Advancement and Ademption by Satisfaction: An Empirical Study of Parental Intent

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INTRODUCTION

The law of succession allows parents to decide whether they would like to give absolute lifetime gifts to their children or subtract lifetime gifts from their children's inheritances. The two doctrines that operate to implement this choice are advancement and ademption by satisfaction. Advancement governs distributions in intestacy and ademption by satisfaction governs transfers made under wills.

Both doctrines allow courts to determine through evidence whether a parent intended a lifetime gift to his or her child to be in addition to or in lieu of an inheritance. An advancement is a gift made by a donor during life to a donee with the intent that the gift replace what the donee is to receive under intestate succession upon the donor's death.[1] Ademption by satisfaction occurs when a testator gives a lifetime gift to a donee, subsequent to the date of creating a will, with the intent that the gift be in lieu of the legacy.[2]

This paper makes three claims. First, it presents empirical evidence suggesting that parents generally intend to treat lifetime gifts to children as in addition to, rather than advances on, what they are to receive at death. Second, this paper argues as a matter of policy that lawmakers should allow extrinsic evidence to determine whether parents intend lifetime gifts to be advances or absolute transfers. Finally, this paper argues that the doctrines of advancement and ademption by satisfaction should be condensed into a single, internally consistent doctrine, thereby avoiding pointless inconsistencies between them.

PART I

Presumptions: Do Parents Intend to Give Equal or Unequal Shares to Children?

Early Legislation

Advancement

The doctrine of advancement is purely of statutory origin and must be determined on a state by state basis.[3] Early American advancement legislation was modeled after the first advancement statute contained in the English statute of distributions of 1670.[4] The English statute of distributions provided that one third of the intestate estate shall go to the wife of the intestate.[5] The rest shall be divided "by equall portions to and amongst the Children of such persons dyeing intestate" except for "Children who . . . shall be advanced by the Intestate in his Life time by portion or portions equall to the share which shall by such distribution be allotted to the other Children."[6] The source of the advancement provision in the English statute of distributions is unknown.[7]

English courts treated all gifts made by the decedent to his or her children during life as advancements except gifts of small sums and gifts made for support.[8] English courts used a categoric test by looking at objective evidence to determine the nature or purpose of the gift.[9] American courts rejected the English categoric test and instead determined whether a lifetime gift was an advancement by analyzing whether the decedent's intent was to make an advancement or absolute gift.[10] Since early advancement legislation did not have presumptions to help courts to determine the intent of the decedent, courts created their own.[11]

For example, when a parent gave a substantial lifetime gift to one of their children, it was presumed he or she intended to make an advancement.[12] Not all substantial lifetime gifts were considered advancements, though. Courts drew a distinction between lifetime gifts given for

pleasure and lifetime gifts given to establish the child in life.[13] Gifts given for pleasure were presumed to be absolute gifts, while gifts given for the purpose of establishing a child in life were presumed to be advancements.[14] For example, wedding gifts made from parent to child were usually held substantial and made for the purpose of establishing the child in life.[15] Courts also considered the wealth of the parent to determine whether a gift should be charged as an advancement.[16] If a gift was of small value relative to the wealth of the parent, the court was more likely to regard it as a gift for pleasure,[17] whereas a gift made by a person of limited means would more likely be judged an advancement.

In contrast, courts did not consider gifts for the maintenance and support of a child as intended to establish a child in life. Parents have a legal obligation to support their minor children, and many parents conceive that duty as one that continues later in life.[18] Similarly, parents have a legal duty to educate their minor children which many parents extend to undergraduate and graduate school. Money spent for that purpose was not considered an advancement.[19]

Ademption by Satisfaction

The doctrine of ademption by satisfaction originated with ecclesiastical courts and later the courts of chancery.[20] Courts used presumptions to determine whether a testator intends a lifetime gift to satisfy a legacy. When a parent gave a lifetime gift to his or her child subsequent to making a bequest, the court presumed that the lifetime gift was in satisfaction of the bequest.[21] This presumption hinged on there being a parent-child relationship and that the testator had more than one child, thus raising the issue of equalization among children.

Courts also considered whether the amount of the legacy as stated in the will and the lifetime gift were proportional. When the subsequent payment by the testator was greater than or

equal to the legacy, then the legacy was presumed to be satisfied.[22] If subsequent payment was less than the legacy, then it adeemed *pro tanto*.[23] Further, when a testator bequeathed a legacy for a particular purpose and then carried out that purpose during his or her lifetime, there was a presumption that it was intended as a satisfaction.[24]

Modern Legislation

Contrarily, modern statutory law rests on the assumption that parents act advertently when they make lifetime gifts. As the drafters of the Uniform Probate Code (UPC) posit, "[m]ost inter vivos transfers today are intended to be absolute gifts or are carefully integrated into a total estate plan."[25] This presumption leads to unequal shares in the estate, as parents provide individually for the lifetime needs of their children without disturbing the underlying estate plan.

Advancement

Forty-four states follow the UPC's proposal for advancement and presume that lifetime gifts are absolute.[26] Only Kansas, Mississippi, and Virginia still presume substantial lifetime gifts are advancements.[27] Kentucky presumes that any lifetime gift by a parent or grandparent to a descendant is an advancement, if the lifetime gift was made with a view to a settlement in life and not for purposes of maintenance and education.[28] Louisiana generally presumes that all lifetime gifts that parents give their children are advancements.[29] In Louisiana, lifetime gifts preclude a child from receiving anything further from the estate, unless the parent expressly made the lifetime gift to the child as an advantage over his or her siblings.[30]

Interestingly, Kansas provides that an advance that exceeds the amount allowable by way of intestate succession does not need to be refunded to the estate.[31] There seems to be an understanding in this state that parents may intend to give their children disproportionate shares of their estate. Connecticut is the sole state that does not have a statute covering the doctrine of

advancement. Connecticut case law indicates a gift from parent to child is not enough to establish an advancement—there must be evidence of such intention "beyond the unexplained act" such as declarations of the parent.[32]

Ademption by Satisfaction

Twenty-nine states follow the UPC proposal for ademption by satisfaction and presume lifetime gifts to be absolute.[33] In contrast, Kentucky and West Virginia presume that a satisfaction occurs where testators give their child or other beneficiary a lifetime gift subsequent to executing a will benefiting them in cases where parol or other evidence indicates that the testator intended to make a satisfaction.[34] The nineteen remaining states do not have ademption by satisfaction statutes but most of these states contain case law concerning satisfaction.[35]

Ten state courts hold that if the testator is a parent or stands *in loco parentis* to the legatee, a lifetime gift made after executing a will is presumed to be in satisfaction of the bequest to the legatee.[36] Several jurisdictions qualify this presumption by holding that the lifetime gift to the child must be of the same general nature and generally equal in size to the bequest.[37] The presumption is rebuttable by evidence that the parent wished his or her child to take both the lifetime gift and bequest.[38]

Six jurisdictions hold that if a testator gives a lifetime gift to a stranger subsequent to executing a will benefiting him or her, then no presumption of satisfaction arises.[39] Any beneficiary other than one who is a child or for whom testator assumed legal duties of a parent is regarded as a stranger.[40] For example, aunts, uncles, and grandparents are considered strangers unless they stand *in loco parentis* to the child.[41] In contrast, Tennessee rejects the parent-child presumption because it suggests that testators have greater affection for strangers than their own children.[42]

Eight states hold that a legacy is adeemed when the legacy and the subsequent lifetime gift are made for the same purpose.[43] For example, there may be a satisfaction where a transfer of stock and a devise are both made with the purpose of rewarding faithful attendance.[44] Maryland further refines this rule, by noting the lifetime gift must not be substantially different in kind from the legacy.[45]

Five jurisdictions hold that a satisfaction is presumed where the testator conveys the devisee the same land which was devised to him or her in the will.[46] Finally, Iowa holds that no satisfaction occurs where the testator is fulfilling a legal obligation or duty, such as a divorce decree satisfying the property rights between the parties as they existed at that time.[47] Notwithstanding the foregoing presumptions, eight states hold that presumptions may be overcome with evidence showing that the testator did not intend a satisfaction.[48]

Connecticut places greater emphasis on evidence of a testator's intent and less on presumptions to aid the courts in determining whether a lifetime gift is in satisfaction. In *Cowles v. Cowles*, the court held there is a satisfaction of a devise when there is express proof that the testator intends a satisfaction.[49] Arkansas, Louisiana, Mississippi, New Hampshire, and Wyoming have no cases on point regarding the framework for the doctrine of ademption by satisfaction.

Policy Considerations

The doctrines of advancement and ademption by satisfaction are rooted in the presumption that parents intend for their children to share equally in their estate.[50] This presumption rests on the idea that parents have a natural affection toward all their children.[51] Granting children equal shares promotes equity and helps prevent disharmony between siblings. But the modern trend in legislation toward a presumption that lifetime gifts are absolute suggests

an alternative scenario—that parents do not intend to treat their children equally, given disparate needs (or, perhaps, dutifulness to parents).[52]

Relations between parent and children as well as between siblings are particularly vulnerable during the distribution of the parent's estate.[53] Money is a way for children to verify their parent's love and approval so unequal inheritances could exasperate sibling resentments that have been brewing for a lifetime. For those parents who nonetheless wish to assist (or reward) one child more than another, while avoiding disharmony within the family, making use of lifetime gifts seems logical. This approach allows parents to appear "even handed" in the distribution of their estates while allowing them the freedom to distribute their resources according to the disparate needs (or dutifulness) of each child. Wills are public documents, thus children may affirm that they are equally loved when they receive equally sized inheritances. Lifetime gifts on the other hand, are private transfers. Children do not have the same sort of informational access to those transfers. Therefore, parents may give lifetime gifts to each child as they see fit with less worry of causing rifts within the family. [54]

Parents who make lifetime transfers to children still run the risk that word of them will leak back to a sibling. Yet many families are secretive about these matters. A study of 650 families demonstrated that two-thirds of Americans with at least $3 million in assets have not talked to their children about their wealth or never will.[55] Evidence also shows that whereas many parents give unequal gifts to their children during life, more than two-thirds of parents leave equal inheritances to each of their children.[56]

Empirical Data

Hence, we may conclude, theory suggests the coequal plausibility of the early and modern legislative approaches to advancement. A presumption of advancement for children conforms with the assumption that parents prefer to treat their children equally. A presumption against advancement conforms to the assumption that parents wish to benefit needy (or dutiful) children in a covert manner while maintaining superficial equality in their estate plans.

In order to determine which approach better reflects the typical intent of parents, we need empirical evidence. This paper presents the results of the first empirical study ever undertaken to establish parental preferences regarding the treatment of lifetime gifts. I conducted a survey on March 3, 2019, for a period of two weeks, through Qualtrics, an online questionnaire system. The survey included a total of one thousand and thirty-two respondents. The survey focused on parents giving substantial lifetime gifts to their children because advancements are mostly made to children.[57] Further, the doctrine of advancements is designed to produce equality between children so the survey tests whether parents intend to treat their children equally or in the alternative as the UPC suggests, unequally.

The survey asked respondents how many children they have in order to narrow the study to respondents with more than one child. The survey categorized respondents according to those that have a will, living trust, or neither to determine if intent varies as a result of different estate planning methods. To test whether parents intend to give equal or unequal portions of their estate to each of their children the survey asked: “Let’s assume you made a substantial gift to one of your children -- but not to other children -- during your lifetime. For example, you gave one of your children money for a house. Would you want that amount to be subtracted from their inheritance upon your death? Or would you want that amount to be in addition to what they

would receive upon your death?" The two last sentences of the question containing the words "subtracted from" and "in addition to" were alternated in order to control for question-order bias.

Survey Results for Respondents with More Than One Child				
	Will	Living Trust	Intestacy	Total
Respondents				
Respondents that believe lifetime gifts should be an advancement or satisfaction of a legacy:	46 out of 98 respondents, 48.94%	13 out of 34 respondents, 40%	76 out of 186 respondents, 40.85%	135 out of 318 respondents, 42%
Respondents that believe lifetime gifts should be absolute:	52 out of 98 respondents, 51.05%	21 out of 34 respondents, 60%	110 out of 186 respondents, 59.14%	183 out of 318 respondents, 57.55%

Among the one thousand and thirty-two total respondents, three hundred and eighteen respondents had more than one child. Within this subset of respondents, a clear majority of 57.55% answered that they intend lifetime gifts to their children during life to be absolute. For respondent with wills, 51.05% believed lifetime gifts should be absolute. For respondents with living trust, 60% believed lifetime gifts should be absolute. Finally, 59.14% of respondents without a will or living trust believed that lifetime gifts should be absolute. Although the sample size is small, these data suggest that most parents do not intend to give their children equal portions of their entire estate.

To align with the intent of the majority of parents, states should adopt the UPC proposal that lifetime gifts are presumed to be absolute.

PART II

Evidentiary Issue: What Should a Donor Have to Do to Override the Rule That Gifts Are Absolute?

Legislation

Most states used to determine whether a lifetime gift was an advancement or satisfaction, as opposed to an absolute transfer, through extrinsic evidence.[58] Extrinsic evidence can take the form of oral declarations by the transferor, actions by the transferor, and the circumstances surrounding the transfer. Today, however, the trend among the states is to follow the UPC, which requires written evidence to rebut the presumption that lifetime gifts are intended to be absolute. Under the UPC, a lifetime gift that the decedent gave to an heir is treated as an advancement only if "(i) the decedent declared in a contemporaneous writing, or the heir acknowledged in writing that the gift is an advancement, or (ii) the decedent's contemporaneous writing or the heir's written acknowledgement otherwise indicates that the gift is to be taken into account in computing the division and distribution of the decedent's intestate estate." [59] Likewise, under the UPC, a lifetime gift to the beneficiary under a will is treated as a satisfaction only if "(i) the will provides for deduction of the gift, (ii) the testator declared in contemporaneous writing that the gift is in satisfaction of the devise or that the value is to be deducted from the value of the devise, or (iii) the devisee acknowledged in writing that the gift is in satisfaction of the devise or that its value is to be deducted from the value of the devise." [60]

Advancement

Forty-one states follow the UPC and require a writing to prove that a lifetime gift is an advancement.[61] Twenty of these states contain a writing requirement that is taken almost verbatim from the UPC.[62] Others provide variations on the UPC provisions. For example, Vermont's advancement legislation provides a lifetime gift is an advancement if the decedent

declares the gift is an advancement in a signed writing executed in the presence of two disinterested persons or the gift is acknowledged in a signed writing as an advancement by the recipient.[63] South Carolina similarly requires a contemporaneous writing signed by the decedent or a signed written acknowledgement by the recipient.[64] Georgia requires the decedent to declare an advancement in a signed writing within thirty days of making the transfer or the recipient to acknowledge the same in a signed writing at any time.[65] Wisconsin does not require that the decedent's writing declaring an advancement be contemporaneous with the gift.[66]

Seven states allow extrinsic evidence to determine whether a lifetime gift is advancement.[67] Among these states, Iowa, Kansas, and Mississippi have no cases construing their respective advancement statutes. Kentucky considers testimony, formal documents such as deeds, and surrounding circumstances to determine whether a lifetime gift is absolute or an advancement.[68] For example, if a parent makes wedding gifts of the same amount to each child without any view to a portion or settlement in life, then a Kentucky court is likely to find that there is no advancement.[69] Further, if a parent paid his child's hospital bill or attorney's fees to help a child in trouble, then a court is likely to find the payment was not an advancement.[70] When there is testimony from the donee indicating that the donor's gift of money to the donee was made to equalize the children's shares, a court will likely hold the gift to be an advancement.[71]

North Carolina considers written, oral and circumstantial evidence to determine whether an advancement has been made.[72] For example, in *Snyder v. Duncan*, the daughter signed a writing expressly stating that her father paid the purchase price for a tract of land conveyed to her.[73] Although the father did not sign the writing, the court held that the transfer constituted an advancement because it was consistent with the father's actions in providing for his children

during his life. Interestingly, North Carolina allows courts to disregard donors' intent when they are incompetent and order advancements be made to children or grandchildren when the donor possess property in excess of what is needed for self-support.[74]

Finally, Washington considers oral testimony and Virginia considers the express intention of the donor.[75] Louisiana turns the UPC on its head and requires a parent or grandparent to expressly indicate that the lifetime gift to a child or grandchild is absolute otherwise it is treated as an advancement.[76] Connecticut does not have an advancement statute but allows extrinsic evidence in the form of oral, written and circumstantial evidence to determine whether a lifetime gift is an advancement.[77]

Ademption by Satisfaction

Twenty-nine states follow the UPC and require a writing to prove ademption by satisfaction.[78] Fourteen of these states have copied the UPC writing requirement almost line-by-line.[79] Three others vary from the UPC by not requiring the testator to make a writing contemporaneous with the gift.[80] In contrast, Kentucky and West Virginia's legislation allow extrinsic evidence to prove the donor's intent to make a satisfaction.[81]

Nineteen states have no ademption by satisfaction statutes but a majority of these states have case law on point.[82] Eight of these state courts consider extrinsic evidence to determine whether the testator intends a lifetime gift to satisfy a devise.[83] For example, the Iowa court in the *Matter of the Estate of Condon*, held there was a satisfaction where the donor wrote "will payment" on the check to donee, the check amount was for the exact amount in the will and there was testimony indicating donor's intent to make a satisfaction.[84] Maryland explicitly rejects the UPC writing requirement and implies that such a requirement would deter courts from upholding testator's intent which is "the heart of ademption by satisfaction."[85] By contrast, six jurisdictions

lean toward the use of written evidence rather than extrinsic evidence.[86] Arkansas, Louisiana, New Hampshire, Washington and Wyoming do not have cases that determine whether extrinsic evidence may be used to show a satisfaction.

Policy Considerations

Advancements, a Form of Conditional Gifts

Advancements and conditional gifts function similarly because each doctrine considers the donor's intent at the time of making the lifetime gift.[87] The death of the donor can be analogized to a "condition" for an advancement. On the other hand, advancements are different from conditional gifts because conditional gifts are premised upon the performance of a condition by the donee for the gift to become his or her property while advancements do not require performance by the donee.[88] Still, the issues under the doctrines overlap. The doctrine of advancement asks whether the donor intended to make an absolute gift or an advancement. In the case of a conditional gift, the issue is whether the donor intended to make an absolute gift or a conditional gift.[89]

To determine whether the donor intended a lifetime gift to be absolute or conditional, courts consider any express declarations by the donor at the time of making the gift or the surrounding circumstances.[90] In this context, it seems inconsistent to limit proof of an advancement to written evidence, as a majority of the states do. Still, the limitation to written evidence could reflect concerns about fraudulent claims and increased litigation. In the case of a conditional gift, the donor is usually available to testify on his or her behalf, while for an advancement, the donor is unavailable to testify, aggravating the risk of fraud.

Achieving Donative Intent Versus Fraud Concerns

It seems that two policy concerns are in tension here. Extrinsic evidence allows courts to evaluate all the evidence and circumstances that may shed light on donative intent. Yet, a rule that allows specific factual inquiry into donative intent could lead to admitting evidence that is prone to misinterpretation and fraudulent manufacture.[91] And here, the unavailability of the decedent aggravates the tension: the decedent cannot take the stand to contradict perjured testimony.

Ultimately, admitting extrinsic evidence appears the better approach. As the empirical evidence presented earlier shows, the majority of testators who wish to give absolute lifetime gifts to their children is a relatively slender majority. Thus, a rule that excludes extrinsic evidence would likely thwart quite a few decedents that intend to give lifetime gifts in satisfaction of devises to children. In this way, the UPC writing requirement tends to overgeneralize donors' intent.

Further, a writing requirement could frustrate donative intent in many cases due to ignorance; uncounseled donors may be unaware of the requirement. *Walters v. Stewart* illustrates this principle because both friends and family in this case testified that the father intended the $50,000 lifetime gift to his son as an advancement against his son's inheritance.[92] At the time of gift, the Georgia legislature did not require a writing for an advancement, and the father failed to execute one; nevertheless, the state probate code was revised in 1998 to require a writing, and because the father died subsequently, this revision applied to the distribution of his estate.[93] Although there was no writing to prove an advancement, the court of appeals reversed the lower court's summary judgment in favor of the son. The court felt that the son, as an executor had a fiduciary duty to acknowledge that the transfer was an advancement, if that was his father's

intention. [94] This court realized that failing to account for extrinsic evidence might frustrate donative intent when there were numerous testimonies of an advancement.

Moreover, writings are open to fraudulent manufacture just as extrinsic evidence is. If legislatures truly wish to guard against fraud in light of the decedent's inability to testify, they must impose requirements similar to those that protect against fraudulent wills. One state has elected to go down this path. Vermont requires the donor to sign a writing in the presence of and subscribed by two disinterested witnesses that declares that a gift was an advancement.[95] This approach sets up the best available shield against fraud. But whether the risk of fraud is so great as to justify such an excessively harsh rule is unclear—it could lay a huge trap for uninformed donors.

PART III

The Doctrines of Advancement and Ademption by Satisfaction Should Be Merged

This paper at times has not differentiated between advancement and ademption by satisfaction because the two doctrines are functionally equivalent. As this section will demonstrate, they should be merged. The UPC observes that the difference in terminology between an advancement and ademption by satisfaction is insignificant.[96] If the two doctrines serve the same purposes and are governed by the same policies, then why distinguish them at all?

In fact, in a several states, formal merger has already occurred.[97] But that is not the case under the UPC. Although largely coordinated, the UPC provisions covering advancement and ademption by satisfaction display one discrepancy. The advancement provision provides that "if the recipient of the property fails to survive the decedent, the property is not taken into account in computing the division and distribution of the decedent's intestate estate."[98] In contrast, the ademption by satisfaction provision provides that "if the devisee fails to survive the testator, the

gift is treated as a full or partial satisfaction of the devise."[99] The ademption by satisfaction provision further elaborates on this discrepancy in its comment:

> [I]f a devisee to whom a gift in satisfaction is made predeceases the testator . . . his or her descendants . . . take the same devise as their ancestor would have taken had the ancestor survived the testator; if the devise is reduced by reason of this section as to the ancestor, it is automatically reduced as to the devisee's descendants. In this respect, the rule in testacy differs from that in intestacy.[100]

The UPC gives no reason for the discrepancy between the doctrines of advancement and ademption by satisfaction. Since the doctrine of advancement and ademption by satisfaction are default rules that represent the probable intent of the decedent, it makes sense to treat the rule of satisfaction and advancements differently only if evidence shows that intestate and testate decedents have different preferences in connection with predeceasing donees. The drafters of the UPC fail to present evidence of such a discrepancy, and logic makes it unlikely: Why would the donor's intent in regard to predeceasing donees hinge on whether they were heirs or devisees?

Policy: A Closer Inspection of the Origins of the UPC Discrepancy

This discrepancy first appeared in the second tentative draft of the UPC written in July 22 – August 1, 1968—the first draft that included sections covering both advancement and ademption.[101] In that draft, the discordant rule for a predeceasing donee named as a beneficiary under the will showed up in the accompanying comment, which stated: "If a devisee to whom an advancement is made predeceases the testator and his issue take[s] under 2-603, they take the same devise as their ancestor; if the devise is reduced by reason of his section as to the ancestor, it is automatically reduced as to his issue."[102]

By the 1989 UPC draft, the drafters moved the discordant rule from the comment to "subsection (c)" of the ademption by satisfaction provision.[103] In the 1990 conference for amendments to the UPC, the Chairman presented subsection (c) of the ademption by satisfaction

provision and asked whether there were any questions or comments on the section.[104] There evidently were no concerns about this amendment because the conference proceeded on to the next section without a word. Like the discrepancy in the UPC today, the draft gave no reason for the discrepancy. Since the discrepancy is present in early drafts of the UPC, this may suggest that the UPC drafters imported the discrepancy from pre-existing state law and that there is simply no policy reason for it.

Interestingly, the Restatement contains reasoning for why recipients of advancements must survive the decedent for the advancement to take effect. The basis for this rule under the Restatement is that "the heir must have received the advanced property in order to be charged with the advancement."[105] Thus, the intestate estate will be distributed as if the advancement never took place. This reasoning appears equally applicable to the descendants of predeceasing devisees taking bequests in lieu of those devisees. Yet, the ademption by satisfaction provision in the Restatement reproduces the discrepancy and this time gives no reason for allowing a satisfaction to occur where the devisee failed to survive the testator.[106]

Since early advancement legislation was modeled after the advancement provision in the English statute of distributions, the states' advancement legislation ignored the issue of whether heirs take in place of a donee that predeceases a donor. The English statute of distributions made no mention of whether grandchildren should account for advancements in the event the donee predeceased the donor.[107]

Kansas took a different approach than the UPC in *Meenen v. Meenen*. This court held that a grandson that inherited from his grandmother in place of his father was subject to advancements his father received.[108] The court stated that if the grandson was not subject to his father's debts or advancements, then the grandson would be in a better position than his father

would have been had he survived the grandmother. The court further contended that the grandson has stepped into his father's shoes and should not be permitted to get a greater share than his father would have taken. This analysis suggests that the discrepancy should be resolved in favor of the rule appearing in the UPC's section of ademption by satisfaction rather than the other way around. Why should an heir be entitled to a greater share than the predeceasing heir whose shoes they stand in? It is strange to allow heirs to inherit a greater share when they take by right of representation.

Solution

To avoid pointless discrepancies between the doctrines of advancement and ademption by satisfaction, states should uniformly merge these doctrines into one. That has already occurred in four states: Georgia, New York, Oregon and Wisconsin have adopted statutes that merged the doctrines of advancement and ademption by satisfaction into one.[109] In these states, advancements are taken into account in computing the recipient's issue's share if the recipient predeceases the decedent irrespective of whether they take as heirs or beneficiaries under a will. Sixteen other states that maintain separate doctrines take into account advancements to calculate the recipient's issue's share if the recipient predeceases the decedent. [110]

CONCLUSION

In conclusion, states should uniformly adopt the UPC proposal and presume that lifetime gifts are absolute. A clear majority of respondents, 57.55%, answered that they intend lifetime gifts to their children to be absolute. Further, states should adopt a rule that allows extrinsic evidence to determine whether parents intend to make an advancement or absolute transfer to their children. A writing requirement could hinder donors that intend to make an advancement but are unaware of the writing requirement and thus fail to execute a writing. Finally, states

should uniformly merge the doctrines of advancement and ademption by satisfaction into one internally consistent doctrine.

[1] Restatement (Third) of Property (Wills & Don. Trans.) § 2.6 (1999).
[2] *Id*. § 5.4 (1999).
[3] *Pilkington v. Wheat*, 51 S.W.2d 42, 44 (Mo. 1932); *Kiger v. Terry*, 26 S.E. 38, 39 (N.C. 1896).
[4] Restatement (Third) of Property (Wills & Don. Trans.) § 2.6 (1999).
[5] Statutes of the Realm (1625-1680), p. 720.
[6] *Id*.
[7] Harold I. Elbert, Advancements: I, 51 Mich. L. Rev. 665, 666 (1952-1953).
[8] Restatement (Third) of Property (Wills & Don. Trans.) § 2.6 (1999).
[9] *Id*.
[10] *Id*.
[11] *Johnson v. Belden*, 20 Conn. 322, 325 (Conn. 1850); *Packard v. Packard*, 149 P. 404, 405 (Kan. 1915).
[12] *See Watt v. Lee*, 191 So. 628, 631 (Ala. 1939); *Goodwin v. Parnell*, 65 S.W. 427, 427 (Ark. 1901); *Sewell v. Everett*, 49 So. 187, 188 (Fla. 1909); *Neal v. Neal*, 111 S.E. 387, 388 (Ga. 1922); *Howard v. Howard*, 28 S.E. 648 (Ga. 1897); *Wenbert v. Lincoln Nat. Bank & Tr. Co.*, 61 N.E.2d 466, 469 (Ind. App. 1945); *Culp v. Wilson*, 32 N.E. 928, 928–29 (Ind. 1893); *Ruch v. Biery*, 11 N.E. 312, 314 (Ind. 1887); *In re Wiese's Estate*, 270 N.W. 380, 382 (Iowa 1936); *Fell v. Bradshaw*, 215 N.W. 595, 596 (Iowa 1927); *In re Sells' Estate*, 197 N.W. 922, 923 (Iowa 1924); *O'Connell v. O'Connell*, 36 N.W. 764, 765 (Iowa 1888); *Burns v. Burns*, 123 P. 720, 722 (Kan. 1912); *Pitts v. Metzger*, 187 S.W. 610, 611 (Mo. Ct. App. 1916); *Ray v. Loper*, 65 Mo. 470, 472 (1877); *Gordon v. Barkelew*, 6 N.J. Eq. 94, 101 (Ch. 1847); *Thompson v. Smith*, 75 S.E. 1010, 1011 (N.C. 1912); *Ex parte Griffin*, 54 S.E. 1007, 1007 (N.C. 1906); *Johnson v. Patterson,* 81 Tenn. 626, 632–33 (1884); *Johnson v. Mundy*, 97 S.E. 564, 566–67 (Va. 1918).
[13] *Page v. Elwell*, 253 P. 1059, 1064–65 (Colo. 1927); *Shiver v. Brock*, 55 N.C. 137, 137 (1855); *Ison v. Ison*, 26 S.C. Eq. 15, 18–19 (S.C. App. Eq. 1852).
[14] *Page v. Elwell*, *supra* note 13; *Shiver v. Brock*, *supra* note 13; *Ison v. Ison*, *supra* note 13.
[15] *Carter's Ex'rs v. Rutland,* 2 N.C. 97, 97–98 (N.C. Super. L. & Eq. 1794); *Wenbert v. Lincoln Nat. Bank & Tr. Co.*, *supra* note 12.
[16] *McDonald v. McDonald*, 86 Mo. App. 122, 127–28 (1900); *McCaw v. Blewit*, 7 S.C. Eq. 90, 102–03 (S.C. App. L. & Eq. 1827).
[17] *McDonald v. McDonald, supra* note 16; *McCaw v. Blewit, supra* note 16.
[18] *Bissell v. Bissell*, 94 N.W. 465, 466 (Iowa 1903).
[19] *Garrett v. Colvin*, 26 So. 963, 963 (Miss. 1899); *In re Riddle's Estate*, 19 Pa. 431, 433 (1852).
[20] Barney Barstow, Ademption by Satisfaction, 6 Wis. L. Rev. 217, 225 (1931); *Richardson v. Eveland*, 18 N.E. 308, 310–11 (Ill. 1888).
[21] *Roberts v. Weatherford*, 10 Ala. 72, 75 (1846); *Van Houten v. Post*, 32 N.J. Eq. 709, 712 (Prerog. Ct), *rev'd,* 33 N.J. Eq. 344 (1880); *De Graaf v. Teerpenning*, 1876 WL 11219 (N.Y. Sup. Ct. 1876), *rev'd sub nom. De Groff v. Terpenning* (N.Y. Gen. Term. 1878); *Moore v. Hilton*, 39 Va. 1, 2 (1841).
[22] *Roberts v. Weatherford*, *supra* note 21; *Van Houten v. Post*, *supra* note 21*; De Graaf v. Teerpenning*, *supra* note 21; *Moore v. Hilton*, *supra* note 21.
[23] *See Moore v. Hilton*, *supra* note 21.
[24] *Associated Professors of Loyola Coll. of City of Baltimore v. Dugan*, 113 A. 81, 83 (Md. 1921); *Hine v. Hine*, 1863 WL 4134 (N.Y. Gen. Term. 1863).
[25] Unif. Probate Code § 2-109 cmt.

[26] Ala. Code § 43-8-49; Alaska Stat. Ann. § 13.12.109; Ariz. Rev. Stat. Ann. § 14-2109; Ark. Code Ann. § 28-9-216; Cal. Prob. Code § 6409; Colo. Rev. Stat. Ann. § 15-11-109; Del. Code Ann. tit. 12, § 509; Fla. Stat. Ann. § 733.806; Ga. Code Ann. § 53-1-10; Haw. Rev. Stat. Ann. § 560:2-109; Idaho Code Ann. § 15-2-110; Iowa Code Ann. § 633.224; 755 Ill. Comp. Stat. Ann. 5/2-5; Ind. Code Ann. § 29-1-2-10; Me. Rev. Stat. tit. 18-C, § 2-108; Md. Code Ann., Est. & Trusts § 3-106; Mass. Gen. Laws Ann. ch. 190B, § 2-109; Mich. Comp. Laws Ann. § 700.2109; Minn. Stat. Ann. § 524.2-109; Mo. Ann. Stat. § 474.090; Mont. Code Ann. § 72-2-119; N.C. Gen. Stat. Ann. § 29-24; Neb. Rev. Stat. Ann. § 30-2310; Nev. Rev. Stat. Ann. § 151.120; N.H. Rev. Stat. Ann. § 561:13; N.J. Stat. Ann. § 3B:5-13; N.M. Stat. Ann. § 45-2-109; N.Y. Est. Powers & Trusts Law § 2-1.5 (McKinney); N.D. Cent. Code Ann. § 30.1-04-10; Ohio Rev. Code Ann. § 2105.051; Okla. Stat. Ann. tit. 84, § 225; Or. Rev. Stat. Ann. § 112.135; 20 Pa. Stat. and Cons. Stat. Ann. § 2109.1; 33 R.I. Gen. Laws Ann. § 33-1-11; S.C. Code Ann. § 62-2-110; S.D. Codified Laws § 29A-2-109; Tenn. Code Ann. § 31-5-101; Tex. Est. Code Ann. § 201.151; Utah Code Ann. § 75-2-109; Vt. Stat. Ann. tit. 14, § 1723; Wash. Rev. Code Ann. § 11.04.041; W. Va. Code Ann. § 42-1-3g; Wis. Stat. Ann. § 854.09; and Wyo. Stat. Ann. § 2-4-108.

[27] Kan. Stat. Ann. § 59-510; Miss. Code. Ann. § 91-1-17; and Va. Code Ann. § 64.2-206.

[28] Ky. Rev. Stat. Ann. § 391.140; *Chism v. Chism*, 176 S.W.2d 101, 103 (Ky. 1943).

[29] La. Civ. Code Ann. art. 1228; *Succession of Fanz*, 627 So. 2d 715, 718 (La. Ct. App. 1993).

[30] La. Civ. Code Ann. art. 1228.

[31] Kan. Stat. Ann. § 59-510.

[32] *Johnson v. Belden*, *supra* note 11, at 326.

[33] Ala. Code § 43-8-231; Alaska Stat. Ann. § 13.12.609; Ariz. Rev. Stat. Ann. § 14-2609; Cal. Prob. Code § 21135; Colo. Rev. Stat. Ann. § 15-11-609; Fla. Stat. Ann. § 732.609; Ga. Code Ann. § 53-1-10; Haw. Rev. Stat. Ann. § 560:2-609; Idaho Code Ann. § 15-2-612; Me. Rev. Stat. tit. 18-C, § 2-609; Mass. Gen. Laws Ann. ch. 190B, § 2-609; Mich. Comp. Laws Ann. § 700.2608; Minn. Stat. Ann. § 524.2-609; Mo. Ann. Stat. § 474.425; Mont. Code Ann. § 72-2-619; Neb. Rev. Stat. Ann. § 30-2350; Nev. Rev. Stat. Ann. § 151.161; N.J. Stat. Ann. § 3B:3-46; N.M. Stat. Ann. § 45-2-609; N.D. Cent. Code Ann. § 30.1-09-12; N.Y. Est. Powers & Trusts Law § 2-1.5 (McKinney); Okla. Stat. Ann. tit. 84, § 185; Or. Rev. Stat. Ann. § 112.135; S.C. Code Ann. § 62-2-610; S.D. Codified Laws § 29A-2-609; Tex. Est. Code Ann. § 255.101; Utah Code Ann. § 75-2-609; Va. Code Ann. § 64.2-417; and Wis. Stat. Ann. § 854.09.

[34] Ky. Rev. Stat. Ann. § 394.370 and W. Va. Code Ann. § 41-3-2.

[35] These states include, Arkansas, Connecticut, Delaware, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Mississippi, New Hampshire, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Vermont, Washington, and Wyoming.

[36] *In re Jean I. Willey Tr.*, No. CIV.A. 5935-VCG, 2011 WL 3444572, at *6 (Del. Ch. Aug. 4, 2011); *Richardson v. Eveland*, *supra* note 20; *Knowles v. Knowles*, 29 Ill. App. 124, 127 (Ill. App. Ct. 1888); *Weston v. Johnson*, 48 Ind. 1, 4 (1874); *Swails v. Swails*, 98 Ind. 511, 515–16 (1884); *State ex rel. Brown v. Crossley*, 69 Ind. 203, 209 (1879); *In re Estate of Condon*, 715 N.W.2d 770 (Iowa Ct. App. 2006); *In re Youngerman's Estate*, 114 N.W. 7, 8 (Iowa 1907); *In re Mikkelsen's Estate*, 211 N.W. 254, 255 (Iowa 1926); *YIVO Inst. For Jewish Research v. Zaleski*, 874 A.2d 411, 417 (Md. 2005); *Rhein v. Wheltle*, 109 A.2d 923, 926 (Md. 1954); *Wallace v. Dubois*, 4 A. 402, 403 (Md. 1886); *Colley v. Britton*, 123 A.2d 296, 300 (Md. 1956); *Selby v. Fid. Tr. Co.*, 51 A.2d 822, 825 (Md. 1947); *King v. Sellers*, 140 S.E. 91, 92 (N.C. 1927); *Grogan v. Ashe*, 72 S.E. 372, 373 (N.C. 1911); *Bowen v. Bowen*, 34 Ohio St. 164, 182–83 (1877); *Miner v. Atherton's Ex'r*, 35 Pa. 528, 536 (1860); *Appeal of Swoope*, 27 Pa. 58, 61 (1856); *In re Stine's*

Estate, 16 Pa. Super. 12, 14 (1901); *In re Strand's Estate*, 3 Pa. D. & C.3d 457, 463 (Pa. Com. Pl. 1976); *Hayes v. Welling*, 96 A. 843, 850 (R.I. 1916); *Holmes v. Holmes*, 36 Vt. 525, 535 (1864).
[37] *State ex rel. Brown v. Crossley*, *supra* note 36; *Colley v. Britton*, *supra* note 36; *King v. Sellers*, *supra* note 36; *Grogan v. Ashe*, *supra* note 36; *Richardson v. Eveland*, *supra* note 20, at 44 (qualifying the parent-child presumption by holding that a satisfaction takes place when a parent bequeaths a legacy to a child and afterwards gives a lifetime gift to the child, which is *ejusdem generis*); *Appeal of Swoope*, *supra* note 36; *In re Stine's Estate*, *supra* note 36.
[38] *In re Jean I. Willey Tr.*, *supra* note 36, at *7; *Richardson v. Eveland*, *supra* note 20; *YIVO Inst.*, *supra* note 36; *Rhein v. Wheltle*, *supra* note 36; *Miner v. Atherton's Ex'r, supra* note 36, at 536-37; *Appeal of Swoope*, *supra* note 36; *In re Strand's Estate*, *supra* note 36.
[39] *Richardson v. Eveland*, *supra* note 20; *Swails v. Swails*, *supra* note 36; *In re Estate of Condon*, *supra* note 36; *In re Youngerman's Estate*, *supra* note 36, at 9; *YIVO Inst.*, *supra* note 36; *Rhein v. Wheltle*, *supra* note 36; *King v. Sellers*, *supra* note 36; *Grogan v. Ashe*, *supra* note 36; *In re Ritter's Estate*, 10 Pa. Super. 352, 355 (1899); *In re Alexander's Estate*, 83 Pa. Super. 210, 211–12 (1924); *In re Todd's Estate*, 85 A. 843, 843–45 (Pa. 1912).
[40] *In re Todd's Estate*, *supra* note 39.
[41] *Swails v. Swails*, *supra* note 36; *Johnson v. McDowell*, 134 N.W. 419 (Iowa 1912).
[42] *Evans v. Beaumont,* 72 Tenn. 599, 603–04 (1880); *Scholze v. Scholze*, 2 Tenn. App. 80, 96–97 (1925).
[43] *Marshall v. Rench*, 3 Del. Ch. 239, 255 (1868); *In re Kreitman's Estate*, 386 N.E.2d 650, 652 (Ill App. Ct. 1979); *In re Youngerman's Estate*, *supra* note 36, at 9; *Trustees of Baker Univ. v. Trustees of Endowment Ass'n of Kansas State Coll. of Pittsburg*, 564 P.2d 472, 480 (Kan. 1977); *YIVO Inst.*, *supra* note 36, at 420; *Rhein v. Wheltle*, *supra* note 36; *Howze v. Mallett*, 57 N.C. 194, 195 (1858); *Estate of Parks v. Hodge*, 623 N.E.2d 227, 230 (Ohio Ct. App. 1993); *Bool v. Bool*, 135 N.E.2d 372, 376 (Ohio 1956); *Stichtenoth v. Toph*, 1890 WL 382, at *6 (Ohio Super. 1890); *In re Lefever's Estate*, 39 Pa. Super. 189, 194 (1909); *In re Alexander's Estate*, *supra* note 39; *Baily v. Herkes*, 1829 WL 2667, at *3 (Pa. 1829); *In re Johnson's Estate*, 201 Pa. 513, 51 A. 342 (1902); *In re Johnson's Estate,* 1901 WL 3440, at *2 (Pa. Orph. 1901), *aff'd*, 201 Pa. 513, 51 A. 342 (1902); *Appeal of Keiper*, 1888 WL 4020, at *2 (Pa. Orph. 1888), *aff'd*, 124 Pa. 193, 16 A. 744 (1889).
[44] *In re Alexander's Estate*, *supra* note 39; *see also Howze v. Mallett*, *supra* note 43 (holding delivery by the testator to the legatee of the specific thing bequeathed will satisfy the legacy).
[45] *YIVO Inst.*, *supra* note 36, at 420; *see also In re Youngerman's Estate*, *supra* note 36, at 9 (holding the contract and provisions of the will were different and thus the contract was not a substitute for the devise).
[46] *Marshall v. Rench*, *supra* note 43; *In re Hall's Estate*, 110 N.W. 148, 149 (Iowa 1907); *Rice v. Rice*, 125 N.W. 826, 827 (Iowa 1910); *Parnham v. Steele*, 5 Pa. D. & C.2d 145, 153 (Pa. Com. Pl. 1956); *Evans v. Beaumont*, *supra* note 42, at 601; *In re Estate of Frank*, 189 P.3d 834, 839 (Wash. Ct. App. 2008).
[47] *In re Brown's Estate*, 117 N.W. 260, 263 (Iowa 1908).
[48] *In re Pridmore's Estate*, 187 Ill. App. 301, 306 (Ill. App. Ct. 1914); *In re Brown's Estate*, *supra* note 47, at 262-63; *Trustees of Baker Univ. v. Trustees of Endowment*, *supra* note 43; *Rhein v. Wheltle*, *supra* note 36, at 925; *In re Yingling's Estate*, 13 Pa. D. & C.2d 399, 403 (Pa. Orph. 1958); *Indus. Tr. Co. v. Davies*, 58 A.2d 399, 400–01 (R.I. 1948); *In re Estate of Hume*, 984 S.W.2d 602, 604 (Tenn. 1999); *In re Estate of Miller*, 158 S.W.3d 429, 434 (Tenn. Ct. App. 2004); *Holmes v. Holmes*, *supra* note 36.

[49] *Cowles v. Cowles*, 13 A. 414, 415 (Conn. 1887).
[50] Elbert *supra* note 7, at 683; *see also* Mary L. Fellows, Concealing Legislative Reform in the Common-Law Tradition: The Advancements Doctrine and the Uniform Probate Code, 37 Vand. L. Rev. 671, 674 (1984) (every intestacy statute contains a distribution pattern to ensure equality among the decedent's children and the purpose of the advancement doctrine is to further this equality principle).
[51] Harold I. Elbert, Advancements: II, 52 Mich. L. Rev. 231, 249 (1953-1954).
[52] *See Packard v. Packard*, *supra* note 11, at 406 (illustrating that a parent may wish to give a substantial absolute gift to one child due to his disability to bring him on balance with the rest of the children).
[53] Kerry Hannon, *How to Talk About the Family Money*, N.Y. Times (Nov. 6, 2019, https://www.nytimes.com/2019/11/06/your-money/family-money-discussions.html) (A survey of about 2,000 Americans ages 25 to 70 showed that close to 70 percent of sibling money disagreements focused on issues like how their inheritance from their parents is divided, which child attends their parents more and if parents are fair in their financial support of the children).
[54] Paul Sullivan, *4 Reasons Parents Don't Discuss Money (and Why They Should)*, N.Y. Times (Aug. 2, 2019, https://www.nytimes.com/2019/08/02/your-money/parenting-wealth-discussions.html) (A study showed that 67 percent of American parents with more than $3 million in assets had quietly made lifetime gifts in a trust or set aside money to pay for their children's school, buy a home or supplement their income).
[55] *Id*.
[56] B. Douglas Bernheim & Sergei Severinov, Bequests as Signals: An Explanation of the Equal Division Puzzle, 111 J. Pol. Econ. 733 (2003).
[57] Harold I. Elbert, Advancements: III, 52 Mich. L. Rev. 535, 564 (1953-1954).
[58] Elbert, *supra* note 7, at 665-66; *see also* Barstow, *supra* note 20, at 218.
[59] UPC § 2-109.
[60] UPC § 2-609.
[61] Ala. Code § 43-8-49; Alaska Stat. Ann. § 13.12.109; Ariz. Rev. Stat. Ann. § 14-2109; Ark. Code Ann. § 28-9-216; Cal. Prob. Code § 6409; Colo. Rev. Stat. Ann. § 15-11-109; Del. Code Ann. tit. 12, § 509; Fla. Stat. Ann. § 733.806; Ga. Code Ann. § 53-1-10; Haw. Rev. Stat. Ann. § 560:2-109; Idaho Code Ann. § 15-2-110; 755 Ill. Comp. Stat. Ann. 5/2-5; Ind. Code Ann. § 29-1-2-10; Me. Rev. Stat. tit. 18-C, § 2-108; Md. Code Ann., Est. & Trusts § 3-106; Mass. Gen. Laws Ann. ch. 190B; § 2-109; Mich. Comp. Laws Ann. § 700.2109; Minn. Stat. Ann. § 524.2-109; Mo. Ann. Stat. § 474.090; Mont. Code Ann. § 72-2-119; Neb. Rev. Stat. Ann. § 30-2310; Nev. Rev. Stat. Ann. § 151.120, N.H. Rev. Stat. Ann. § 561:13; N.J. Stat. Ann. § 3B:5-13; N.M. Stat. Ann. § 45-2-109; N.Y. Est. Powers & Trusts Law § 2-1.5 (McKinney); N.D. Cent. Code Ann. § 30.1-04-10; Ohio Rev. Code Ann. § 2105.051; Okla. Stat. Ann. tit. 84, § 225; Or. Rev. Stat. Ann. § 112.135; 20 Pa. Stat. and Cons. Stat. Ann. § 2109.1; 33 R.I. Gen. Laws Ann. § 33-1-11; S.C. Code Ann. § 62-2-110; S.D. Codified Laws § 29A-2-109; Tenn. Code Ann. § 31-5-101; Tex. Est. Code Ann. § 201.151; Utah Code Ann. § 75-2-109; Vt. Stat. Ann. tit. 14, § 1723; W. Va. Code Ann. § 42-1-3g; Wis. Stat. Ann. § 854.09; and Wyo. Stat. Ann. § 2-4-108.
[62] Alaska Stat. Ann. § 13.12.109; Ariz. Rev. Stat. Ann. § 14-2109; Colo. Rev. Stat. Ann. § 15-11-109; Haw. Rev. Stat. Ann. § 560:2-109; Ind. Code Ann. § 29-1-2-10; Me. Rev. Stat. tit. 18-C, § 2-108; Mass. Gen. Laws Ann. ch. 190B, § 2-109; Mich. Comp. Laws Ann. § 700.2109; Minn. Stat. Ann. § 524.2-109; Mont. Code Ann. § 72-2-119; N.H. Rev. Stat. Ann. § 561:13; N.J. Stat. Ann. § 3B:5-13; N.M. Stat. Ann. § 45-2-109; N.D. Cent. Code Ann. § 30.1-04-10; 33 R.I. Gen.

Laws Ann. § 33-1-11; S.D. Codified Laws § 29A-2-109; Tenn. Code Ann. § 31-5-101; Tex. Est. Code Ann. § 201.151; Utah Code Ann. § 75-2-109; and W. Va. Code Ann. § 42-1-3g.
[63] Vt. Stat. Ann. tit. 14, § 1723.
[64] S.C. Code Ann. § 62-2-110.
[65] Ga. Code Ann. § 53-1-10.
[66] Wis. Stat. Ann. § 854.09.
[67] Iowa Code Ann. § 633.224; Kan. Stat. Ann. § 59-510; Ky. Rev. Stat. Ann. § 391.140; Miss. Code. Ann. § 91-1-17; N.C. Gen. Stat. Ann. § 29-24; Wash. Rev. Code Ann. § 11.04.041; Va. Code Ann. § 64.2-206.
[68] *Remmele v. Kinstler*, 298 S.W.2d 680, 682 (Ky. 1957); *Popplewell v. Flanagan*, 244 S.W.2d 445, 450 (Ky. 1951); *Damron v. Bartley*, 194 S.W.2d 73, 75 (Ky. 1946); *Chism v. Chism*, *supra* note 28, at 76.
[69] *Popplewell v. Flanagan*, *supra* note 68.
[70] *Popplewell v. Flanagan*, *supra* note 68; *Chism v. Chism*, *supra* note 28, at 76.
[71] *Popplewell v. Flanagan*, *supra* note 68, at 450–51.
[72] *Snyder v. Duncan*, 191 N.C. App. 399, 663 S.E.2d 13 (2008); *see also Lassiter v. Lassiter*, 190 S.E.2d 283, 284 (N.C. Ct. App. 1972).
[73] *Snyder v. Duncan*, *supra* note 72.
[74] N.C. Gen. Stat. Ann. § 35A-1322.
[75] *In re Spadoni's Estate*, 430 P.2d 965, 968 (Wash. 1967); *Feld v. Priebe*, No. HQ-111512-1, 2004 WL 2999114, at *1 (Va. Cir. Ct. Dec. 22, 2004).
[76] La. Civ. Code Ann. art. 1228.
[77] *Johnson v. Belden*, *supra* note 11, at 326–27; *Chapman v. Allen*, 14 A. 780, 781 (Conn. 1888).
[78] Ala. Code § 43-8-231; Alaska Stat. Ann. § 13.12.609; Ariz. Rev. Stat. Ann. § 14-2609; Cal. Prob. Code § 21135; Colo. Rev. Stat. Ann. § 15-11-609; Fla. Stat. Ann. § 732.609; Ga. Code Ann. § 53-1-10; Haw. Rev. Stat. Ann. § 560:2-609; Idaho Code Ann. § 15-2-612; Me. Rev. Stat. tit. 18-C, § 2-609; Mass. Gen. Laws Ann. ch. 190B, § 2-609; Mich. Comp. Laws Ann. § 700.2608; Minn. Stat. Ann. § 524.2-609; Mo. Ann. Stat. § 474.425; Mont. Code Ann. § 72-2-619; Neb. Rev. Stat. Ann. § 30-2350; Nev. Rev. Stat. Ann. § 151.161; N.J. Stat. Ann. § 3B:3-46; N.M. Stat. Ann. § 45-2-609; N.Y. Est. Powers & Trusts Law § 2-1.5; N.D. Cent. Code Ann. § 30.1-09-12; Okla. Stat. Ann. tit. 84, § 185; Or. Rev. Stat. Ann. § 112.135; S.C. Code Ann. § 62-2-610; S.D. Codified Laws § 29A-2-609; Tex. Est. Code Ann. § 255.101; Utah Code Ann. § 75-2-609; Va. Code Ann. § 64.2-417; and Wis. Stat. Ann. § 854.09.
[79] Alaska Stat. Ann. § 13.12.609; Ariz. Rev. Stat. Ann. § 14-2609; Cal. Prob. Code § 21135; Colo. Rev. Stat. Ann. § 15-11-609; Haw. Rev. Stat. Ann. § 560:2-609; Me. Rev. Stat. tit. 18-C, § 2-609; Mass. Gen. Laws Ann. ch. 190B, § 2-609; Mich. Comp. Laws Ann. § 700.2608; Minn. Stat. Ann. § 524.2-609; Mont. Code Ann. § 72-2-619; N.M. Stat. Ann. § 45-2-609; N.D. Cent. Code Ann. § 30.1-09-12; Or. Rev. Stat. Ann. § 112.135; and Utah Code Ann. § 75-2-609.
[80] Nev. Rev. Stat. Ann. § 151.161; S.D. Codified Laws § 29A-2-609; and Wis. Stat. Ann. § 854.09.
[81] Ky. Rev. Stat. Ann. § 394.370; and W. Va. Code Ann. § 41-3-2.
[82] These states include: Arkansas, Connecticut, Delaware, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Mississippi, New Hampshire, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Vermont, Washington, Wyoming.
[83] *In re Pridmore's Estate*, *supra* note 48, at 307-08; *In re Estate of Condon*, *supra* note 36; *Trustees of Baker Univ. v. Trustees of Endowment*, *supra* note 43, at 265; *YIVO Inst.*, *supra* note

36, at 422; *Caine v. Barnwell*, 82 So. 65, 66 (Miss. 1919); *Grogan v. Ashe*, *supra* note 36, at 374; *Cory v. Lentner*, 1852 WL 2625, at *3 (Ohio Dist. Aug. 1852); *Bowen v. Bowen*, *supra* note 36, at 183; *In re Strand's Estate*, *supra* note 36, at 462; *In re Stine's Estate*, *supra* note 36; *Appeal of Swoope*, *supra* note 36; *Miner v. Atherton's Ex'r*, *supra* note 36, at 536-37.
[84] *In re Estate of Condon*, *supra* note 36; *see also Heileman v. Dakan*, 233 N.W. 542, 544 (Iowa 1930) (receipt made by testator indicated a satisfaction).
[85] *YIVO Inst.*, *supra* note 36, at 419-20.
[86] *Cowles v. Cowles*, *supra* note 49, at 416; *In re Jean I. Willey Tr.*, *supra* note 36, at *7; *Gray v. Bailey*, 42 Ind. 349, 351 (1873); *Swails v. Swails*, *supra* note 36, at 513–14; *Indus. Tr. Co. v. Davies*, *supra* note 48; *Evans v. Beaumont*, *supra* note 42, at 605; *Holmes v. Holmes*, *supra* note 36, at 536-37.
[87] Fellows, *supra* note 50, at 687.
[88] 38 Am. Jur. 2d Gifts § 68.
[89] *Cooper v. Smith*, 2003-Ohio-6083, ¶ 31, 155 Ohio App. 3d 218, 228, 800 N.E.2d 372, 380.
[90] *Id.*
[91] Fellows, *supra* note 50, at 673.
[92] *Walters v. Stewart*, 588 S.E.2d 248, 249 (Ga. Ct. App. 2003).
[93] *Id.* at 475–76.
[94] *Id.* at 476.
[95] Vt. Stat. Ann. tit. 14, § 1723.
[96] UPC § 2-609. Ademption By Satisfaction, cmt.
[97] Ga. Code Ann. § 53-1-10; N.Y. Est. Powers & Trusts Law § 2-1.5; Or. Rev. Stat. Ann. § 112.135; and Wis. Stat. Ann. § 854.09.
[98] UPC § 2-109. Advancements, subsection (c).
[99] UPC § 2-609. Ademption By Satisfaction, subsection (c).
[100] UPC § 2-609. Ademption By Satisfaction, cmt.
[101] Uniform Probate Code §§ 2-113, 2-610 cmt, National Conference of Commissioners on Uniform State Laws, Meeting in its Seventy Seventh Year, Philadelphia, Pennsylvania, July 22 – August 1, 1968.
[102] *Id.* at 2-610. Advancement in Testate Estate; Ademption by Satisfaction, cmt.
[103] Probate Code, National Conference of Commissioners on Uniform State Laws, Draft for December 1-3, 1989 Meeting, 2-609. Ademption by Satisfaction, subsection (c).
[104] National Conference of Commissioners on Uniform State Laws, Proceedings in Committee of the Whole Uniform Probate Code, Article II, July 13 – 20, 1990, p. 74.
[105] Restatement (Third) of Property (Wills & Don. Trans.) § 2.6, cmt. h (1999).
[106] Restatement (Third) of Property (Wills & Don. Trans.) § 5.4, cmt. h (1999).
[107] *See supra* p. 4.
[108] *Meenen v. Meenen*, 308 P.2d 158, 166–67 (Kan. 1957); *see also Appeal of Storey*, 83 Pa. 89, 97 (1877) (holding grandchildren should be charged for advancements made to their parent if they take through a deceased parent by representation).
[109] Ga. Code Ann. § 53-1-10; N.Y. Est. Powers & Trusts Law § 2-1.5; Or. Rev. Stat. Ann. § 112.135; and Wis. Stat. Ann. § 854.09.
[110] Illinois - 755 Ill. Comp. Stat. Ann. 5/2-5; Indiana - Ind. Code Ann. § 29-1-2-10; Iowa Code Ann. § 633.226; Kan. Stat. Ann. § 59-510; Ky. Rev. Stat. Ann. § 391.140; La. Civ. Code Ann. art. 1228; Md. Code Ann., Est. & Trusts § 3-106; Mass. Gen. Laws Ann. ch. 190B, § 2-109; Miss. Code. Ann. § 91-1-17; Nev. Rev. Stat. Ann. § 151.150; N.C. Gen. Stat. Ann. § 29-29;

Okla. Stat. Ann. tit. 84, § 227; S.C. Code Ann. § 62-2-110; Vt. Stat. Ann. tit. 14, § 1726; Va. Code Ann. § 64.2-206; and Wash. Rev. Code Ann. § 11.04.041.