

First Supplement to Memorandum 86-60

Subject: Study L-1039 - Estate and Trust Code (Distribution of
Interest and Income)

Attached to this Supplement as Exhibit 1 is a report on the basic memorandum (Memo 86-60) of Kenneth Petrulis and Phyllis Cardoza for the Legislative Committee of the Probate, Trust and Estate Planning Section of the Beverly Hills Bar Association, discussed below.

§ 6180. Definitions

Under Section 6180, a devise of \$10,000 is a "general pecuniary devise." The report prefers the term "specific money devise," because the devise is for a specific dollar amount. However, the terms "specific" and "general" refer not to the dollar amount, but rather to the property from which the devise is to be taken. If the devise specifies the particular property to be given, as for example a devise of "my 1948 Hudson automobile," the devise is considered specific. If the devise indicates a dollar amount but does not specify the fund or source from which the money is to be paid, it may be paid from any source, and the devise is considered general. Therefore, the usage in Section 6180 of the terms "general" and "specific" is correct as drafted.

Section 6180 is drawn from existing Section 662. Existing Section 662 defines "demonstrative" devise, while Section 6180 does not. Section 662 also defines "general" devise, while Section 6180 defines the more limited term "general pecuniary devise." The report expresses concern that Section 6180 continues some, but not all, of the definitions of existing Section 662. The reason for this is that the draft statute does not use the terms "demonstrative devise" or "general devise." There is no need to define a term which is not used in the statute.

Perhaps we should have a single set of definitions applicable both to the abatement provisions (Memo 86-59) and to those concerning distribution of interest and income (Memo 86-60). This would require reorganization of the draft statute. In the context of the abatement

memo (Memo 86-59), if the Commission decides to restore the rule requiring general devises to abate before specific ones, we may need a definition of "general devise." The staff will give further thought to definitions after the Commission resolves the policy questions in Memos 86-59 and 86-60.

§ 6186. Commencement of income from testamentary trust

Section 6186 is a new provision which reads:

6186. (a) In case of a devise of income from a general pecuniary devise in trust, the income commences one year from the testator's death.

(b) In case of a devise of income from a residuary devise in trust, the income commences at the date of the testators' death.

The rule of subdivision (a) parallels the rule that a general pecuniary devise, including a general pecuniary devise in trust, does not draw interest until one year after the testator's death (Section 6184), but is inconsistent with the rule under Section 6187 that annuities commence at the testator's death (Section 6187). The staff drafted subdivision (a) to try to provide a rule consistent with existing estate planning instruments, particularly those creating a marital deduction formula bequest.

The report expresses the view that subdivision (a) may not be consistent with existing instruments. If this view is correct, subdivision (a) should either be deleted or redrawn.

Respectfully submitted,

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Exhibit 1

BEVERLY HILLS BAR ASSOCIATION
PROBATE, TRUST AND ESTATE PLANNING SECTION
LEGISLATION COMMITTEE
Phyllis Cardoza, ILA

CALIFORNIA LAW REVISION COMMISSION
Study L-800 - (Probate Code) (Distribution of Interest and Income)
Memorandum 86-60 dated 6-12-86

§6180. Definitions

1. The BHBA Legislative Committee members generally have difficulty with the current scheme of confusing labels for different types of devises. For example, a "general pecuniary devise" has long meant a specific amount of money, whereas "demonstrative devise" has meant a specific amount of money taken from a specific fund. Why should there be a difference? And furthermore, most people understand "specific" to mean just that, and general to mean unspecified, so that calling a specific amount of money "general" is contradictory.

We would suggest the term "specific money devise".

2. Realizing, however, that there is case law using the various terms of art for devises, and notwithstanding the second paragraph of Comment for repealed §662, we suggest that all terms previously used for devises be defined, including (in addition to Subparagraphs (a) through (d) presently listed):

Demonstrative devise

General devise

§6186. Commencement of Income From Testamentary Trust

Our members disagree with Professor Halbach's view that "most practitioners believe that, when the will is silent, income from a testamentary trust does not commence until one year after the testator's death." We fail to see the reasons why there should be different treatment for the income attributable to property given outright, when ownership vests immediately, and income for property given in trust.