

Memorandum 85-19

Subject: Study L-640 - Trusts (Jurisdiction and Venue)

This memorandum presents a redrafted set of provisions relating to jurisdiction and venue of proceedings involving trusts. At the November 1984 meeting these provisions were considered in the form attached to Memorandum 84-29, and were numbered as Sections 4600 to 4603. The numbers have been changed in this revised draft to fit into the tentative outline attached to Memorandum 84-93 on the agenda for this meeting.

Basis of Jurisdiction (Draft §§ 1103-1104)

When this subject was considered at the November 1984 meeting, the Commission expressed the view that the statute should seek to maximize the jurisdiction over trusts of the superior court sitting in probate. The draft statute implements this policy. See draft Section 1104 in Exhibit 1. The draft statute reaffirms that any constitutional basis of jurisdiction is available in the area of trust administration. Draft Section 1104 is drawn to be consistent with Code of Civil Procedure Section 410.10 which reads: "A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States." In brief, this means that a minimum contacts standard determines whether an exercise of jurisdiction is consistent with the constitution. Thus the basic standards of fairness and substantial justice of *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), now govern both in personam jurisdiction and in rem jurisdiction. *Shaffer v. Heitner*, 433 U.S. 186 (1977). By tying into the constitutional standard, draft Section 1104, like Code of Civil Procedure Section 410.10, provides the broadest possible jurisdiction. (More detail is provided in the comment to draft Section 1104.)

Draft § 1102. "Principal place of administration of the trust" defined

At the November 1984 meeting the Commission asked the staff to see whether the definition of "principal place of administration of the trust" might be improved. The staff has considered other standards, but we have retained the existing standard (drawn from Probate Code Section 1138.3(a)) in draft Section 1102 as the best alternative. One factor in this decision is that the consequences of the concept of the principal

place of administration are not as significant in the revised draft because Section 1104 recognizes that jurisdiction may be exercised on other bases than reflected in Section 1103 which depends upon finding the principal place of administration. Hence, the pressure on this definition is significantly reduced.

However, the Commission may still find this definition inadequate in the area of venue. See draft Section 1105. Again we note that this is existing law, and the staff is unaware of any particular problems that have arisen under the venue provisions of Probate Code Section 1138.3(a). In the case of a testamentary trust, draft Section 1105 provides an optional venue in the county where the estate is administered, so the determination of the principal place of administration of the trust may be unnecessary. In any event, the Commission may want to consider revising the venue provisions without the "day-to-day records" language. Consider the following from the Texas Trust Code:

§ 115.002. Venue

(a) The venue of an action under Section 115.001 . . . is determined according to this section.

(b) If there is a single, noncorporate trustee, venue is in the county in which the trustee's residence is located.

(c) If any trustee is a corporation, venue is in the county in which the corporation's principal office is located, or, if two or more corporations are trustees of the trust, venue is in the county in which the principal office of any of the corporations is located.

(d) If there are two or more trustees, none of which is a corporation, venue is in the county in which the principal office of the trust is maintained.

The staff thinks that the existing law, continued in draft Section 1102, is both more specific and more flexible than this Texas provision. A more detailed venue provision drawn from the same source as the California provision is Indiana Trust Code Section 30-4-6-3 which reads:

30-4-6-3 Venue

Sec. 3. (Venue)

(a) Unless the terms of the trust provide otherwise, venue in this state for matters arising under this article shall be exclusively in the county in which the principal place of administration of the trust is located. The principal place of administration of a trust is that usual place at which the records pertaining to the trust are kept or, if there is no such place, the trustee's residence. If there are co-trustees, the principal place of administration is either that of the corporate trustee, if there is one (1); that of the individual trustee who has custody of the records,

if there is one (1) such person and there is no corporate co-trustee; or, if neither of these alternatives apply, that of any of the co-trustees.

(b) If the principal place of administration is maintained in another state, venue in this state of any matters arising under this article shall be in the county stipulated in writing by the parties to the trust or, if there is no such stipulation, in the county where the trust property, or the evidence of the trust property, which is the subject of the action is either situated or generally located.

. . . .

This section focuses on the trust records in several of its provisions, but omits the "day-to-day" language that appears in the Uniform Probate Code and existing California law.

Respectfully submitted,

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EXHIBIT 1

Draft

Probate Code §§ 1100-1105

4996

PART 5. JUDICIAL PROCEEDINGS CONCERNING TRUSTS

CHAPTER 1. JURISDICTION AND VENUE

§ 1100. Subject matter jurisdiction

1100. (a) The superior court sitting in probate has exclusive jurisdiction of proceedings concerning the internal affairs of trusts as provided in this division.

(b) The superior court sitting in probate has concurrent jurisdiction of the following:

(1) Actions and proceedings to determine the existence of trusts.

(2) Actions and proceedings by or against creditors or debtors of trusts.

(3) Other actions and proceedings involving trustees and third persons.

Comment. Section 1100 is new and is drawn from the first sentence of Uniform Probate Code Section 7-201(a). Subdivision (a) provides for exclusive jurisdiction in the superior court in matters involving the internal affairs of trusts. See Chapter 3 (commencing with Section 1130). Jurisdiction was in the superior court under former Section 1138.3. Subdivision (a) also supersedes former Section 1123.7.

Subdivision (b) is new and is drawn from Uniform Probate Code Section 7-204.

The reference to the superior court sitting in probate in this section means the department of the court that deals with probate matters; it does not mean a court of limited power. See Section 1101 (superior court sitting in probate as full-power court).

37005

§ 1101. Probate court as full-power court

1101. The superior court sitting in probate has all the powers of the superior court in proceedings properly brought before it pursuant to this division.

Comment. Section 1101 is a new provision that makes clear that the probate court, when considering trust cases brought before it under this division, has all the powers of the superior court exercising its

general jurisdiction. Hence, while preserving the division of business among different departments of the superior court, this section rejects the limitation on the powers of the probate court that has been frequently cited in appellate decisions. See, e.g., *Copley v. Copley*, 80 Cal. App.3d 97, 106, 145 Cal. Rptr. 437 (1978).

15346

§ 1102. "Principal place of administration of trust" defined

1102. (a) If a trust has a single trustee, the "principal place of administration of the trust" is the trustee's usual place of business where the day-to-day records pertaining to the trust are kept or, if none, the trustee's residence.

(b) If the trust has more than one trustee, the "principal place of administration of the trust" is the usual place of business where the day-to-day records pertaining to the trust are kept or, if none, the usual place of business or residence of any of the cotrustees as agreed upon by them or, if none, the residence or place of business of any of the cotrustees.

Comment. Section 1102 continues the substance of the second and third sentences of former Section 1138.3(a).

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§ 1103. Jurisdiction over parties

1103. Subject to Section 1104:

(a) By accepting the trusteeship of a trust having its principal place of administration in this state the trustee submits personally to the jurisdiction of the court under this division.

(b) To the extent of their interests in the trust, all beneficiaries of a trust having its principal place of administration in this state are subject to the jurisdiction of the court under this division.

Comment. Section 1103 is a new provision that is intended to facilitate the exercise of the court's power under this chapter. This section is drawn from Uniform Probate Code Section 7-103. As recognized by the introductory clause, constitutional limitations on assertion of jurisdiction apply to the exercise of jurisdiction under Section 1103. Consequently, appropriate notice must be given to a trustee or beneficiary as a condition of jurisdiction under this section. See, e.g., *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950). Section 1103 is not a limitation on the jurisdiction of the court over the trust, trust property, or parties to the trust. See Section 1104 (general basis of probate court jurisdiction).

§ 1104. Basis of jurisdiction over trust, trust property, and trust parties

1104. The superior court sitting in probate may exercise jurisdiction in proceedings under this division on any basis permitted by Section 410.10 of the Code of Civil Procedure.

Comment. Section 1104 is a new provision that recognizes that the probate court may exercise jurisdiction on any basis that is not inconsistent with the California or United States Constitutions, as provided in Code of Civil Procedure Section 410.10. See generally Judicial Council Comment to Code Civ. Proc. § 410.10. In addition, Section 1103 codifies a basis of personal jurisdiction derived from concepts of presence in the state and consent to jurisdiction. However, personal jurisdiction over a trustee may be exercised where the trustee is found, regardless of the location of the trust property. See *Estate of Knox*, 52 Cal. App.2d 338, 344, 126 P.2d 108 (1942). Similarly, jurisdiction may be exercised to determine matters concerning trust property, particularly land, located in California even if the principal place of administration of the trust is not in California. See Restatement (Second) of Conflict of Laws § 276 & comments (1969); 5 A. Scott, *The Law of Trusts* §§ 644-47, at 4074-83 (3d ed. 1967). But as a general rule the courts of one state cannot directly affect the title to land in another state. See *Hardy v. Hardy*, 164 Cal. App.2d 77, 79, 330 P.2d 278 (1958).

A determination that a California court may exercise jurisdiction is not decisive if the exercise would be an undue interference with the jurisdiction of a court of another state which has primary supervision over the administration of the trust. See *Estate of Knox*, 52 Cal. App.2d 338, 344-48, 126 P.2d 108 (1942); *Schuster v. Superior Court*, 98 Cal. App. 619, 623-28, 277 P. 509 (1929); Restatement (Second) of Conflict of Laws § 267 & comments (1969). This concept of primary supervision in the context of trust administration is a special application of the doctrine of forum non conveniens, which is recognized generally in Code of Civil Procedure Section 410.30.

Where the court has acquired jurisdiction over parties to a trust, jurisdiction continues over the parties and the subject of the proceeding, notwithstanding the removal of a person or trust property, until the conclusion of the action or proceeding concerning the trust. See Code Civ. Proc. § 410.50(b); *cf.* *Maloney v. Maloney*, 67 Cal. App.2d 278, 280, 154 P.2d 426 (1945) (jurisdiction over child custody issue).

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§ 1105. Venue

1105. (a) The proper county for commencement of a proceeding pursuant to this division is the county in which is located the principal place of administration of the trust.

(b) In the case of a testamentary trust, the proper county for commencement of a proceeding pursuant to this division is either the county described in subdivision (a) or the county where the estate is administered.

(c) In other cases, venue is determined by the rules applicable to civil actions generally.

Comment. Subdivision (a) of Section 1105 continues the substance of part of the first sentence of former Section 1138.3(a). See Section 1102 ("principal place of administration of trust" defined).

Subdivision (b) continues the substance of former Section 1138.3(b) and extends the former provision to all testamentary trusts. Subdivision (b) also supersedes the part of former Section 1120(b) relating to jurisdiction over testamentary trusts.

Subdivision (c) provides venue rules applicable in cases described in Section 1100(b) or when jurisdiction over a trust, trust property, or parties to a trust is based on a factor other than those described in subdivisions (a) and (b). See Section 1104 (general basis of jurisdiction). Thus, for example, when the principal place of administration of a trust is in another state, but jurisdiction is proper in California, the general rules governing venue apply. See, e.g., Code Civ. Proc. §§ 392 (real property), 395 (county of defendant's residence). This subdivision is drawn from Uniform Probate Code Section 7-204.