

#L-3013

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06/20/89

Fourth Supplement to Memorandum 89-53

Subject: Study L-3013 - Uniform Statutory Rule Against Perpetuities
(Comments from Professor Bird)

Attached to this supplement is a letter from Professor Gail Boreman Bird opposing adoption of the Uniform Statutory Rule Against Perpetuities in California.

Respectfully submitted,

Stan G. Ulrich
Staff Counsel

EXHIBIT 1UNIVERSITY OF CALIFORNIA
HASTINGS COLLEGE OF THE LAW

CA LAW REV. COMM'N

JUN 20 1989

RECEIVED

GAIL BOREMAN BIRD
Professor of Law

16 June 1989

Mr. John H. DeMouilly
Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto CA 94303-4739

Dear John:

I recently received the tentative recommendation proposing the adoption of the Uniform Statutory Rule Against Perpetuities. I am writing to object to the recommendation. The primary ground for my opposition is that California's current perpetuities statutes are perfectly adequate. The cy pres approach, especially when coupled with California's other reforms of the common law rule, works; litigation has been practically non-existent. In the common parlance, "if it ain't broke, don't fix it."

In his thorough examination and analysis of the various types of possible perpetuities reforms, Professor Bloom reports that nationwide there were only eight perpetuities cases during the period 1978 - 1985: "In effect, there was, on the average, but one relevant perpetuities case per year in the United States." Bloom, Perpetuities Refinement: There Is An Alternative, 62 Wash.L.Rev. 23, 35 (1987). Thus there has hardly been a problem of rampant invalidation of interests under the common law rule. Furthermore, California's cy pres statute (Civil Code Section 715.5) would serve to remedy any problems that might arise.

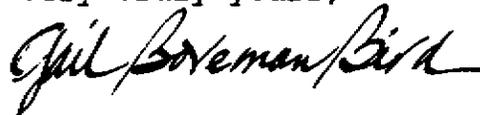
My only suggestion for reform would be to adopt Professor Bloom's suggestion that "[a]nother feature could be added to the cy pres statute, specifically the allowance of extrinsic evidence to ascertain the testator's intent. This measure would ensure better effectuation of the transferor's intent and in the process, would overcome any concern that a judge may arbitrarily and unwittingly

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rewrite a will. Finally, settlement would be encouraged." Id. at 73.

In conclusion, the current California perpetuities rule appears eminently workable and I do not believe that any major change is warranted.

Very truly yours,

A handwritten signature in cursive script that reads "Gail Boreman Bird". The signature is written in dark ink and is positioned below the typed name.

Gail Boreman Bird