

Memorandum 90-54

Subject: Study L-3034 - Gifts in View of Death

At the last meeting, the Commission considered a staff draft of a *Tentative Recommendation Relating to Gifts in View of Death*. The Commission asked the staff to revise the draft consistent with the Commission's suggestions, and to bring it back for further review.

Attached is a revised staff draft. Unlike the last draft which amended the Civil Code provisions, this draft proposes to put the revised provisions in the Probate Code. They would go in Division 5 (nonprobate transfers). This draft incorporates the decisions and suggestions of the Commission at the last meeting.

Limit to Tangible Personal Property?

A question was raised at the last meeting whether gifts in view of death should be permitted only for tangible personal property, and not for intangible personal property. Intangible personal property includes bank accounts, promissory notes, and shares of corporate stock. See *Ornbaun v. First Nat'l Bank*, 215 Cal. 72, 76, 8 P.2d 470 (1932) (bank account); *Hoxie v. Bryant*, 131 Cal. 85, 90, 63 P. 153 (1900) (promissory note); *Payne v. Elliot*, 54 Cal. 339, 342 (1880) (stock); R. Cunningham & W. Stoebuck, *The Law of Property* § 1.4, at 12 (1984).

The courts have upheld gifts in view of death of the following kinds of property:

(1) Negotiable bills of exchange of a national bank. *Edwards v. Wagner*, 121 Cal. 376, 53 P. 821 (1898).

(2) A promissory note payable to the order of decedent but not endorsed. *Druke v. Heiken*, 61 Cal. 346 (1882); see *Delleplane v. Hynes*, 83 Cal. App. 604, 609, 257 P. 180 (1927).

(3) Endorsed corporate stock. *Wakefield v. Wakefield*, 37 Cal App. 2d 648, 99 P.2d 1105 (1940).

(4) Unendorsed corporate stock. *Braun v. Brown*, 14 Cal. 2d 346, 94 P.2d 348 (1939); *Grane v. Reardon*, 217 Cal. 531, 20 P.2d 49 (1933); see *In re Estate of Escolle*, 134 Cal. App. 473, 25 P.2d 860 (1933).

(5) A bank deposit book. *Braun v. Brown*, 14 Cal. 2d 346, 94 P.2d 348 (1939). The gift is good even when bank regulations require a written order or assignment and the decedent has not done so. *Donovan v. Hibernia Sav. & Loan Soc'y*, 90 Cal. App. 489, 499-504, 265 P. 995 (1928); *Dellepiane v. Hynes*, 83 Cal. App. 604, 609-15, 257 P. 180 (1927).

(6) Unendorsed certificate of deposit, whether or not the conditions of transfer printed on the certificate require endorsement. *Mellor v. Bank of Willows*, 173 Cal. 454, 460-61, 160 P. 567 (1916).

(7) Unendorsed registered United States bonds. *Vandor v. Roach*, 73 Cal. 614, 15 P. 354 (1887).

(8) Currency. *Odone v. Marzocchi*, 34 Cal. 2d 431, 436-38, 211 P.2d 297 (1949).

In upholding the gift in view of death in these cases, the courts gave effect to the clear intent of the decedent, since a donee must establish a gift in view of death by clear and convincing evidence. *Knight v. Tripp*, 121 Cal. 674, 678, 54 P. 267 (1898); *Broderick v. Koehler*, 92 Cal. App. 2d 813, 817, 207 P.2d 1070 (1949); *Yates v. Dundas*, 80 Cal. App. 2d 468, 474, 182 P.2d 305 (1947); *Barham v. Khoury*, 78 Cal App. 2d 204, 211, 177 P.2d 579 (1947); *Lo Presti v. Manning*, 125 Cal. App. 442, 445, 13 P.2d 1002 (1932).

Although litigation was required to establish the donee's claim, the cases reached fair and equitable results. The staff sees no sound policy reason to overturn these cases by limiting gifts in view of death to tangible personal property.

The staff recommends the Commission approve the attached TR for distribution for comment.

Respectfully submitted,

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