

First Supplement to Memorandum 82-107

Subject: Study L-625 - Probate Law and Procedure (Rules of Construction of Wills)

In the basic Memorandum (82-107), the staff advised that Professor Niles suggested we contact Professor Edward Halbach to get his view whether we should go beyond the proposed revisions to Section 204.090 and try to draft comprehensive rules of construction for determining when the membership of a class is determined, depending on the particular kind of class gift. Professor Halbach is a nationally recognized expert in this area of law, and he has published extensively on this subject. See, e.g., Halbach, Future Interests: Express and Implied Conditions of Survival, 49 Calif. L. Rev. 297 (1961).

The staff has discussed this matter with Professor Halbach. It is Professor Halbach's view that it would be a valuable addition to California law to have a comprehensive set of rules, perhaps drawn from the Restatement of Property, drawn to cover nontestamentary as well as testamentary instruments. These rules should probably go in the Civil Code. Professor Halbach is willing to draft a proposed statute for Commission consideration, although it would be several months before he has time to devote to this project.

The staff recommends that the Commission authorize the Executive Secretary to execute on behalf of the Commission a contract with Professor Halbach. The contract would provide a compensation of \$50 a day for attending Commission meetings and for the payment of travel expenses subject to state regulations governing payment of travel expenses. The amount of the contract would be \$1,000 and the contract would terminate on June 30, 1984. We have not discussed these terms with Professor Halbach. However, in view of the limited funds available, we would not recommend that any greater amount be devoted to this contract. We believe that the contract will be satisfactory to Professor Halbach.

Respectfully submitted,

John H. DeMouilly
Executive Secretary