

First Supplement to Memorandum 90-139

Subject: Study L-3034 - Gifts in View of Death (Letter from Beverly Hills Bar)

Attached is a letter from the Legislative Committee of the Probate, Trust and Estate Planning Section of the Beverly Hills Bar Association suggesting two revisions to the Tentative Recommendation. The first is to revise Section 5704 to provide that a gift in view of death is revoked by the giver's "full or partial" recovery from the illness or escape from the peril under which it was made. The staff is opposed to this suggestion, because it would automatically revoke a gift in view of death while the giver is still under some mortal danger, probably contrary to the giver's intent. If the giver partially recovers from the illness, the giver may expressly revoke the gift. (Also, five commentators seemed to want to make a gift in view of death less revocable, not more so. See Exhibits 2, 5, 7, 13, and 19 to basic memo.)

The second suggestion of the Beverly Hills Bar is to revise Section 5704 to qualify the protection given to a bona fide purchaser to make that protection "subject to the court's equitable discretion." The staff has a problem with this suggestion also. It would authorize the court to disregard the rights of a bona fide purchaser if equity requires. The dispute will be between two innocent parties -- (1) the bona fide purchaser and (2) either the giver who has survived and wants the gift back, or a deceased giver's unsecured creditor who wants the gift restored to an insolvent estate. The policy of existing law and of the Tentative Recommendation is to protect the bona fide purchaser. The giver created the situation by making the gift. The giver's unsecured creditor, by definition, did not extend credit in reliance on the security of the property given. The staff would not weaken the protection given to the bona fide purchaser.

Respectfully submitted,

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CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Re: Study L-3034, Tentative Recommendation Relating to
Gifts in View of Death

Ladies and Gentlemen:

The Legislative Committee of the Probate, Trust & Estate Planning Section of the Beverly Hills Bar Association has reviewed and discussed the above referenced Tentative Recommendation and has the following suggestions for revision of the draft statute.

1. We suggest paragraph (1) of subdivision (a) of Section 5704 be revised to read as follows: "(1) The giver's full or partial recovery from the illness, or escape from the peril, under the presence of which it was made."
2. We suggest subdivision (d) of Section 5704 be revised to read as follows: "(d) Notwithstanding subdivisions (a) and (b), when the gift has been delivered to the donee, the rights of a bona fide purchaser from the donee before the revocation shall be subject to the court's equitable discretion."

Very truly yours,



LISA C. ALEXANDER, ESQ
Chair of Committee
Legislative Committee
Probate, Trust & Estate Planning Section
Beverly Hills Bar Association

LCA:ks

cc: Kenneth G. Petrulis, Esq., Chair of PTEP Section