes and

1. ALASKA STAT. § 20.10.140 (1962); ARK. STAT. ANN. § 56-121 (Supp. 1967); CAL. CIV. CODE § 227p (West 1960); COLO. REV. STAT. ANN. § 14-1-13 (1964); CONN. GEN. STAT. ANN. § 45-67 (Supp. 1969); DEL. CODE ANN. tit. 13, §§ 951-.56 (1953); FLA. STAT. ANN. §§ 63.241-261 (1969); GA. CODE ANN. § 74-420 (Supp. 1970); IDAHO CODE ANN. § 16-1501 (Supp. 1969); ILL. ANN. STAT. ch. 4, § 9.1-3 (Smith-Hurd 1966); IND. ANN. STAT. § 3-124 (Repl. Vol. 1968); IOWA CODE ANN. § 600.1 (Supp. 1968); KAN. STAT. ANN. § 59-2101 (1964); KY. REV. STAT. § 405.390 (1971); LA. REV. STAT. ANN. § 9.461 (1965); ME. REV. STAT. ANN. tit. 19, § 531 (Supp. 1970); MD. ANN. CODE art. 16, §§ 71, 82 (Repl. Vol. 1966); MASS. ANN. LAWS ch. 210, § 1 (1969); MINN. STAT. ANN. § 259.22 (1971); MISS. CODE ANN. § 1269-02 (Recomp. Vol. 1956); MO. ANN. STAT. §§ 453.010-453.090 (Vernon 1952); MONT. REV. CODE ANN. §§ 61-139, 140 (Repl. Vol. 1969); NEV. REV. STAT. § 127.190 (1967); N.H. REV. STAT. ANN. §§ 461.9-10 (Repl. Vol. 1968); N.J. REV. STAT. §§ 2A:22-1 to -3 (1962); N.M. STAT. ANN. § 22-2-24 (Supp. 1971); N.Y. DOM. REL. LAW §§ 109-11 (McKinney 1964); N.C. GEN. STAT. § 48-36 (Supp. 1971); N.D. CENT. CODE §§ 14-14-03, 05 (1971); OKLA. STAT. ANN. tit. 10, § 60.21 (1966); ORE. REV. STAT. § 109.329 (1967); PA. STAT. ANN. § 101-603 (1971); R.I. GEN. LAWS ANN. § 15-7-4 (1969); S.C. CODE ANN. § 10-2587.18 (Supp. 1970); S.D. CODE § 25-6-8 (1967); TENN. CODE ANN. § 36-138 (Supp. 1970); TEX. REV. CIV. STAT. art. 46b-1 (1969); UTAH CODE ANN. § 78-301 (Supp. 1971); VT. STAT. ANN. tit. 15, §§ 431, 438, 448 (1958); VA. CODE ANN. § 63.1-222 (Repl. Vol. 1968); WASH. REV. CODE ANN. §§ 26.32.020, 26.32.100 (Supp. 1971); W. VA. CODE ANN. § 48-4-7 (1966); WIS. STAT. ANN. §§ 322.01-04 (1958); WYO. STAT. ANN. § 1-726 (1959); D.C. CODE ANN. §§ 16-1301, 303-3-4 (1967).

2. Note, *Adoption in Virginia*, 38 VA. L. REV. 544, 552-3 (1952).

3. *Bedinger v. Graybill's Executor & Trustee*, 302 S.W.2d 594 (Ky. 1957) was the source of much publicity and law review commentary because it involved the adoption of a wife by her husband. *Green v. Fitzpatrick*, 220 Ky. 590, 295 S.W. 896 (1927), declaring the adoption of a mistress valid, also created furor.

4. Wadlington, *Adoption of Adults: A Family Law Anomaly*, 54 CORNELL L. REV. 566 (1969).

court decisions is available. The purpose of this note is to reveal the current status of adult adoptions, the resulting legal consequences, and the various problems that may arise with its use.

I. HISTORICAL DEVELOPMENT

The adoption of children is commonplace in this country and serves a dual function. On the one hand, adoption provides families for illegitimate or homeless children and, on the other, it furnishes children for couples or individuals desiring children and unable or unwilling to have their own. Adoption has existed since ancient times. One of the earliest legal references is found in the ancient Babylonian Code of Hammurabi: "If a man take a child in his name, adopt and rear him as a son, this grown-up son may not be demanded back."⁵ Adoption was also prevalent in ancient Greece and Rome.⁶ In Rome, in addition to child adoption, there developed the practice adrogation whereby adults were adopted to carry on a family name.⁷ Adrogation applied only to the adoption of those who were independent and *sui juris*.⁸ Since ancient adoptions simulated the relation between parents and natural child, the adopting parent was required to be at least eighteen years older than the adoptee.⁹ The ancient practice has influenced modern adoption statutes to the extent that age difference requirements are still to be found in state adoption statutes, and the artificial relationship is everywhere patterned after that of the parent and natural child.¹⁰

There was no mention of adoption in the common law of England. As a consequence, adoption is completely regulated by statute in the United States.¹¹ Although Massachusetts enacted an adoption act in

5. 1 KOCOUREK & WIGMORE, *EVOLUTION OF LAW, SOURCES OF ANCIENT AND PRIMITIVE LAW* 426 (1915); Huard, *The Law of Adoption: Ancient and Modern*, 9 VAND. L. REV. 743, 745 (1956).

6. II KOCOUREK & WIGMORE, *EVOLUTION OF LAW, PRIMITIVE AND ANCIENT INSTITUTIONS* 344-46 (1915); Huard, *The Law of Adoption: Ancient and Modern*, 9 VAND. L. REV. 743, 745 (1956).

7. Brosnan, *The Law of Adoption*, 22 COLUM. L. REV. 332 (1922); Huard, *The Law of Adoption: Ancient and Modern*, 9 VAND. L. REV. 743, 745 (1956).

8. *Id.*

9. For a general history of adoption see Brosnan, *The Law of Adoption*, 22 COLUM. L. REV. 332 (1922); *Hockaday v. Lynn*, 200 Mo. 456, 98 S.W. 585 (1906).

10. Wadlington, *Minimum Age Difference as a Requisite for Adoption*, 1966 DUKE L.J. 392, 396 (1966).

11. Brosnan, *The Law of Adoption*, 22 COLUM. L. REV. 332, 335-37 (1922);

1851 and twenty years later provided for adult adoption,¹² the English did not provide for adoption until 1926.¹³ Most of the early adoption statutes did not expressly provide for the adoption of adults, but the courts permitting adult adoption nevertheless construed the statutory language broadly to include persons of all ages.¹⁴ Gradually, legislatures provided statutory definitions of ambiguous words such as "child" or "children." In the absence of statutory definition, the courts could interpret "child" to mean either a person under the age of twenty-one, or a person bearing the relation of child to a parent. Obviously, only the second interpretation included adopted adults. Modern adoption statutes often deal separately with adult adoption.¹⁵

II. ADULT ADOPTION DISTINGUISHED FROM CHILD ADOPTION

Adult adoption differs significantly from child adoption in three ways: 1) motivation for adopting; 2) legal responsibility of the adopting parent; and 3) adoption procedures.

Reasons for adult adoption in certain situations are similar to reasons for child adoption. An earlier adoption, invalid because of some procedural defect, can be validated at a later date after the child reaches majority. A stepparent may adopt stepchildren after they have reached adulthood,¹⁶ and occasionally a relationship of filial affection will develop between two adults which they wish to legalize.¹⁷ Some parents merely neglect to adopt a child raised as their own, while others may not be able to adopt the child because of legal obstacles.¹⁸ Under these

Huard, *The Law of Adoption: Ancient and Modern*, 9 VAND. L. REV. 743, 746 (1956); Wadlington, *Adoption of Adults: A Family Law Anomaly*, 54 CORNELL L. REV. 566, 569 (1969).

12. LEAVY, *THE LAW OF ADOPTION* 1 (1968). Mass. Acts 1871, ch. 310, § 6 at 654: "A person of adult age may be adopted in like manner upon his own consent without other consent or notice." See Brosnan, *The Law of Adoption*, 22 COLUM. L. REV. 332, 335 (1922).

13. Adoption of Children Act, 16 & 17 Geo. 5, c. 29 (1926). For the background of this law see P. BROMLEY, *FAMILY LAW* 401 (3rd ed. 1966).

14. *Sheffield v. Franklin*, 151 Ala. 492, 44 So. 373 (1907); *Atchison v. Atchison's Exrs.*, 89 Ky. 488, 12 S.W. 942 (1890); *State ex rel. Buerk v. Calhoun*, 330 Mo. 1172, 52 S.W.2d 742 (1932); *In re Moran's Estate*, 151 Mo. 555, 52 S.W. 377 (1899); *Craft v. Bliss*, 8 Tenn. App. 498 (1928).

15. See CAL. CIV. CODE §§ 221, 227p (West 1960); COLO. REV. STAT. ANN. § 4-1-13 (1964); CONN. GEN. STAT. ANN. § 45-67 (Supp. 1969); KAN. STAT. ANN. § 59-2101 (1964); MINN. STAT. ANN. § 259.22 (1971).

16. *St. Louis Union Trust Co. v. Hill*, 336 Mo. 17, 76 S.W.2d 685 (1934).

17. *Ex Parte Libertini*, 244 Md. 542, 224 A.2d 443 (1966).

18. *In re Adoption of Miller*, 227 So. 2d 73 (Fla. 1969); *Brock v. Dorman*,

circumstances, the child can usually be adopted as an adult.¹⁹

Most adult adoptions, however, have some financial purpose. An adopting parent may wish to have the family name carried on or to designate an heir.²⁰ A childless couple may decide that one spouse should adopt the other so that the spouse can inherit as a child.²¹ The adoption of one's spouse may also enable the spouse to take both as surviving spouse and as a child. And some people use adult adoption as a device to permit the adoptee to pay a lower inheritance tax reserved for close relatives.²² Finally, in *Greene v. Fitzpatrick*²³ a wealthy bachelor-lawyer adopted his stenographer-mistress who was married. The adoption prevented relatives from contesting the will, although they might have contested the adoption.

The second difference between adult and child adoptions is that the adoptive parent bears no legal duty of support even when a particular adoption statute provides that the same rights and responsibilities shall exist between an adopted adult and the adoptive parent as exist between a natural child and its parents.²⁴ Whereas some states provide

339 Mo. 611, 98 S.W.2d 673 (1936); *Bertero v. Goodwin*, 267 Mo. 427, 184 S.W. 74 (1916).

19. The statutory requirement that the natural parents consent to a child adoption may prohibit the family from adopting the child during his minority. Only the consent of the child is usually necessary after the child has reached adulthood.

20. *Williams v. Ward*, 15 Cal. App. 3d 381, 93 Cal. Rptr. 107 (1971); *First Nat'l Bank of K.C. v. Sullivan*, 394 S.W.2d 273 (Mo. 1965); *Brock v. Dorman*, 339 Mo. 611, 98 S.W.2d 672 (1936); 90 N.J. Super. 498, 218 A.2d 175 (1966); *Delaney v. First Nat'l Bank*, 73 N.M. 192, 386 P.2d 711 (1963); *In re Buckingham's Estate*, 194 Misc. 297, 86 N.Y.S.2d 518 (1949).

21. *Bedinger v. Graybill's Executor & Trustee*, 302 S.W.2d 594 (Ky. 1957); *noted in*, 12 ARK. L. REV. 199 (1958); 43 IOWA L. REV. 637 (1958); 47 KY. L.J. 149 (1958); 11 S.C.L.Q. 554 (1959); 36 TEXAS L. REV. 820 (1958); TUL. L. REV. 469 (1958); 1958 WASH. U.L.Q. 97; 4 WAYNE L. REV. 169 (1958).

22. *In re Zook's Estate*, 62 Cal. 2d 492, 399 P.2d 53, 42 Cal. Rptr. 597 (1965); *Dunbar v. Schaefer*, 129 Colo. 215, 268 P.2d 420 (1954); *McLaughlin v. People*, 403 Ill. 493, 87 N.E.2d 637 (1949); *Province's Estate*, 4 Pa. Dist. 591 (1895); *Commonwealth v. Ferguson*, 137 Pa. 595, 210 A. 870 (1890); *In re Hagar's Estate*, 98 Vt. 235, 126 A. 507 (1924).

23. *Greene v. Fitzpatrick*, 220 Ky. 590, 295 S.W. 896 (1927). When a man adopts his mistress, as in this case, a woman her paramour, or one adult another of the same sex, a third motivation may present itself apart from or in conjunction with family or financial reasons—the desire to formalize, albeit indirectly, a meretricious relationship. Some implications of the use of adult adoption for this purpose are discussed in Wadlington, *Adoption of Adults: A Family Law Anomaly*, 54 CORNELL L. REV. 566 (1969); Wadlington, *Minimum Age Difference as a Requisite for Adoption*, 1966 DUKE L.J. 392 (1966).

24. MO. ANN. STAT. § 453.090 (Vernon 1952) provides that the adoptee "if a

that an adult adoption has the same legal consequences as if the adult had been adopted as a child,²⁵ others provide that an adult adoption gives the adult the same legal status as a natural child.²⁶ In contrast to these statutes, the Colorado statute declares that the adoption of an adult merely designates an heir,²⁷ and that of New Hampshire provides that the adopted adult should not be regarded as an adopted child.²⁸ Although the adoption of a child totally severs the relationship with the natural parents, both legally and in fact, the adoption of an adult only severs the legal relationship. The adopted adult is not compelled to live with or enter the family of his new parent, and the adoption will probably not change the life of the adopted adult significantly.

Thirdly, since the legal ramifications of adult adoption can be quite extensive, the lack of formality concerning procedure and the ease with which the adoption may be granted are noteworthy. The procedures for adopting an adult are usually far simpler than those necessary for adopting a child. The detailed investigation of the new parents which precedes the adoption of a child is not necessary when the adoptee is an adult,²⁹ and very few states require that an adoption be in the best

minor, shall be entitled to proper support, nurture and care from said parent or parents by adoption." In every state the duty to support ends once the child has reached majority.

25. DEL. CODE ANN. tit. 13 § 954 (1953):

Upon the issuance of the decree of adoption and forever thereafter, all the duties, rights, privileges and obligations recognized by law between parent and child shall exist between the petitioner and petitioners and the person or persons adopted, as fully and to all intents and purposes as if such person or persons were the lawful and natural offspring or issue of the petitioners.

26. GA. CODE ANN. § 74-420 (Supp. 1971):

Thereafter, the relation between such person and the adopted adult shall be, as to their legal rights and liabilities, the relation of parent and child.

KY. REV. STAT. § 405.390 (1969):

An adult person over eighteen years of age may be adopted in the same manner as provided for the adoption of a child and with the same effect except that his consent alone to such an adoption shall be required.

The following states have similar provisions: Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Utah, Vermont, Washington, West Virginia, Wisconsin and Wyoming.

27. COLO. REV. STAT. ANN. § 4-1-13, Comment (1964) states that adult adoption has the "sole purpose of making the adoptee heir at law without other rights or assumption of obligations." In accordance with the statute, in *Martin v. Cueller*, 131 Colo. 117, 279 P.2d 843 (1955) the adoptive parent of the deceased, adopted as an adult, was held to have no right to bring an action for wrongful death.

28. N.H. REV. STAT. ANN. § 461.10 (1968).

29. FLA. STAT. ANN. §§ 63.241-281 (1969); GA. CODE ANN. § 74-420 (Supp. 1971); KAN. STAT. ANN. § 59-2101 (1964); MINN. STAT. ANN. § 259.22 (1971); OKLA. STAT. ANN. tit. 10, § 60.21 (1966).

interests of the parties.³⁰ If the adult consents to the adoption, the petition for adoption is usually granted summarily without the full hearing which accompanies the child adoption.

It is only essential in child adoptions that the court obtains consent to the adoption from the natural parents.³¹ The same is true for notice to the natural parents in all but one state. Since the adoption proceeding takes away all rights and responsibilities of the natural parents toward the child and gives them to the adoptive parents,³² these requirements in reference to child adoption seem entirely reasonable. After adoption the child assumes all the rights and responsibilities of a natural child. Some states allow an adopted child to inherit from its natural parents according to the laws of descent and distribution, but other states deny even this.³³ In most jurisdictions, the natural parents

30. The following states require that the adoption be in the best interests of the parties: CAL. CIV. CODE § 227 (West 1960); IND. ANN. STAT. § 3-124 (Repl. Vol. 1968); NEV. REV. STAT. § 127.210 (1967); N.J. REV. STAT. § 2A:22-1 (1952); N.Y. DOM. REL. LAW § 111 (McKinney 1964); OKLA. STAT. ANN. tit. 10, § 60.21 (1966); S.C. CODE ANN. § 10-2587.18 (Supp. 1970); WIS. STAT. ANN. § 322.04 (1958).

31. All states require the consent of the natural mother if the child is illegitimate and, if legitimate, the consent of both parents unless the parent has waived such rights by abandonment or insanity. Two typical consent statutes are: CAL. CIV. CODE ANN. § 224 (West Supp. 1962); N.Y. DOM. REL. LAW § 111 (McKinney 1964). For a compilation of consent provisions in adoption statutes see 24 ROCKY MT. L. REV. 359, 360 n.18 (1952).

32. The following statutes are representative: IDAHO CODE § 16-1508 (Supp. 1971):

A child, when adopted, may take the name of the person adopting, and the two shall thenceforth sustain toward each other the legal relation of parent and child, and shall have all the rights and shall be subject to all the duties of that relation, . . .

IDAHO CODE § 16-1508 (Supp. 1971):

Unless the decree of adoption otherwise provides, the natural parents of an adopted child are, from the time of the adoption, relieved of all parental duties toward, and all responsibilities for, the child so adopted, and have no right over it, . . .

TEX. REV. CIV. STAT. art. 46a, § 9 (1969):

When a minor child is adopted in accordance with the provisions of this Article, all legal relationship and all rights and duties between such child and its natural parents shall cease and determine, and such child shall thereafter be deemed and held to be for every purpose the child of its parent or parents by adoption as fully as though naturally born to them in lawful wedlock. Said child shall be entitled to proper education, support, maintenance, nurture and care from said parent or parents and said parent or parents by adoption shall be entitled to the services, wages, control, custody and company of said adopted child, all as if said child were their own natural child.

33. See *Wilterwood v. Nelson*, — Wash. 2d —, 472 P.2d 536 (1970) (for a state that has moved from allowing the adopted child to inherit from its natural parents to prohibiting such inheritance. Mississippi is one state that allows the inheritance from

lose both the right to alimentation and the right to inherit from the natural child should he die intestate.³⁴

Only Illinois requires the consent of the natural parents to an adult adoption.³⁵ Florida, in contrast, demands consent or, in the alternative, mere notice to the natural parents.³⁶ A recent Florida case held that consent of the natural parents was not required by the due process clause since the consent of the adoptee alone is consistent with the adult's right to change his name, to marry, and to sue or disinherit his parents without their consent.³⁷ However, since natural parents do lose certain rights when natural children are adopted as adults, it is arguable that they are entitled by due process to at least notice of the adoption proceedings, as provided in the Florida statute. Without notice, the natural parent may never become aware that his child has been adopted as an adult, and the child may benefit under the will of the natural parent when he would have been excluded otherwise.

All states require the consent of the adoptive parent's spouse to a child adoption, whereas fifteen states require this consent to an adult adoption.³⁸ Where the consent of the spouse is not necessary, there

natural parents after adoption. MISS. CODE ANN. §§ 1269-06, 1453 (Recomp. vol. 1956). Infausto, *Annual Review of Decisions and Statutory Revisions Affecting Adoptions*, 4 FAMILY L.Q. 150, 163-64 (1970); Comment, *The Adopted Child's Inheritance From Intestate Natural Parents*, 55 IOWA L. REV. 739 (1970).

34. This loss of rights results from the complete severance of the child from its natural family and the new relationship with the adoptive family. Natural parents of adopted adults are usually subject to the same provisions. The following states explicitly provide that an adopted adult can inherit from natural parents but not vice-versa: N.J. REV. STAT. § 2A:22-3(a) (1950); OKLA. STAT. ANN. tit. 10, § 60.16(1) (1966); S.C. CODE ANN. § 10-2587.13(a) (Supp. 1970); TEX. REV. CIV. STAT. art. 46b-1, § 5 (1969); VT. STAT. ANN. tit. 15, § 448 (Supp. 1971).

35. ILL. ANN. STAT. ch. 4, § 9.1-8(e) (Smith-Hurd Supp. 1971):

In the case of an adoption of an adult, only the consent of such adult and of his parents, if they can be found and if they are neither in need of mental treatment nor mentally retarded shall be required.

36. FLA. STAT. ANN. § 63.261 (1969):

The written consent of the adoptee and of the spouse, if any of the adoptee to the adoption shall be filed with the petition and also one of the following:

1. The written consent of the natural parent or parents, if any, of the adoptee.

2. Proof of service of process on the parents.

California is the only other state providing for notice to interested parties. CALIF. CIV. CODE § 227p (West 1960).

37. *In re Adoption of Miller*, 227 So. 2d 73, 75 (Fla. 1969).

38. The Uniform Adoption Act § 3(a) and the following states require such consent: CAL. CIV. CODE § 227 (West 1960); CONN. GEN. STAT. ANN. § 45-67 (Supp. 1969); ME. REV. STAT. ANN. tit. 19, § 531 (Supp. 1970); MASS. ANN. LAWS ch. 210,

is a greater opportunity for fraudulent procurement of adult adoptions. Some states require the consent of the spouses of both the adoptive parent and the adoptee.³⁹ Of course, these requirements do not protect a senile individual who is widowed since the only person with standing to object to the adoption is the person whose consent is required by law and not obtained.⁴⁰

III. EFFECTUATION OF PURPOSE

An adult adoption may be effected in a sister state if it is not permitted in the state where the prospective adoptee has his domicile. Most states disallowing adult adoptions recognize decrees obtained in other states if the parties were domiciled in the other state at the time of the adoption,⁴¹ and the decree was validly obtained.⁴² Most states do not have residency requirements for adoption so that the parent need only change domicile.

Once obtained, however, the adoption may not have the desired legal consequences. If the motive behind the adoption is consistent with that of adopting a child, the effects of the adoption should be those desired.⁴³ But if the adoption is intended to be an estate planning device, problems may arise that frustrate the intent of both the

§ 1 (1969); NEV. REV. STAT. § 127.200 (1967); N.M. STAT. ANN. § 22-2-24 (Supp. 1971); N.Y. DOM. REV. LAW § 110 (McKinney 1964); N.D. CENT. CODE § 14-15-03 (1971); OKLA. STAT. ANN. tit. 10, § 60.3 (1966); PA. STAT. ANN. tit. 1, § 411 (Supp. 1971); S.C. CODE ANN. § 10-2587.3 (Supp. 1970); TEX. REV. CIV. STAT. art. 46b-1, § 1 (1969); UTAH CODE ANN. § 78-30-1 (Supp. 1971); VT. STAT. ANN. tit. 15, § 431 (1958); WIS. STAT. ANN. § 322.02 (1958). If this consent is absent, it may be considered only an irregularity rather than a jurisdictional error, but *In re O'Keefe*, 164 Misc. 473, 300 N.Y.S. 27 (1937) held the adoption decree void because the proper consent was not obtained from the adoptive parent's spouse in the adoption.

39. CONN. GEN. STAT. ANN. §§ 45-67 to -68 (Supp. 1969); FLA. STAT. ANN. §§ 63.251-261 (1969); NEV. REV. STAT. § 127.200 (1967); VT. STAT. ANN. tit. 15, § 438 (1958).

40. *In re Adoption of Sewell*, 242 Cal. App. 2d 208, 51 Cal. Rptr. 367 (1966); *In re O'Keefe*, 164 Misc. 473, 300 N.Y.S. 27 (1937); *Steven v. Halstead*, 181 App. Div. 198, 200, 168 N.Y.S. 142, 144 (1917); *In re Adoption of Russell*, 170 Pa. Super. 358, 85 A.2d 878 (1952).

41. *Delaney v. First Nat'l Bank*, 73 N.M. 192, 386 P.2d 711 (1963); *McLaughlin v. People*, 403 Ill. 493, 87 N.E.2d 637 (1949); *Barret v. Delmore*, 143 Ohio St. 203, 54 N.E.2d 789 (1944); *In re Morris' Estate*, 56 Cal. App. 2d 715, 133 P.2d 452 (1943).

42. *Id.*

43. *See, e.g.*, COLO. REV. STAT. ANN. § 4-1-13 (1964); CONN. GEN. STAT. ANN. § 45-68 (1958); N.J. STAT. ANN. § 2A:22-1 (1952).

adoptive parent and the adopted adult: 1) the inheritance tax may be increased by the adoption rather than being reduced; 2) the adopted adult may not be able to inherit through the adoptive parent; 3) the class of people allowed to take under an instrument of trust or a will may be interpreted in such a way that the adult is excluded; 4) the intent of the testator may be found to be such that the adult is not allowed to take; 5) there may be statutory controls on abuse that deny inheritance to the adult or invalidate the adoption.

An adult adoption may serve to reduce inheritance taxes if collateral heirs or strangers are adopted and allowed to take as lineal heirs.⁴⁴ Some states, however, have eliminated this abuse by taxing adopted adults at a higher rate than adopted or natural children.⁴⁵ When heirs have challenged the constitutionality of taxing adopted adults at a different rate, the courts have held that such a provision does not violate the equal protection clause so long as the tax is imposed uniformly on the class and is not oppressive.⁴⁶ Anyone planning to adopt an adult for tax purposes should be certain that the state statute allows such a tax reduction before adopting. Some states prohibit the adoption of collateral heirs,⁴⁷ and other states eliminate tax reductions through the taxing statutes.⁴⁸

Another series of problems arises when the adopted adult attempts to inherit either from or through the adopting adult. The courts gen-

44. ORE. REV. STAT. § 118.005(1) (1969) provides for such a reduction:

Any person related to the decedent by a change of relationship, any step or steps of which are created by legal adoption, shall, for the purposes of O.R.S. ch. 118, be considered as related in the same degree as though all steps in the relationship were by natural blood.

45. CAL. REV. & TAX CODE, §§ 13307-13310 (1956):

An adopted adult is considered to be non-lineal issue and is entitled to only a \$50 exemption from inheritance tax rather than the \$5000 reserved for adopted children.

See *In re Zook's Estate*, 62 Cal. 2d 492, 399 P.2d 53, 42 Cal. Rptr. 597 (1965); *People v. Schaefer*, 129 Colo. 215, 268 P.2d 420 (1954); *Province's Estate*, 4 Pa. Dist. 591 (1895); *Commonwealth v. Ferguson*, 137 Pa. 595, 20 A. 870 (1890); *In re Hagar's Estate*, 98 Vt. 235, 126 A. 507 (1924). *Contra*, *McLaughlin v. People*, 403 Ill. 493, 87 N.E.2d 637 (1949).

46. *In re Hagar's Estate*, 98 Vt. 235, 126 A. 507 (1924).

47. Connecticut, Massachusetts, New Hampshire. CONN. GEN. STAT. ANN. § 45-67 (Supp. 1969); MASS. ANN. LAWS ch. 219 § 1 (1969); N.H. REV. STAT. ANN. § 461:9 (Repl. vol. 1968).

48. CAL. REV. & TAX CODE §§ 13307-13310 (1956); COLO. REV. STAT. ANN. § 138-3-13 (1956); VT. STAT. ANN. tit. 32, § 6541 (1970).

erally follow the same reasoning used when adopted children attempt to inherit either from or through the adoptive parents. Under the rules of intestate succession an adopted child will inherit from the adoptive parents.⁴⁹ Whether or not an adopted child is allowed to inherit through the adoptive parents or their relatives depends upon the following: 1) the testator's intent; 2) the language used in the will and the surrounding circumstances; 3) the adoption statutes in effect at the time; and 4) prior court decisions.⁵⁰

Generally, the most important of these factors is intent.⁵¹ If it is clear that the testator did not intend that the adopted child inherit, the court will not allow the adoptee to take. The negative intent is most often found when the children are adopted after the death of the

49. Most adoption statutes contain specific provisions which allow the child to inherit from the adoptive parents. The intent behind this practice is to give the child the same rights as the natural child and to further the policies of adoption. See *Kolb v. Ruhl's Adm'r*, 303 Ky. 604, 198 S.W.2d 326, 328 (1946) which held that succession to estates and right to inheritance is completely regulated by statute and that the law which is in force at the time of death determines the identity of the heirs.

50. *Weitzel v. Weitzel*, 16 Ohio Misc. 105, 106, 239 N.E.2d 263, 265 (1968):

Historically, American courts gave adopted children very little consideration in cases involving inheritance or rights to share in class gifts under private instruments As time passed adoptions became more and more common . . . and today, in the mind of an average man, an adopted child and a natural child are classed as equals, both are considered to be members of their parents' families.

Whether or not the children were adopted before the date of the will or the testator's death, they were not usually allowed to take unless the language made that result clear. *Merchants v. Wyeth*, 120 F.2d 242 (8th Cir. 1941); *Sanders v. Adams*, 278 Ky. 24, 178 S.W.2d 223 (1939); *In re McEwan*, 128 N.J. Eq. 140, 15 A.2d 340 (1940); *Ashhurst's Estate*, 133 Pa. Super. 526, 3 A.2d 218 (1938).

The courts are divided as to whether an adopted child can inherit through the adoptive parents. The general rule is that if the testator did not know of the adoption, it is presumed that the child is not included. This is the "stranger to the adoption" doctrine. See 86 A.L.R.2d 32 (1955); Halbach, *The Rights of Adopted Children Under Class Gifts*, 50 IOWA L. REV. 971 (1965); Oler, *Construction of Private Instruments Where Adopted Children Are Concerned*, 43 MICH. L. REV. 901 (1945); Note, *Adopted Children: Inheritance Through Intestate Succession, Wills, And Similar Instruments*, 42 B.U.L. REV. 210 (1962). The adoption statutes also influence whether an adopted child will inherit through its adoptive parent. See *Denton v. Miller*, 110 Kan. 292, 203 P. 693 (1922); *Anderson v. French*, 77 N.H. 509, 93 A. 1042 (1915); *Ross v. Ross*, 129 Mass. 243 (1873); *VERNIER*, 4 AM. FAMILY LAW § 262 (1936).

51. The courts decide the testator's intent by looking at the language used in the will to designate the class of beneficiaries and the surrounding circumstances i.e., did the testator know of the adoption, and did he change the language of the will after the adoption?

testator.⁵² Likewise, the courts consider the testator's intent when deciding whether an adopted adult is within the class entitled to inherit.

The testator's intent is determined by the language used in the will to designate the class of beneficiaries and by the circumstances surrounding the execution of the will, including the laws in force at the time of execution and at the death of the testator. If the adoption of children *and* adults is allowed when the instrument is drawn up, the tendency of the courts is to include the adoptee. This result is even more likely if the testator himself has adopted a child or adult. The courts, however, do not agree on which terms designating the class of beneficiaries include an adopted adult.⁵³

An adopted adult is entitled to take from the adoptive parent unless the will was executed before the adoption, or the parent has clearly shown that he does not wish to include the adult by using such language as "bodily heirs."⁵⁴ When the testator is a relative of the adoptive parent, it is unlikely that the court will include the adopted adult in the class of beneficiaries unless it is very clear that the testator meant

52. *Sanders v. Adams*, 278 Ky. 24, 178 S.W.2d 223 (1939); *In re Fislser's Estate*, 131 N.J. Eq. 310, 25 A.2d 265 (1942); *In Re Ashhurst's Estate*, 32 Pa. D. & C. 543 (1938); *aff'd* 133 Pa. Super. 526, 3 A.2d 218 (1938).

53. The following cases included adopted adults within "heirs at law" or "heirs": *Bedinger v. Graybill's Ex'r & Trustee*, 302 S.W.2d 594 (Ky. 1957); *First Nat'l Bank v. Sullivan*, 394 S.W.2d 273 (Mo. 1965); *Brock v. Dorman*, 339 Mo. 611, 98 S.W.2d 672 (1936); *St. Louis Union Trust Co. v. Hill*, 336 Mo. 17, 76 S.W.2d 685 (Mo. 1934). *Contra*, *Nickerson v. Hoover*, 70 Ind. App. 343, 115 N.W. 588 (1917); *Minary v. Citizens' Fidelity Bank & Trust Co.*, 419 S.W.2d 340 (Ky. 1967); *Wyeth v. Stone*, 144 Mass. 441, 11 N.E. 729 (1887); *In re Buckingham's Estate*, 194 Misc. 297, 86 N.Y.S.2d 518 (1949); *In re Kingsbury*, 192 App. Div. 206, 182 N.Y.S. 559, *aff'd* 230 N.Y. 580, 130 N.E. 901 (1920). *See Schaefer v. Merchant Nat'l Bank*, 160 N.W.2d 318 (Iowa 1968) ("direct heirs" does not include adopted adult); *First Nat'l Bank v. Sullivan*, 394 S.W.2d 273 (Mo. 1965) ("heirs of the body" does not include adopted adults). "Child" included an adopted adult in *Delaney v. First Nat'l Bank*, 73 N.M. 192, 386 P.2d 711 (1963); *In re Stanford's Estate*, 49 Cal. 2d 120, 315 P.2d 631 (1957) (dictum). *Contra*, *Pennington v. Citizen's Fidelity Bank & Trust Co.*, 390 S.W.2d 671 (Ky. 1965); *Wilson v. Johnson*, 389 S.W.2d 634 (Ky. 1965); *In re Comly's Estate*, 90 N.J. Super. 498, 218 A.2d 175 (1966); *In re Freeman's Estate*, 40 Pa. Super. 31, 41 (1901). "Issue" included an adopted adult in *Atchison v. Atchison's Ex'rs*, 89 Ky. 488, 12 S.W. 942 (1890); *Craft v. Bliss*, 8 Tenn. App. 498 (1928). *Contra*, *In re Nichols Trust*, 3 Misc. 2d 898, 241 N.Y.S.2d 854 (1956).

54. *In re Stanford's Estate*, 49 Cal. 2d 120, 315 P.2d 681 (1957); *Scott v. Peters*, 87 Ind. App. 1, 158 N.E. 490 (1927); *Succession of Quatarano*, 139 So. 2d 277 (La. App. 1962); *Ex Parte Libertini*, 244 Md. 542, 224 A.2d 443 (1966); *Collamore v. Learned*, 171 Mass. 99, 9 N.E. 518 (1898); *Bernero v. Goodwin*, 267 Mo. 427, 184 S.W. 74 (1916); *In re Adoption of Brundage*, 134 N.Y.S.2d 703, *aff'd*, 285 App. Div. 1185, 143 N.Y.S.2d 611, *app. den.* 286 App. Div. 1003, 144 N.Y.S.2d 921 (1954).

to include the adult or should have realized that an adopted adult would be included in the class of those who could take.⁵⁵

It has been noted that an adult adoption is often motivated by the desire to provide an heir in order that a trust not terminate at the death of the adoptive parent. Both the language used to designate the class which is to take and the adoption statutes in force at the time of the execution are taken into account in deciding whether the adoptee will inherit. If adult adoption was allowed neither at the time the will was drawn nor at the time of the testator's death, the court will find it difficult to find in favor of the adopted adult.⁵⁶ Litigation in this area has dealt with wills or trusts executed when the majority of states prohibited adult adoption so that testators could not be held cognizant of the possibility of an adult adoption. Future testators, however, will be advised to use language such as "heirs of the body" to avoid inclusion of adopted adults, or more directly, to exclude them specifically as beneficiaries under the will.

Missouri courts have often interpreted the testator's intent as including an adopted adult within a class of beneficiaries. In *Brock v. Dorman*,⁵⁷ an adopted adult was allowed to inherit as an "heir" from the mother of her adoptive father. Without looking at the testatrix's actual intent, the court reasoned that the adult was entitled to take since the statute in effect on the date of the will's execution contemplated the adoption of adults. The testatrix did not know the "heir" in *Brock*, but the adoptee had been raised by the adoptive parents although formally adopted only at the age of forty-three in order to defeat the will. *First National Bank of Kansas City v. Sullivan*⁵⁸ extended *Brock* by allowing an adopted adult, the adoptive mother's daughter-in-law, to inherit as an heir at law from the trust of the adoptive mother's father. Since the testator bequeathed to "heirs," the court ruled that the adult

55. *Abramovic v. Bruncken*, 94 Cal. Rptr. 303 (1971); *Williams v. Ward*, 15 Cal. App. 3d 381, 93 Cal. Rptr. 107 (1971); *Minary v. Citizens Fidelity Bank & Trust Co.*, 419 S.W.2d 340 (Ky. 1967); *Wilson v. Johnson*, 389 S.W.2d 634 (Ky. 1965); *In re Comly's Estate*, 90 N.J. Super. 498, 278 A.2d 175 (1966); *In re Buckingham's Estate*, 195 Misc. 297, 86 N.Y.S.2d 518 (1949); *In re Kingsbury*, 192 App. Div. 206, 182 N.Y.S. 559, *aff'd* 230 N.Y. 580, 130 N.E. 901 (1920).

56. *Abramovic v. Bruncken*, 94 Cal. Rptr. 303 (1971); *Williams v. Ward*, 15 Cal. App. 3d 381, 93 Cal. Rptr. 107 (1971); *In re Comly's Estate*, 90 N.J. Super. 498, 278 A.2d 175 (1966); *In re Buckingham's Estate*, 194 Misc. 297, 86 N.Y.S.2d 518 (1949).

57. *Brock v. Dorman*, 339 Mo. 611, 98 S.W.2d 673 (1936).

58. *First National Bank of Kansas City v. Sullivan*, 394 S.W.2d 273 (Mo. 1965).

should take as it was not clear that the testator would have wished otherwise. Missouri seems to take the position that the adopted adult is entitled to inherit unless the intent of the testator is clearly opposed to this result.

Many states examine and interpret the language used in the instrument in order to decide whether the adopted adult is within the class of beneficiaries. Adults are generally not in classes designated by words such as "issue," "lawful issue," or "heirs of the body," all of which connote blood relationships. When confronted with the word "children" some courts have followed the commonly accepted meaning excluding adopted adults.⁵⁹ One court allowed an adopted adult to take as a "child" when the testator meant to enlarge the class and had adopted children of his own.⁶⁰

Even when the adoption statute states that an adopted adult has all the rights of a natural child,⁶¹ courts have not interpreted this mandate literally and have instead looked to the testator's intent. As pointed out, this leads to uncertain results. While Missouri has liberally construed intent, other states have interpreted it narrowly. In *Nickerson v. Hoover*,⁶² an Indiana case, a father used the following language to limit the gift of his estate to his daughter: "forever provided she have heirs." The court did not allow an adult, adopted by the daughter, to take on the grounds that the testator intended that the heirs be born to the daughter. Similarly, Massachusetts courts have held that the adoptee must show that the testator's intent was to *include* the adoptee when the corpus of a trust is to go to the beneficiary's "heirs at law" at his death.⁶³

The comparison between the Massachusetts and Missouri decisions demonstrates the difficulty in predicting whether an adult adoption will have the desired legal consequences. In a state such as Colorado, whose adoption statute states that adopting an adult is merely the desig-

59. *Wilson v. Johnson*, 389 S.W.2d 634 (Ky. 1965); *In re Comly's Estate*, 90 N.J. Super. 498, 218 A.2d 175 (1966); *In re Freeman's Estate*, 40 Pa. Super. 31 (1901).

60. *Delaney v. First Nat'l Bank*, 73 N.M. 192, 386 P.2d 711 (1963).

61. DEL. CODE ANN. tit. 13 § 954 (1953); GA. CODE ANN. § 74-420 (Supp. 1970); KY. REV. STAT. § 405.390 (1971).

62. *Nickerson v. Hoover*, 70 Ind. App. 343, 115 N.E. 588 (1917).

63. *Old Colony Trust Co. v. Wood*, 321 Mass. 519, 74 N.E.2d 141 (1947); *Wyeth v. Stone*, 144 Mass. 441, 11 N.E. 729 (1887).

nation of a legal heir,⁶⁴ one could not expect that the courts would be liberal in construing a testator's intent unless, of course, the language used is "heirs." The court decision will be based on a consideration of the adoption statute, the policies behind it, and the case law.

In Kentucky, the statute provides without restriction that the legal effect of an adult adoption will be the same as adopting a child.⁶⁵ This statute prompted at least one bizarre application. In *Bedinger v. Graybill's Executor & Trustee*,⁶⁶ a husband adopted his wife to make her his heir within the meaning of a provision of his mother's will giving the corpus of a trust to the son's heirs at law at his death. Collateral heirs took before a surviving spouse under the Kentucky laws of descent and distribution.⁶⁷ The state supreme court allowed the adopted wife to inherit as an heir since adult adoption was clearly allowed by statute. The court, however, has not followed the decision in subsequent cases. A decade after *Bedinger*, in *Minary v. Citizens Fidelity Bank & Trust Co.*,⁶⁸ the court ruled that the adopted adult was not permitted to be brought under the terms of the will unless the testator clearly so intended. *Pennington v. Citizens Fidelity Bank & Trust Co.*⁶⁹ held that a husband adopted by his wife, the testatrix's daughter, was not a "child" within the meaning of the will and could not take the remainder. In another case, two stepsons, adopted as adults, were not allowed to take as "children" of the adoptive parents under the will of the adoptive grandparents.⁷⁰

Adult adoption is subject to abuse because of summary procedure and financial advantage. One method of controlling abuse is through the courts, but most states have chosen to legislate special controls within the adoption statutes. Five states prohibit the adoption of a spouse.⁷¹ Three states and the Uniform Adoption Act require a specified age difference between the adoptive parent and the adoptee.⁷²

64. COLO. REV. STAT. ANN. § 4-1-13 (1964).

65. KY. REV. STAT. § 405.390 (1971).

66. *Bedinger v. Graybill's Executor & Trustee*, 302 S.W.2d 594 (Ky. 1957).

67. KY. REV. STAT. § 391.010 (1971).

68. *Minary v. Citizens Fidelity Bank & Trust Co.*, 149 S.W.2d 340 (Ky. 1967).

69. *Pennington v. Citizens Fidelity Bank & Trust Co.*, 390 S.W.2d 671 (Ky. 1965).

70. *Wilson v. Johnson*, 389 S.W.2d 634 (Ky. 1965).

71. CAL. CIV. CODE § 227p (West 1960); CONN. GEN. STAT. REV. § 45-67 (Supp. 1969); MASS. ANN. LAWS ch. 210, § 1 (1969); N.H. REV. STAT. ANN. § 461:9-10 (Repl. vol. 1968); NEV. REV. STAT. § 127.190 (1967).

72. FLA. STAT. ANN. § 63.241 (1969) (ten years older); N.J. STAT. ANN. § 2A:22 (1952) (fifteen years older); UTAH CODE ANN. § 78-301 (Supp. 1971) (ten years older); UNIFORM ADOPTION ACT § 18 (ten years older).

A similar requirement was dropped from the New Mexico statute within the past year.⁷³ A few states allow an adult to be adopted only if he has lived in the adoptive parents' home for a period during his minority.⁷⁴ This tends to eliminate all adoptions dissimilar from child adoptions. Some states require the consent of the adopting parent's spouse⁷⁵ thereby preventing the adoption of a young person or mistress unknown to the wife. This safeguard, of course, serves no purpose when the spouse is deceased. Vermont has eliminated a number of adoptions for financial reasons by allowing an adopted adult to inherit exclusively from and not through the adoptive parent.⁷⁶ Because of the scarcity of cases raising the issue, and the lack of information on the number of adults adopted every year, it is difficult to decide whether more control over adult adoption is needed to prevent abuse. The small number of cases litigated indicates either that very few adults are adopted or that few adoptions cause difficulty. If either is the case, it is unlikely that more control is warranted. One commentator has gone so far as to advocate abolishment of adult adoption on the ground that the practice serves no useful purpose.⁷⁷

IV. MERITS OF THE DEVICE

As has been suggested, there exists a view that adult adoption is a perversion of the natural family, and basically an estate planning device which has no place in the realm of family law. It is, of course, important to consider what detrimental effects adult adoption has on the general institution of adoption and the family structure. There are,

73. N.M. STAT. ANN. § 22-2-24 (Supp. 1971).

74. Idaho does not permit an adult adoption unless the adoptive parent has borne the relation of parent to the adoptee for a period of at least fifteen years. IDAHO CODE ANN. § 16-1501 (Supp. 1969). Illinois requires that the adoptee shall have lived in the home of the adoptive parent for at least two years before the adoption. ILL. ANN. STAT. ch. 4, § 9.1-3 (Smith-Hurd 1966). North Carolina provides a six month residence requirement in the home of the adoptive parent before filing the petition. South Dakota requires that the adoptee shall have lived in the home of the adoptive parent for at least six months during his minority. S.D. CODE § 25-6-8 (1967). Virginia requires that the adoptee shall have lived in the adoptive parent's home for at least five years during his minority. VA. CODE ANN. § 63.1-222 (Repl. vol. 1968).

75. VT. STAT. ANN. tit. 15, § 448 (1958); N.J. REV. STAT. §§ 2A:22-1 to -3 (1952); R.I. GEN. LAWS ANN. § 15-7-4 (1969).

76. VT. STAT. ANN. tit. 15 § 448 (1958).

77. Wadlington, *Adoption of Adults: A Family Law Anomaly*, 54 CORNELL L. REV. 566 (1969).

indeed, isolated cases in which either a man adopts his mistress, or an unmarried adult adopts another of the same sex, but it is difficult to argue that adoption really legitimizes these relationships since the usual parent-child relationship does not occur. Even if adult adoptions were used regularly to legitimate illicit relationships, it would be for the individual state legislatures to decide whether or not this was such an undesirable result that the possibility of adopting an adult should be restricted or eliminated.

When not prohibited by statute, the adoption of close relatives is arguably not a perversion of the family unit since the adoption has only legal consequences. Moreover, the trend in the case law is to limit whatever precedent originally existed for such adoptions.⁷⁸

Other criticism of adult adoption has centered on its use for purposes entirely alien to the adoption of children. Surely the purposes behind adopting stepchildren or someone for whom a filial affection has developed are no different from those behind child adoptions. Those who contend that adult adoption is used basically as an estate planning device are correct. But the suggestion that the same result can be better accomplished by expanding the law of property to allow adults to inherit as children is a no more viable alternative. Property law is static in most respects and the concepts relating to inheritance relate back to the English common law. Property law would probably be unable to accommodate a device similar to adult adoption. As it has developed, adult adoption is flexible and can meet the demands of both estate planning and family law.

The most valid criticism is that adult adoption can be used to defeat a testator's desires. At least some of the results of Missouri cases would indicate that this is true. Most of the cases, however, only allow the adoptee to take if the adult adoption statute was in effect when the will was executed,⁷⁹ and the words used in the instrument fail to limit the inheritance to natural born children.⁸⁰ In fact, most of the cases

78. *Minary v. Citizens Fidelity Bank & Trust Co.*, 419 S.W.2d 340 (Ky. 1967); *Pennington v. Citizens Fidelity Bank & Trust Co.*, 390 S.W.2d 671 (Ky. 1965); *Johnson v. Wilson*, 389 S.W.2d 634 (Ky. 1965).

79. *Abramovic v. Bruncken*, 94 Cal. Rptr. 303 (1971); *Williams v. Ward*, 15 Cal. App. 3d 381, 93 Cal. Rptr. 107 (1971); *Brock v. Dorman*, 339 Mo. 611, 98 S.W.2d 673 (1936); *In re Kingsbury*, 192 App. Div. 206, 182 N.Y.S. 559, *aff'd*, 230 N.Y. 580, 130 N.E. 901 (1920); *In re Freeman's Estate*, 40 Pa. Super. 31, 41 (1909).

80. *Schaefer v. Merchants Nat'l Bank*, 160 N.W.2d 318 (1968); *In re Nichol's Trust*, 3 Misc. 2d 898, 241 N.Y.S.2d 854 (1956).

have not frustrated the testator's wishes because the adult adoption statutes were not in effect at the time of the execution of the will. The problem arises because the courts have not uniformly interpreted the language in the will designating the class of people who are to take. If the state statutes were to clarify whether an adopted adult may inherit through the adoptive parent, the lack of uniformity among court interpretations would be alleviated. Vermont has revised its statute in this way.⁸¹ In states allowing adult adoptions, testators should plan for the possibility that an adult adoption will take place many years in the future. It is difficult to gauge the value of adult adoption as an estate planning device because of the vast differences among the statutes and uncertain direction of the courts.

V. CONCLUSION

There is no reason why adult adoption cannot be both a valuable adjunct to regular adoptions and a useful estate planning device safeguarded from abuse. The Uniform Adoption Act⁸² permits adult adoption if the adoptive parent is at least ten years older than the adoptee. At least half of the states provide controls of one sort or another. Some are so stringent⁸³ that they practically eliminate the possibility of using the adoption as an estate planning device, while others do very little except assure that the spouses of the parties to the adoption have given their consent.

Increased specificity among the state statutes would enable those considering adopting an adult to determine prior to initiation of legal proceedings whether the act will have the desired effect. Georgia revised its statute in 1967 to eliminate a provision which maintained the pre-adoption status of the adopted adult with respect to persons other than the adopted parents. Now the statute⁸⁴ provides that the adoptive parents cannot inherit that which was inherited by the adult from his blood relatives. The statute explicitly provides that the adopted adult is allowed "to inherit under the laws of descent and distribution in the absence of a will and to take under the provisions of any instrument, of testamentary gift, bequest, devise or legacy unless expressly excluded

81. VT. STAT. ANN. tit. 15, § 448 (1958).

82. UNIFORM ADOPTION ACT § 18; M. LEAVY, LAW OF ADOPTION 75 (3d Ed. 1968).

83. IDAHO CODE ANN. § 16-1501 (Supp. 1969).

84. GA. CODE ANN. § 74-420 (Supp. 1970).

therefrom." In 1971, New Mexico revised its adult adoption statute to eliminate the old requirements that the adult be unmarried and childless and that the adoptive parent be at least fifteen years older than the adoptee. These recent enactments along with the almost unanimous provisions for adult adoption elsewhere indicate that adult adoption is here to stay and becoming less restricted. This is not to say that the number of adult adoptions will increase in the future, but rather that the statutes will be available for use. Yet, for the device to be useful, effective, and free from abuse, the need for further statutory provision is clear.

Suggestions for reform include clarifying whether an adopted adult is to inherit through the adoptive parents in a given state. Further safeguards from abuse can be implemented so that the testator's intents are not frustrated. The courts will always have difficulty with the interpretation of terms in wills and trusts, and there is little that can be done to eliminate this problem.