

Memorandum 84-31

Subject: Study L-640 - Trusts (Validity of Trust for Indefinite Beneficiary or Purpose)

At the last meeting the Commission tentatively approved the proposal in Memorandum 84-19 (copy attached) to harmonize the law of trusts and powers by recognizing the validity of certain trusts created with indefinite beneficiaries or for indefinite or benevolent purposes. However, before considering the question in detail, the Commission requested the staff to draft statutory language implementing the proposal for the purpose of discussion.

The guiding principle in the draft statute is to validate dispositions in trust that would be valid as dispositions by power of appointment. It makes no sense to defeat a decedent's intended disposition in trust by the sophistry "since the court cannot force a trustee to act, the court will not allow the trustee to act."

The staff proposes the following section:

§ . Designation of beneficiary

- . (a) A trust is not created unless there is a beneficiary.
(b) The requirement of subdivision (a) is satisfied by any one of the following provisions in the trust:
- (1) A beneficiary or class of beneficiaries that is definitely ascertainable.
 - (2) A beneficiary or class of beneficiaries that is sufficiently described so that it can be reasonably determined that some person meets the description or is within the class.
 - (3) A grant of a power to the trustee or some other person to select the beneficiaries based on a standard or in the discretion of the trustee or other person.

This provision would permit a trust for "my friends" or for "persons chosen by my trustee." The point here is that the donor would be able to make such dispositions by way of a power of appointment, and so should not be frustrated because a trust form was used. It should be remembered that on occasion courts have upheld dispositions in trust form as if the decedent had given a power of appointment to the "trustee". See, e.g., In re Estate of Davis, 13 Cal. App.2d 64, 68, 56, P.2d 584 (1936).

An overlapping question is the invalidation of trusts for indefinite purposes. This usually involves trusts that have indefinite beneficiaries because the beneficiary is defined in terms of a "benevolent" rather than an approved "charitable" purpose. As reported in Memorandum 84-19, a gift to a person to dispose of "as he may see fit" can fail if the word "trust" is used but may be effective if it is not judged as a trust.

The staff proposes the following provision relating to trust purposes:

§ . Trust for indefinite or general purposes

_____. A trust created for an indefinite or general purpose is not invalid for that reason if it can be determined with reasonable certainty that a particular use of the trust property either does or does not come within the stated purpose.

Under this provision, it is likely that the Sutro trust discussed in Memorandum 84-19 (at p. 5) would have been upheld.

Respectfully submitted,

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