#L-640 7/30/84

First Supplement to Memorandum 84-25

Subject: Study L-640 - Trusts (Comments on Oral Trusts)

Memorandum 84-25 contains a discussion of the proposition that the state of the law would be improved if oral express trusts were abolished (with no effect on constructive and resulting trusts). Attached as Exhibit 1 is a letter from Albert J. Forn who appears to be reacting to a summary of the original staff memorandum on this subject. Mr. Forn opposes any weakening of the law of oral trusts. However, the example supporting Mr. Forn's opinion seems to involve the degree of formality of trusts since there is a writing at issue. The staff does not see how this writing is supported by the law pertaining to oral trusts. It is reminiscent of the sort of written memorandum that might be found to satisfy the Statute of Frauds. Mr. Forn could still prove by parol evidence that the cryptic "UDT" was intended to create a trust. The staff is resistant to the idea that oral trusts should be preserved in order to perpetuate the successful use of "UDT" as a trust-creation shorthand.

Respectfully submitted,

Stan G. Ulrich
Staff Counsel

Exhibit 1

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July 11, 1984.

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Re: Probate Section Newsletter, July, 1984
Notes From Law Revision Commission

Dear Ms. Merritt:

There is no doubt that a trust may be created in California by an oral declaration. Additionally the Restatement of Trusts authorizes an oral declaration of trusts.

California Civil Code section 852 expressly requires that a trust relating to real property must be in writing. Nowhere is it stated that a trust relating to personal property need be written.

In fact the implication is clear in California Civil Code sections 2216, 2218, 2221, 2253, and 2254 that when a trust is created by words, the words may be merely oral.

Rather than weaken the law as to oral trusts, I would favor adding somewhere (maybe at C. C. 2214 or 2225, both unused numbers) that "A trust not entailing an interest in real property may be created by oral declaration."

This attitude is based on my experience, not on any theory. I have argued before judges who just refused to believe that a trust could be created orally. For example a certificate of shares in the name of "I. M. Smith Trustee UDT DTD 5/15/83 FBO U.R.Smith" would be found void as a trust by some judges because, while "UDT" means "under declaration of trust" and "FBO" means "for the benefit of," no separate written declaration of trust was ever executed. Such a judge would refuse to admit evidence that the particular mutual fund did not provide

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separate printed forms of declaration of trust, or that the fund transferred the proceeds of thousands of such certificates to beneficiaries solely on the strength of this type of legend, or that I. M. Smith said thus and so to the mutual fund salesman when buying the shares.

A judge of this type of mentality needs a stronger more affirmative statute than we now have, and would never even try to grasp the concepts of resulting trust or constructive trust.

Moreover it is not the wealthy person who suffers in this situation. He can afford to appeal from and reverse the trial judge's error, whereas the person whose benefit amounts to only a few thousand dollars has no effective remedy in these circumstances.

Very truly yours,

ALBERT J. FORN

AJF:RR