2024 HOT CASES:

A Review of Key 2024 Probate Decisions

Contra Costa County Bar Association

Estate Planning & Probate Section

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1

Young v. Hartford (2024) 106 Cal.App.5th 730.

"It's The Final Judgment"

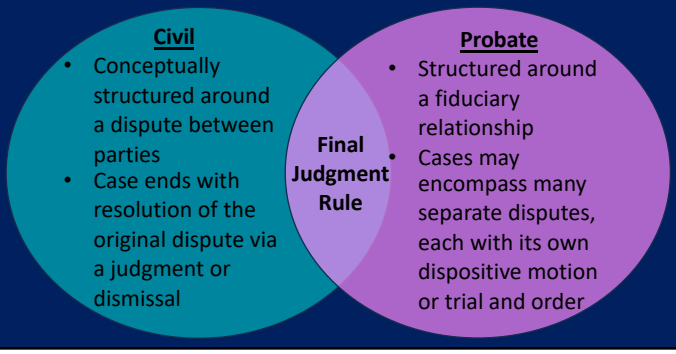
Suspension is not final under PC 15642

2

Young v. Hartford (2024) 106 Cal.App.5th 730.

- "Finality is a powerful theme in appealability jurisprudence."
  - Final Judgment Rule
    - Purpose is "to prevent piecemeal disposition and multiple appeals" which "tend to be oppressive and costly."
    - Concept of finality is handled differently in Probate Court proceedings.

"We emphasize, however, that despite these procedural distinctions, the probate court appealability structure also embraces finality as a concept."



Certain categories of orders are appealable in Probate (Prob. Code, § 1300)

3

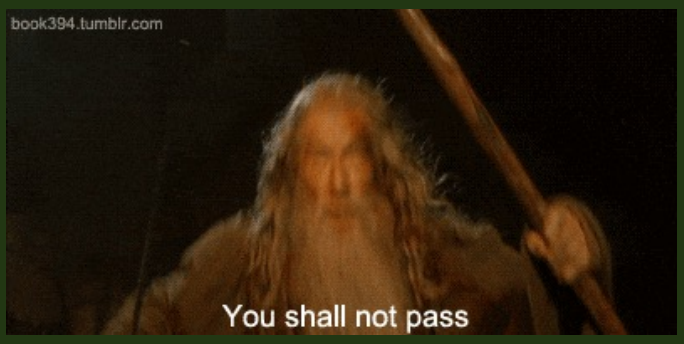
Young v. Hartford (2024) 106 Cal.App.5th 730.

- Scenario:
  - Court suspended the powers of the trustee and trust protector
  - Appeal of the suspension order
  - Affirmed
- Prob. Code, § 15642 is a Removal Statute
  - Suspension ≠ Removal
    - Suspension is a provisional remedy available to the probate court "[i]f it appears to the court that trust property or the interests of a beneficiary may suffer loss or injury pending a decision on a petition for removal of a trustee and any appellate review." (Prob. Code, § 15642(e))
  - Prob. Code, § 1300(b) – removal orders are appealable
  - *Schwartz v. Labow* (2008) 164 Cal.App.4th 417.
    - Concluded in a FN only that suspension of a trustee's powers is not, of itself, appealable under Prob. Code, § 1300(b)
- Held: Suspension of a trustee's powers is a provisional remedy, not a final one.

4

Reich v. Reich (2024) 105 Cal. App. 5th 1282.

"You Shall Not Pass!
(A Non–Probate IRA to an Omitted Spouse)"



Omitted spouse's share does not include proceeds of an IRA when the IRA benes are trusts

5

Reich v. Reich (2024) 105 Cal. App. 5th 1282.

- Basic Principles:
  - Omitted spouse (Prob. Code, § 21600 et seq.) – when one spouse dies w/o providing for other spouse in testamentary instruments that were created before marriage, omitted spouse is statutorily entitled to a share of decedent's estate.
  - IRA is a nonprobate asset (Prob. Code, §§ 5000 et seq., 5011) – look to beneficiary designations
- Scenario:
  - Testamentary trust created 2 subtrusts (i.e. separate trusts) for 2 daughters.
  - IRA beneficiary designations named the two subtrusts as beneficiaries.
  - Trial Court denied the surviving spouse's petitions to include the IRA proceeds in calculating her omitted spouse's share.
- Court of Appeal affirmed.
  - IRA proceeds never pass *through* the decedent's testamentary trust to the beneficiaries' separate trusts.

6

Reich v. Reich (2024) 105 Cal. App. 5th 1282.

- Procedural history:
  - Surviving spouse filed a petition that sought an omitted spouse's share of the decedent's estate.
    - She argued that the proceeds of the decedent's IRA were part of the estate from which she receives a share because those proceeds had to be "marshal[led] through the Trust before they could pass to [the separate subtrusts]."
  - Daughter demurred.
    - Ground that IRA proceeds would pass directly to the separate trusts (not through the trust), such that they fell outside of the decedent's estate for purposes of calculating the omitted spouse's share.

- Trial court overruled demurrer, ruling that an IRA's proceeds can sometimes be included in a decedent's estate and that the IRA proceeds in this case would pass to subtrusts of the Trust and thus "essentially" be paid into the actual Trust.

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Reich v. Reich (2024) 105 Cal. App. 5th 1282.

- Procedural history (cont'd):
  - Spouse and daughter reach settlement
    - IRA proceeds explicitly excluded from the settlement (still disputed)
  - Spouse filed two petitions, one re: each daughter's separate trust
    - Regarding her entitlement to a share of the IRA proceeds as part of her "omitted spouse's share."
  - Different Department/Judge of the Probate Court DWP'd spouse's petitions
    - Reasoning: IRA proceeds were not part of decedent's "estate" and hence were not an asset subject to the "omitted spouse's share"
      - The proceeds constitute a nonprobate asset, and
      - The IRA beneficiary designation form specifies that the proceeds would "flow directly" to the daughters separate trusts (rather than through the decedent's trust)
      - Court also ruled the prior demurrer ruling in the spouse's favor on the issue was not controlling.

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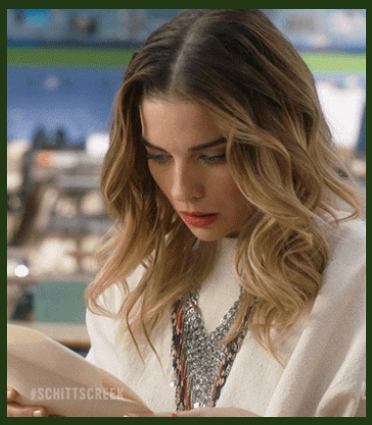
Reich v. Reich (2024) 105 Cal. App. 5th 1282.



- Court of Appeal:
  - Although IRA proceeds *can* sometimes pass through a trust that becomes irrevocable upon death, such as when the designated beneficiary of the IRA is the decedent's trust, the IRA proceeds *in this case* never became part of the Trust for purposes of calculating the omitted spouse's share.
  - Undisputed that decedent held the IRA in his individual capacity, not held by the Trust (prohibited under federal law)
  - Undisputed that decedent designated the separate trusts for the daughters as the beneficiaries of the IRA's proceeds
  - Thus, the IRA proceeds never passed through the trust
- P.S. Demurrer rulings are not binding on a different judge making later rulings on the merits

9

Estate of Williams (2024) 104 Cal.App.5th 374.

"Only because I didn't know you existed."

Burden of proof is on the omitted child to show the sole reason for the omission is because the parent was unaware of their birth

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Estate of Williams (2024) 104 Cal.App.5th 374.

- Pretermitted child – after-born child omitted from a testamentary instrument is presumed to have been omitted inadvertently and to be entitled to a share of the estate
  - Prob. Code, § 21622
  - Current law presumes a child born before execution of the relevant testamentary instrument was intentionally omitted.
- Presumption is only overcome if:
  - An intent to omit the child is apparent in the testamentary instrument,
  - The testator devised substantially all the estate to the omitted child's other parent, or
  - Evidence establishes the testator made a gift to the child outside the estate in lieu of a testamentary devise

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Estate of Williams (2024) 104 Cal.App.5th 374.

- Pretermitted child (Prob. Code, § 21622)
  - Interpreted by *Rallo v. O'Brian* (2020) 52 Cal.App.5th 997.
    - "unambiguously carv[ing] out a distribution right for unknown children *only if* they can prove the *only reason* the decedent did not provide for them was because [the decedent] did not know they existed."
    - A general disinheritance clause proves a testator's "intent to exclude potential children, even those whose identities are unknown," such that the testator "did *not* fail to provide for an unknown child *solely* because [the testator] was unaware of the child's birth."

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Estate of Williams (2024) 104 Cal.App.5th 374.

- Scenario:
  - Person petitioned to receive a share of her father's trust as an omitted child alive at the time he executed his trust documents.
  - Trial court found credible other child's testimony that father was aware of, yet failed to provide for, his 4 other known children; intent was only to provide for 2.
  - Trial court denied petition and entered judgment against her.
  - Person appealed, arguing the trial court misapplied Prob. Code, § 21622.
- Affirmed.
  - Person failed to carry her burden of showing the *sole* reason she was omitted was because her father was unaware of her birth.
    - Father's omission of 4 *known pretermitted children* and his naming as beneficiaries only 2 children resulting from his marriage shows his intent that only those 2 children should receive a share of his estate.

13

Estate of Flores (2024) 98 Cal.App.5th 619.

"Donny, You're [Assigned] Out of Your Element"

11700 heirship proceeding does not determine assignment rights

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Estate of Flores (2024) 98 Cal.App.5th 619.

- Heir hunter firm informed Donald he was the heir of a nephew he never knew existed. Donald thought it was a scam. Donald assigned his interest in the estate to John.
- John filed an 11700 petition: determination that Donald and John were nephew's heirs, each entitled to 50% of the estate.
- Turns out, the estate had value $$$.
- John died before final distribution.
- In petition for final distribution, nephew's pers rep took into account Donald's assignment. Donald objected. Donald claimed the 11700 order was conclusive as to persons entitled to dist of the estate (i.e., that it overrode the assignment).
- Trial Court disagreed. Donald assigned his interest to John, unaffected by the 11700.
- Court of Appeal affirmed. Heir rights ≠ Contractual/assignee rights

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Estate of Flores (2024) 98 Cal.App.5th 619.

- Trial Court concluded the issues in the heirship petition were "to determine who the heirs of the estate were and their respective percentage of interests in the estate."
  - The order "decided which individuals were statutorily entitled to inherit from the decedent but did not decide the distribution of those interests."
- On appeal, Donald argued 11700 heirship order was binding and conclusive as to the dist of decd's estate
  - Donald argued trial court erred in subsequently issuing an order that gave effect to Donald's assignment of his share in the estate to John.
- "Donald's arguments are also inconsistent with case law which has long drawn a distinction between heirs, devisees, and legatees, who have a direct entitlement to a share of a decedent's estate, and persons whose only interest in the estate is derivative of the rights of an heir, devisee, or legatee . . . [A] dist order could not be deemed to have determined an assignee's or grantee's rights under an assignment or other instrument."

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Estate of Flores (2024) 98 Cal.App.5th 619.

Prob. Code, § 11700 Proceedings

- Permissive: any interested person may file a timely statement of interest. Failure to do so bars participation in the proceeding but does not affect their interest in the estate. (PC § 11702(b)(2).)
- Order determines persons entitled to dist and specifies shares.
- *In rem*.
- Settles the rights of all persons claiming as heirs of the decedent, whether or not they are named in the petition.
- Underlying rights of an heir, devisee, or legatee to a share of the estate are conclusively determined.
- But, the rights of the assignee against the heir, devisee, or legatee arise by contract.

- If not raised in the 11700 proceeding, the assignee's rights against the heir, devisee, or legatee are not barred by the court's order determining the persons entitled to a direct dist of the estate.

17

Feehan v. Superior Court (2024) 105 Cal.App.5th 38.

"The court will find the kid is mine, so let me visit him now (if that's OK)"

Visitation OK to presumed parent during pending UPA proceeding if in the best interests of the child.

18

Feehan v. Superior Court (2024) 105 Cal.App.5th 38.

- California's statutory scheme/Legislature/Public Policy: governing child custody and visitation (physical or legal) determinations:
  - Overarching concern is the best interest of the child
    - Ensure the health, safety, and welfare of children
  - Broad authority of courts to enter such orders during the pendency of a proceeding
  - Aim toward preserving the parent-child relationship.
    - Ensure children have frequent and continuing contact w/ both parents after the parents have ended their relationship
    - Encourage parents to share the rights and responsibilities of child rearing, except when contact would not be in the best interests of the child.

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Feehan v. Superior Court (2024) 105 Cal.App.5th 38.

- Fam. Code, § 7604 of the UPA:
  - "A court *may* order pendente lite relief consisting of a custody or visitation order . . . *if the court finds* both of the following:
    - (a) A parent and child relationship exists pursuant to Section 7540 or 7541.
    - (b) The custody or visitation order would be in the best interest of the child."
  - Statute does not:
    - Require such relief, nor
    - Prohibit the court from ordering such relief in other situations
      - Framework of UPA does not suggest that Fam. Code, § 7604 intended to be the exclusive authority for allowing courts to issue temporary visitation orders
- Held: Family Code, § 7604 does not preclude courts from awarding temporary visitation in Uniform Parentage Act actions.

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Trotter v. Trotter Van Dyck (2024) 103 Cal.App.5th 126.

"You've got mail, not a trust amendment"

An unsigned email does not a trust amendment make. (Questionnaire in anticipation of an estate plan)

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Trotter v. Trotter Van Dyck (2024) 103 Cal.App.5th 126.

- Scenario:
  - Petition for instructions:
    - Whether certain emails from the settlor constituted a valid amendment to the trust's beneficiaries
- Trial court:
  - Found settlor's writings were insufficient to constitute an amendment to the Trust
  - Ordered Trust be distributed to the original beneficiaries
- Affirmed.
- Issues on appeal:
  - 1.a. There was no signed document amending the Trust, and
  - 1.b. The electronic signature provision of the Uniform Electronic Transactions Act (UTEA) does not apply because a unilateral trust amendment does not constitute a "transaction" (Civ. Code, § 1633.1 et seq.);
  - 2. Settlor's writings did not adequately express an intent to amend the trust by the writings themselves.

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Trotter v. Trotter Van Dyck (2024) 103 Cal.App.5th 126.

- Emails between settlor, estate planning attorney, and trustee
  - "My mind is quite clear now as [to] how to move forward on the house and will . . ."
  - Settlor wanted to remove a beneficiary "if possible" and change distributions.
  - Settlor told EP Atty would be available to discuss the trust and will
  - EP Atty sent settlor a questionnaire; settlor scanned and emailed back to EP Atty
  - Settlor had surgery and died shortly thereafter
  - Trustee petitioned for instructions re: whether the writings removed the bene
- Trial court's findings
  - Emails and the questionnaire were instruments in writing delivered in accordance with the provision of the Trust re: amendments.
  - Settlor did not "sign" her emails as the Trust requires.
    - Court rejected argument that settlor signed the emails under the UETA
      - UETA expressly does not apply to "the creation and execution of wills, codicils, and testamentary trusts." (Civ. Code, § 1633.3(b)(1))
- Held: mere correspondence. Writings did not show settlor intended emails/questionnaire *themselves* to make disposition of property. Language & context → in anticipation of Am.

23

Newell v. Superior Court (2024) 107 Cal.App.5th 728.

"All Estate: Are You In Good Hands?"

When trust contestant discovered trust real property was sold and real property purchased, amended petition to add claim for constructive trust and filed a lis pendens. Error for trial court to expunge, finding no real property claim in 17200 petition.

24

Newell v. Superior Court (2024) 107 Cal.App.5th 728.

- Scenario:
  - Daughter was supposed to be trustee and sole beneficiary of parent's trust, but after father died, learned he amended the trust to name his caregiver instead.
  - Filed petition to challenge validity of trust amendments.
  - Discovered caregiver used trust assets to purchase real property.
  - Daughter recorded a lis pendens against the property and amended her petition to include a request for constructive trust on the property.
  - Caregiver moved to expunge lis pendens
- Trial court granted the motion to expunge lis pendens
  - Found daughter's petition did not contain a "real property claim."
- Daughter filed a petition for writ of mandate, arguing if won, 17200 petition would affect title to the property.
- Court of Appeal agreed with daughter.
  - Granted petition for writ of mandate
  - Directed probate court to vacate its order and enter a new order denying the motion

The Tale of Little Lost Pendens

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Newell v. Superior Court (2024) 107 Cal.App.5th 728.

- Parties' arguments:
  - Caregiver moved to expunge, arguing daughter's petition (trust contest) did not contain a real property claim because daughter was challenging the validity of the trust and claiming a beneficial interest in the trust, not claiming an interest in the purchased real property
  - Daughter opposed, arguing that the petition, as supplemented, included a real property claim because the result of the petition (trust contest/UI w/ relief request for constructive trust on the real property) will affect title/possession of the real property subjected to the lis pendens
- Trial court's findings:
  - Because caregiver purchased the R/P after daughter filed her petition, none of the claims implicated the property.
  - Daughter's request for a constructive trust on the real property was not a real property claim, but was merely an effort to preserve trust assets during the pendency of the litigation.

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Newell v. Superior Court (2024) 107 Cal.App.5th 728.

Motions to Expunge Lis Pendens

- Lis Pendens – A recorded document giving constructive notice that an action has been filed affecting title to or right to possession of the real property.
  - Notify all and bind anyone who may subsequently acquire interest in the property
- Motion to Expunge: CCP § 405.30
  - CCP § 405.31: Court must order the notice of lis pendens expunged if finds the pleading on which the notice is based does not contain a real property claim.
- "Real property claim": CCP § 405.4
  - A cause of action that would, if meritorious, affect title to or the right to possession of, specific real property.

In the Context of Trust Litigation

- Trustee holds title to property in trust: a fiduciary relationship w/ respect to the property
  - Trustee holds legal title and beneficiary holds equitable title
  - "Trusts do not own property, trustees do."
  - If trustee removed, new trustee appointed, deed/title change → real property claim.

27

Godoy v. Linzer (2024) 106 Cal.App.5th 765.

"You Can't 'Keep It In the Family'"

"Keep it in the family" was an unreasonable restraint on alienation

28

Godoy v. Linzer (2024) 106 Cal.App.5th 765.

- Scenario:
  - Mama named her three kids as beneficiaries of her living trust.
  - Trust asset was mama's longtime home.
  - Upon mama's death, each kid was to receive a 1/3 fee simple interest in the home.
  - Last trust amendment stated the kids could only sell their respective shares for an amount well below the market value and only to each other, citing her desire to keep the home in the family.
  - Mama died.
  - 2 kids petitioned the probate court for an order determining the trust instrument unreasonably restrained their ability to alienate their interests in the real property.
  - Other kid objected.
- Probate court granted the petition and declared the amendment void.
- Amendment imposed unreasonable restraint on alienation, violating Civil Code § 711.
- Court of Appeal affirmed.

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Godoy v. Linzer (2024) 106 Cal.App.5th 765.

- Trust terms:
  - Each child 1/3 interest in the R/P as TIC
  - Kids retain the real property for >5 years after her death
  - "Could also consider selling/buying the property to/from a sibling or to one or more of [her] grandchildren."
  - Emphasized "requests and suggestions" were "precatory and not mandatory"
- Trust amendment
  - "With the intention of leaving my house to my kids which I worked all my life for, my legacy [and] my wish, is to keep the house as a place for all three of my children to enjoy, live, and prosper and not to be sold or given outside of a [sic] family. Should any one of my [3] children upon my death or in the future wish to sell their portion, they must to [sic] offer it for $100,000. They must be flexible . . . My wish for this home to be in the family, no outsiders. No dispute or adversary behavior among my children take place."

30

Godoy v. Linzer (2024) 106 Cal.App.5th 765.

- Probate court findings and determinations:
  - Mama's wishes in the amendment were mandatory, not precatory
  - Prohibition of unreasonable restraints on alienation (Civ. Code, § 711) applied to real property transferred through testamentary instruments
  - Amendment unreasonably restrained alienation by precluding an open market sale of the property at its fair market value
  - The amendment was void and the original trust was operative.
  - Did not compel sale/dist proceeds; future determination.

31

Godoy v. Linzer (2024) 106 Cal.App.5th 765.

Unreasonable Restraint is Repugnant

- <u>Unreasonable restraint on alienation</u>
  - Common Law
    - The right to freely alienate one's property is an inherent and inseparable quality of an estate in fee simple.
    - General rule: if property is conveyed in fee simple but is subject to a condition restraining its alienation, the conveyance is valid but the condition is not.
    - Fee simple estate + restraint on alienation cannot in co-exist.
    - Restraining condition is "repugnant" and rendered void.
  - Civ. Code, § 711
    - "Conditions restraining alienation, when repugnant to the interest created, are void."

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Godoy v. Linzer (2024) 106 Cal.App.5th 765.

- Civ. Code, § 711
  - "Conditions restraining alienation, when repugnant to the interest created, are void."
  - Unreasonable restraints prohibited
  - Reasonableness: weigh justification for the restraining condition against the quantum of restraint the condition actually imposes.
  - In conveyance of fee simple interest, any restraint on alienability defeats the purpose of the interest created.
- Applies to testamentary instruments / testamentary conveyances of fee simple interests
  - *Wharton v. Mollinet* (1951) 103 Cal.App.2d 710, 713.
  - *Reagh v. Kelley* (1970) 10 Cal.App.3d 1082, 1098-1099.
  - *Estate of Campbell* (1906) 149 Cal.712, 717.
- Court of Appeal agreed w/ the 2 kids that "the prohibition of restraints on alienation applies regardless of the method in which a fee simple interest is conveyed, because ta restraining condition is antithetical to the created fee simple interest and its inherent right of free alienation."

33

Hamlin v. Jendayi (2024) 105 Cal.App.5th 1064.

"Barefoot's Recipe Has More Ingredients"

Potential intestate heirs who were disinherited by the trust had standing to contest the instrument despite not being a "trustee or beneficiary" under Prob. Code, § 17200

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Hamlin v. Jendayi (2024) 105 Cal.App.5th 1064.

- Scenario:
  - Professor died, survived by two sisters and a "student/friend" who helped her in the last years of her life.
  - Trust named friend as trustee and sole beneficiary of the trust.
  - Sisters petitioned to invalidate the trust on grounds of UI/LOC/Forgery
- Probate Court:
  - 17-day bench trial
  - Found friend exerted UI over Prof. to execute the trust
  - Granted the petition, invalidating trust and transferring assets to spec admin of estate.
- Court of Appeal affirmed.
  - Sisters, as potential intestate heirs of Prof. disinherited by the trust, had standing to contest the instrument in the probate court and that their petition was not barred under Prob. Code, § 17200.
  - Substantial evidence supported the court's application/finding of UI

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Hamlin v. Jendayi (2024) 105 Cal.App.5th 1064.

- Standing in Probate Proceedings
  - "A fluid concept dependent on the nature of the proceeding before the trial court and the parties' relationship to the proceeding, as well as to the trust (or estate)."
  - In general, "[t]o have standing, a party must be beneficially interested in the controversy, and have some 'special interest to be served or some particular right to be preserved or protected.' This interest must be concrete and actual, and must not be conjectural or hypothetical."
  - Interested Persons at Prob. Code, § 48. Heirs at Prob. Code, § 44.
  - Probate Court "has flexibility in determining whether to permit a party to participate as an interested party" and may give standing to "anyone having an interest in an estate which may be affected by a probate proceeding."

A fluid concept.

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Hamlin v. Jendayi (2024) 105 Cal.App.5th 1064.

- Cal. Supreme Court examined § 17200 in *Barefoot v. Jennings* (2020) 8 Cal.5th 822.
  - Standing to petition under § 17200 extends not only to current trust beneficiaries but also to individuals formerly named as beneficiaries who claim that trust amendments arose from incompetence, undue influence, or fraud.
  - Probate Court has inherent power to decide all incidental issues necessary to carry out its express powers to supervise the administration of the trust and "wide latitude" granted by § 17206 to "make any orders and take any other action necessary or proper to dispose of the matters presented by the petition."
- Question expressly left open by *Barefoot*:
  - Whether an heir who was never a trust beneficiary has standing under the Probate Code to challenge that trust.
- Court of Appeal, here, answers that question:
  - § 17200 does not limit standing only to trustees or beneficiaries. Stat scheme as a whole
  - Probate Court may confer standing on other persons who assert a property right or claim against a trust estate.

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Smith v. Myers (2024) 103 Cal.App.5th 586.

"Promise to Make a Will or Tales from the Crypt?"

Trust amendment was not a promise to make a will/trust subject to 1 year SOL of CCP § 366.3

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Smith v. Myers (2024) 103 Cal.App.5th 586.

- Scenario:
  - Decedent, wife, daughter and daughter's husband.
  - Decedent made trust:
    - Said in trust that purposefully made no gifts to daughter.
    - Said in trust that decedent would make a gift to daughter outside of the trust.
    - Did not provide any gift to daughter's husband.
    - Gave ranch to wife.
  - Decedent amended the trust:
    - Said daughter and her husband would receive the ranch.
    - Said wife would receive income from the ranch.
  - Decedent died. Wife became trustee.
  - Let the litigation begin!

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Smith v. Myers (2024) 103 Cal.App.5th 586.

- Procedural History:
  - Daughter and husband filed 17200 petition to confirm validity of amendment and remove wife as trustee.
    - Wife demurred: husband was time-barred under § CCP 366.3 - failed to file his claim that decedent left testamentary gift through a trust amendment w/in 1 year of death.
    - Trial court overruled wife's demurrer in its entirety.
    - Wife responded to 17200. Affirmative defense: statute of limitations per CCP § 366.3.
  - Wife filed a cross-petition to invalidate the amendment.
  - Wife filed MSA to 17200 request to confirm validity of the amendment, arguing the daughter and husband's claim was barred by statute of limitation in CCP § 366.3.
  - Trial court concluded the statute of limitations in CCP § 366.3 did not apply because the petition was regarding "the internal affairs of a trust, not a promise relating to a distribution."
  - Wife filed motion for reconsideration. Denied.
  - Trial. Judgment in favor of the daughter and her husband. Wife appealed.

40

Smith v. Myers (2024) 103 Cal.App.5th 586.

- Civ. Code, § 366.3
  - If a person has a claim that arises from a promise or agreement with a decedent to distribution from an estate or trust under another instrument, whether the promise or agreement was made orally or in writing, an action to enforce the claim to distribution may be commenced w/in 1 year after the date of death, and the limitations period that would have been applicable does not apply.
    - 1 year from D/D to bring a claim that decedent promised to make a will/trust
- Plain Language Interpretation
  - SOL of Civ. Code, § 366.3 applies if a claim is based on a decedent's declaration that the decedent would do or refrain from doing something specified or an arrangement with the decedent in which the decedent had promised or agreed to arrange for the claimant to receive a distribution from an estate, trust, or other instrument
- Supported by Legislative History

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Smith v. Myers (2024) 103 Cal.App.5th 586.

- Civ. Code, § 366.3 does not apply in this case.
  - Does not apply to daughter and husband's 17200 petition to validate the trust.
    - They are not alleging:
      - Decedent made an agreement with anyone or promise to anyone to create testamentary documents that would provide them a distribution.
      - Decedent made a binding promise that they would get the ranch when he died.
    - They are alleging:
      - Amendment itself requires the distribution, amendment is valid, and they are entitled to receive the distribution under the amendment.
- Wife "makes various efforts to strain the plain language of the statute to make it fit the [17200] petition, none of which are persuasive."
- Plain language: SOL applies to claims based on promises or agreements to create an instrument that will effectuate a distribution from the property of a decedent, rather than to claims based solely on the instrument effectuating the distribution.

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Smith v. Myers (2024) 103 Cal.App.5th 586.

- Plain Language
  - "[T]he statute contemplates a scenario in which a decedent had made an agreement with (or promise to) the claimant to execute a will, create a trust document, or prepare another instrument that would make the claimant a beneficiary upon the decedent's death."
  - "The claim at issue would then be one to enforce that promise or agreement, regardless of what the will, trust, or other instruments designating a decedent's beneficiaries say."
- Wife's arguments were unpersuasive.
  - The trust was not a "promise or agreement with the decedent" that the distribution would be provided for in the trust.
    - "[I]n making the amendment, [decedent] did not legally bind himself or otherwise irrevocably commit to ensure the ranch was distributed to daughter and husband upon decedent's death."
  - Decedent could have amended the trust during his lifetime without breaching a promise or agreement made.

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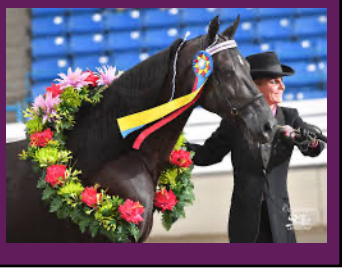
Smith v. Myers (2024) 103 Cal.App.5th 586.

- Legislative History
  - The plain reading of Civ. Code, § 366.3 applies to a claim based on a promise or agreement made by a decedent to create an instrument that would effectuate a distribution to the claimant
    - Not to a claim based on right created by the instrument itself
  - Intended to make changes to laws governing contracts to make wills or trusts.
  - "The Legislature did not mean to sweep into section 366.3's scope every action regarding the purported validity of a trust instrument or a trustee's failure to honor the terms of a trust amendment."
- Court of Appeal Affirmed the judgment, the ruling on the MSA, and the ruling on the motion for reconsideration.
  - Daughter and husband to recover their costs on appeal. (Cal. Rules of Court, rule 8.278(a).)



44

Newman v. Casey (2024) 99 Cal.App.5th 359.

"I can be your EARO baby, but you can't take the deed away"

Court properly granted EARO's from financial elder abuse but exceeded its statutory authority in declaring a deed void as part of TRO

45

Newman v. Casey (2024) 99 Cal.App.5th 359.

- Scenario:
  - Daughter told Mom, *here, sign this to protect your house's taxes from skyrocketing*
  - Documents were actually transfer deeds of house to Daughter
  - Mom filed EARO
  - Daughter's Attorney responded: estate plan shows Mom wanted to leave house and entire estate to Daughter, and transfer was made because of Prop 19
  - Mom said, *oh nay nay, daughter threatened to put me in an old folk's home, I've been getting calls from realtors to sell my home, daughter is difficult and abusive, I've lived in my home over 50 years, and daughter tricked me*
  - Trial court issued EARO
    - Added prohibition that Daughter "take no action whatsoever to encumber the property" and Daughter "have no communication w/ any realtors, mortgage broker, or lender as it relates to this particular property"
    - At end of order, Court added it would "consider adding an order that [Daughter] sign a rescission deed after briefing and argument by counsel."

46

Newman v. Casey (2024) 99 Cal.App.5th 359.

- Daughter filed a request for reconsideration, objection to issuance of EAROs, and briefing on the authority of the court to order recission
- Mother abandoned request for recission and said the "simplest way" for the court to order the remedy (transfer the property back to Mother) "is a court order to void the transfer deed *ab initio*."

- Trial court denied request for consideration and ordered Daughter to return the property to Mom w/in 30 days.
  - Order said, "[Daughter's] possession of title is ongoing elder financial abuse that must be enjoined. Therefore, the court hereby orders the transfer deed void *ab initio*."
- Appeal from Elder Abuse Restraining Orders (Welf. & Inst., § 15657.03) and a subsequent order declaring a deed transferring property void ab initio.

47

Newman v. Casey (2024) 99 Cal.App.5th 359.

- Court of Appeal Affirmed in part and reversed in part
  - Sufficient evidence supports the restraining orders
    - 4 factors supported undue influence finding
      - Vulnerability, apparent authority, actions or tactics, equity of the result
    - Credibility of the witnesses
  - Court exceeded its statutory authority in issuing the subsequent order declaring the *deed void*.
    - Not the type of TRO a court can issue
    - Also, TRO can't last more than 3 or 5 years, depending
- Elder Abuse and Dependent Adult Civil Protection Act (Welf. & Inst. 15600 et seq.)
  - Welf. & Inst., § 15657.03 enumerates the kinds of restraining orders a court may issue
  - Summary and initially provisional remedy to secure the immediate protection of elders from further abuse.
    - To protect elder, EARO may provide a sufficient remedy, or, if not, may need a separate civil or probate action for elder abuse.

48

Key v. Tyler (2024) 102 Cal.App.5th 365.

"If you fight my trust, you will lose it all"

Amendment contest was a direct contest of the original trust, due to NCC's language in original trust. Thus, share of residue pursuant to amendment was not exempt from forfeiture under NCC. Law does not limit scope of NCC settlors may impose.

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Key v. Tyler (2024) 102 Cal.App.5th 365.

- Key appeals from an order denying a petition to disinherit her sister, Tyler.
- Petition sought to enforce a no contest clause in their parents' trust.
- There have been 3 prior appeals of orders concerning the same trust.
- New Issue:
  - Trust amendment (changed residue) didn't include a no contest clause
  - Does that mean that Tyler's share distributed under that amendment are exempt from forfeiture?
    - Trial court: Yes.
    - Court of Appeal: No.
- Holding rests upon plain language of the original trust's no contest clause
  - NCC here: if a bene contests the trust, the settlors shall "disinherit" that bene, and that all interests given to that person "under this trust" are to be forfeited.
    - The plain language of the NCC requires that, if Tyler lacked probable cause to contest the trust, she must be disinherited.
      - Tyler's share of the residue is not exempt from forfeiture simply because her specific share was specified by an amendment that does not contain a NCC

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Key v. Tyler (2024) 102 Cal.App.5th 365.

- Scenario:
  - Trust contained NCC
  - Trust amendment did not
  - Tyler moved to bifurcate trial on Key's No Contest Petition, arguing dispositive issue arising from the absence of a NCC in the amendment (argued if not a protected instrument, not subject to forfeiture).
    - Probate Court agreed and DWP'd Key's No Contest Petition
      - Reversed and remanded to det. whether lack of prob cause for direct contest
- In prior appeal, court decided that Key had provided sufficient evidence of a probability of success on her No Contest Petition to defeat Tyler's anti-SLAPP motion.
  - Established existence of direct contest, but did not decide its consequence
  - Did not decide whether the amendment was a protected instrument.
- No statute limits the scope of the forfeiture that the NCC may impose.
- Here, NCC states that a direct contest w/o probable cause requires forfeiture

51

Key v. Tyler (2024) 102 Cal.App.5th 365.

- This Trust's NCC is comprehensive:
  - In the event any beneficiary contests "this Trust, any other Trust created by a Trustor, or in any manner attacks or seeks to impair any of their provisions," the "Trustors specifically disinherit each such person," and all interests given "under this Trust" to that person shall be forfeited.
- Tyler argues the forfeiture language does not specifically refer to an amendment contest
  - But it says "any other trust created by a Trustor" = amendment
- No dispute that Tyler also directly contested the original trust
  - Q: whether trustors intended to limit the forfeiture that would result from such a contest only to the share of assets directly specified in the original trust instrument.
  - A: No, NCC language in this trust does not support this conclusion.
- Scope of the forfeiture the trustors intended is not limited by law
  - NCC statutes do not limit the scope of the forfeiture that may result or that the transferors are permitted to impose
    - Permissible scope of forfeiture from an actual direct contest of a protected instrument

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Shameless Cross–Reference

CALIFORNIA TRUSTS AND ESTATES QUARTERLY

BACK TO THE FUTURE: HOW TO LOOK AT AN AMENDMENT CONTEST AFTER *AVILES V. SWEARINGEN*

*By Julie R. Woods, Esq.**

INTRODUCTION

Estate planners, to some extent, predict the future for their clients. Litigators, to some extent, reconstruct the past to best determine a settlor or testator's intent. Therefore, trust and estate attorneys should develop a viewpoint that includes both foresight and hindsight.

No contest clauses are often in the forefront of an instrument's analysis. *In terrorem* clauses are designed to incite fear and dissuade a beneficiary from challenging the validity of an instrument and unravelling the settlor's or testator's intent. A contestant may be undeterred from challenging the instrument, however, when seemingly warranted on the grounds of lack of capacity, undue influence, forgery, menace, or duress. A contestant also may challenge the instrument when the cost-benefit analysis is in the contestant's favor, or when the no contest clause itself is ineffective.

This article serves as a guide for estate planners to draft effective no contest clauses, and for litigators to dissect and challenge ineffective ones. The court assembled the framework to analyze no contest clauses, at least in the context of a trust amendment, in the recent opinion of *Aviles v. Swearingen* (2017) 16 Cal.App.5th 485.

Stemming from renowned Ventura County Judge Glen M. Reiser, and affirmed by the Sixth Division of the Second Appellate District, *Aviles v. Swearingen* boldly links current Probate Code section 21310 with past decisional and statutory authority.

The opinion begins: "In this case of first impression, we apply newly enacted, at the time, Probate Code section 21310. If, in theory, this could lead to a debatable result, so be it."[1] The court continues: "There is no 'play in the joints' in probate law, as Chief Justice Rehnquist would say. We 'strictly' follow probate law as given to us by the Legislature."[2]

Contrary to Judge Reiser's admonition, the result should not be debated. After nearly three decades of evolution in the statutory scheme, the appellate court weeded through the codification and recodification of relevant law to examine the core principles of no-contest clauses in trust amendments. The court strictly construed the language of the current statutes, in accord with prior statutes and case law, to hone the effective means of applying no contest clauses across instruments.

Guided by *Aviles v Swearingen*, this article explains how to construe no contest clauses across instruments. An amendment should be scrutinized from several angles. The attorney will first "look straight" at the amendment to determine whether it has its own no contest clause. If not, the attorney will then "look forward" from the original instrument to determine whether its no contest clause states that challenging an amendment triggers a contest. The attorney also will "look back" from the amendment to determine whether it effectively refers to, incorporates, and effectuates the original instrument's no contest clause. Accordingly, this article provides a practical framework and pocket-scenarios for estate planners and litigators to gauge whether a challenge to an instrument's amendment triggers a no contest clause.

I. SEEING THE BIG PICTURE: A BRIEF RECAP OF THE EVOLUTION OF NO CONTEST CLAUSE LAWS

A. Principles and Policy of the Terrifying Terms

The phrase "in terrorem" commonly refers to no a contest clause. Where does it come from and what does it mean?

In 1898, the United States Supreme Court analyzed the difference between a clause merely meant to incite terror in beneficiaries to dissuade them from contesting a will, and a meaningful provision that risks disinheritance tied to a condition placed on a beneficiary's devise.[3] "When legacies are given to persons upon conditions not to dispute the validity of, or the dispositions in wills or testaments, the conditions are not in general obligatory, but only in terrorem. If, therefore, there exist probabilis causa litigandi, the non-observance of the conditions will not be forfeitures."[4] The Supreme Court reasoned that a court of equity considers the clause "merely to guard against vexatious litigation."[5] The clause changes from merely in terrorem into having an effect of possible disinheritance "when the acquiescence of the legatee appears to be a material ingredient in the gift, . . . [t]he bequest is only quousque, the legatee shall refrain from disturbing the will and if he controvert it, his interest will cease and pass to the other legatee."[6]

No contest clauses deter beneficiaries from seeking to countermand a testator or settlor's estate plan. Stated

Volume 24, Issue 3 • 2018 29

Woods, *Back to the Future: How to Look at an Amendment Contest After Aviles v. Swearingen* (Fall 2018) Cal. Trusts & Estates Quarterly, Vol. 24, Issue 3.

Ten Cuidado: this article was not edited well.

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Asaro v. Maniscalco (2024) 103 Cal.App.5th 717.

"5 Lessons in Elder Abuse and Trust Litigation"

Son could sue trustee for elder abuse of mother after parents died, did so properly, and court awarded damages plus double damages under Prob. Code, § 859

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Asaro v. Maniscalco (2024) 103 Cal.App.5th 717.

- Scenario:
  - Family Trust of deceased settlors Nicola and Antoinette
    - Anthony Asaro is trust beneficiary
    - Jon Maniscalco is former trustee and beneficiary
  - Anthony brought claims against Jon for breach of fiduciary duties owed to the trust and financial elder abuse of Antoinette
  - Appellant Jon argues:
    1. Anthony lacked standing to assert his claims
    2. Anthony's claims were time-barred
    3. Anthony's claims were released pursuant to a settlement agreement between Jon and then trustees (including Nicola)
    4. Anthony's elder abuse claims were not supported by substantial evidence
    5. The court improperly calculated Prob. Code, § 859 damages and improperly awarded those damages to Anthony individually
  - Affirmed

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Asaro v. Maniscalco (2024) 103 Cal.App.5th 717.

1. Standing

- Held: Anthony had standing to assert elder abuse claims on behalf of Antoinette; Jon's argument that Anthony needed to be succr-in-int per CCP § 377.11 was unreasonable.
- Elder Abuse claims o/b/o decedent (Welf. & Inst., § 15657.3(d)(1))
  - After elder or dependent adult dies, the right to commence or maintain an action for financial elder abuse
    - Passes to the personal representative of the decedent.
    - Unless:
      - There is no pers rep
      - The pers rep refuses to commence or maintain an action
      - The pers rep's family or an affiliate (PC § 1064(c)) allegedly committed the abuse
    - If there is no pers rep, passes to any of the following persons if CCP § 377.32 met:
      a) An intestate heir whose interest is affected by the action
      b) The decedent's successor in interest as defined in CCP § 377.11
      c) An interested person (Prob. Code, § 48) not including a creditor or a person who has a claim against the estate and is not an heir or beneficiary

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Asaro v. Maniscalco (2024) 103 Cal.App.5th 717.

2. Statute of Limitations:
(a) Breach of Fiduciary Duty Claims

- Held: Anthony's claims were not time-barred; he had no reason to know of his claims more than 3 years before filing his suit.
- Beneficiaries of an irrevocable trust hav ehtir own causes of action against trustees that are not derivative of the settlors' rights (Prob. Code, § 16420)
  - *Estate of Giraldin* (2012) 55 Cal.4th 1058 [once settlor dies and trust becomes irrevocable, benes have standing to sue tee for breaches of fid duty committed during period of irrevocability]
- Anthony's claims for breach of a trustee's fid duties to the trust had to be brought no more than 3 years "after the *beneficiary* discovered, or reasonably should have discovered, the subject of the claim."
  - SOL is expressly measured from bene's discovery of the subject of the claim.

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Asaro v. Maniscalco (2024) 103 Cal.App.5th 717.

2. Statute of Limitations:
(b) Elder Abuse Claims

- Held: Anthony's claims for FEA of Antoinette were timely because of delayed discovery rule
- Claims for FEA have to be brought w/in 4 years "after the plaintiff discover[ed] or, through the exercise of reasonable diligence, should have discovered, the facts constituting the financial abuse." (Welf. & Inst., § 15657.7)
- 4 years can be extended/tolled: (CCP §§ 352, 366.1(b))
  - If a person entitled to bring an action is, at the time the cause of action accrued either under the age of majority or lacking the legal capacity to make decisions, the time of the disability is not part of the time limited for the commencement of the action.
  - After the plaintiff dies, their successors have at least 4 years to file a claim.
- Delayed Discovery Rule
  - Postpones accrual of a cause of action until plaintiff discovers, or has reason to discover, the cause of action

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Asaro v. Maniscalco (2024) 103 Cal.App.5th 717.

3. Settlement Agreement Did Not Release Claims

- Held: Anthony was not bound by the settlement between Jon and settlor Nicola.
  - Nicola alleged Jon misappropriated assets and removed him as trustee; Jon sought to remove new cotrustees and appt conservator for Nicola; mediation; settlement.
  - Trial court found Nicola LOC and no ntc to Anthony by Jon.
- Settlement agreement was fundamentally flawed as it purported to bind benes w/o ntc.
- Trustees generally cannot escape liability if a bene did not know of his rights or material facts, or if the release is not fair and reasonable.
  - Trustee of an irrevocable trust cannot release benes' claims for breach of fid duty against a prior trustee w/o either ntc or consent of those beneficiaries.
    - Benes of an irrevocable trust have their own direct claims for breach of fid duty.
      - The right to release a claim belonging to the trust does not empower a trustee to release claims belonging to benes.
- Aside: confidential settlement of elder abuse claims is "disfavored" as a matter of policy in CA, and such terms are presumptively unenforceable. (CCP § 2017.310(a))

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Asaro v. Maniscalco (2024) 103 Cal.App.5th 717.

4. Elder Abuse Claims were Supported by Substantial Evidence

[This portion of the opinion is not certified for publication]

Me presenting a 5-point case

Me skipping a point

Those of you still listening

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Asaro v. Maniscalco (2024) 103 Cal.App.5th 717.

5. Prob. Code, § 859 Damages

- Held: Trial court properly calculated the penalty and assessed against Jon personally.
- Prob. Code, § 859
  - In addition to the compensatory restoration of property or its equivalent value, PC § 859 authorizes an *additional penalty* measured by the value of the property or 2x its value.
    - This does not mean "treble damages" (P.S. statute does not say "double damages")
    - This is compensatory damages (PC § 856) + 2x those damages (PC § 850) = 3x the harm
      - Return of the property "remedial", plus damages that are "punitive in nature"
- Cases interpreting:
  - *Estate of Young* (2008) 160 Cal.App.4th 62, 88.
  - *Estate of Ashlock* (2020) 45 Cal.App.5th 1066.
  - *Keading v. Keading* (2021) 60 Cal.App.5th 1115, 1130
  - *Estate of Kraus* (2010) 184 Cal.App.4th 103, 118.
  - Not treble as stated in : *Conservatorship of Ribal* (2019) 31 Cal.App.5th 519.
- Trial court could award PC § 859 penalty directly to Anthony under PC § 859 and as a reasonable exercise of the court's discretion. Statute discusses liability, not party to recover it.
  - "Statutory emphasis is not on to whom the property belongs, but whether the person in possession in bad faith wrongly acquired it." (*Kraus*.)

61

Haggerty v. Thornton (2024) 15 Cal.5th 729.

"So It Is Written, So It Shall Be Done!"

Under Prob. Code, § 15402, a trust may be modified via PC 15401 procedures for revocation, unless the trust instrument provides an explicitly exclusive method of modification or otherwise expressly precludes the use of revocation procedures for modification

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Haggerty v. Thornton (2024) 15 Cal.5th 729.

- Methods for modifying a revocable trust
  - Prob. Code, § 15402
    - "Unless the trust instrument provides otherwise, . . . The settlor may modify the trust by the procedure for revocation.
  - Prob. Code, § 15401
    - Trusts my be revoked by complying with any method provided in the trust instrument. (Prob. Code, § 15401, subd. (a)(1).)
    - If the trust instrument explicitly makes that method exclusive, then the trust may be revoked only in that manner. (Prob. Code, § 15401, subd. (a)(2).
    - If not, then the trust may also be revoked by the statutory method.
      - "[A] writing, other than a will, signed by the settlor or any other person holding the power of revocation and delivered to the trustee during the lifetime of the settlor or the person holding the power of revocation."
  - If trust is silent on modification, may modify in same manner as could revoke.
    - Via the statutory method or via any revocation method provided in the trust.

63

Haggerty v. Thornton (2024) 15 Cal.5th 729.

- Issue:
  - Consider the circumstances under which the statutory method is available for modification if the trust instrument specifies a method for modification.
- Holding:
  - Under Prob. Code, § 15402, a trust may be modified via the Prob. Code, § 15401 procedures for revocation, including the statutory method, unless the trust instrument provides a method of modification and explicitly makes it exclusive, or otherwise expressly precludes the use of revocation procedures for modification.

64

Haggerty v. Thornton (2024) 15 Cal.5th 729.

- Scenario:
  - Aunt created trust that included a provision reserving "[t]he right by an acknowledged instrument in writing to revoke or amend this Agreement or any trust hereunder."
  - Aunt amended trust providing for distribution to niece. Aunt signed and notarized.
  - Aunt amended trust providing for distribution to others, not niece. Aunt signed.
  - The amendment was compliant with the statutory method but not with the method of modification specified in the trust instrument.
  - Niece filed petition to determine validity of the last amendment.
- Probate court found trust agreement was validly amended
  - Excluded niece from distribution
- Court of Appeal affirmed.
  - Holding: Amendment was a valid modification pursuant to the statutory method.
    - Statutory method available because trust did not distinguish between revocation and modification, and the methods of such are not explicitly exclusive in trust.

65

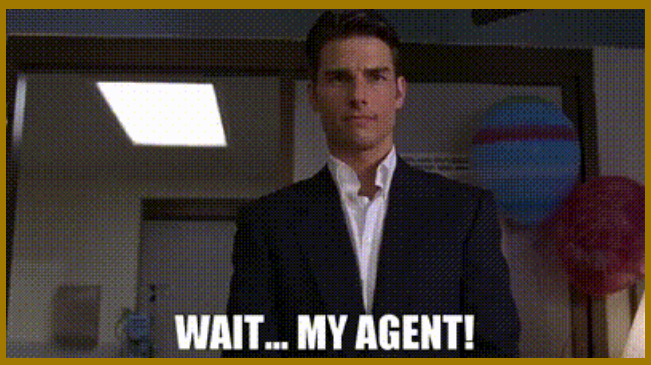
Haggerty v. Thornton (2024) 15 Cal.5th 729.

- Cal. Supreme Court granted review
  - A revocable trust may not be modified by the procedure for revocation where the trust instrument "provides otherwise."
    - Split of authority re: circumstances under which the statutory method is available for modification when a method of modification is specified in the trust instrument.
  - The mere fact that a trust instrument distinguishes between modification and revocation by authorizing certain procedures for revocation and other procedures for modification does not suffice to preclude the use of revocation procedures for modification.
- Conclusion: the statutory method is available for modification unless the trust instrument "provides otherwise" by expressly making a different procedure exclusive. (Prob. Code, § 15402.)
- Affirmed and remanded for further proceedings consistent with the opinion.

66

Harrod v. Country Oaks Partners, LLC (2024) 15 Cal. 5th 939.

"An Ode to AHCD Law"



Cal. Supreme Court defines what is a "Healthcare Decision" (Spoiler Alert: it's not a facility's arbitration agreement)

67

Harrod v. Country Oaks Partners, LLC (2024) 15 Cal. 5th 939.

- Health Care Decisions Law (Prob. Code, § 4600 et seq.)
  - Principal may appoint health care agent to make health care decisions if the principal later lacks capacity to make such decisions
    - Competent adults may draft powers of attorney for healthcare
- Scenario:
  - Health care agent signed 2 K's w/ skilled nursing facility: (1) admission, (2) arbitration
  - Arbitration agreement was optional and had no bearing on whether the principal could access the facility or receive care
- Issue: whether the arbitration agreement was a health care decision w/in authority of health care agent to sign
- Answer: No
- Thus, facility could not compel arbitration of claims arising from the principal's alleged maltreatment that have been filed in court (filed by GAL, and then by succr in interest).
- Precedent: Cal. Supreme Ct addressed conflicting authority re: powers of atty for healthcare

68

Harrod v. Country Oaks Partners, LLC (2024) 15 Cal. 5th 939.

- Power of Attorney Law, Uniform Statutory Form Power of Attorney Act, and Health Care Decisions Law
  - Recognize "the dignity and privacy a person has a right to expect" and the "fundamental right to control the decisions relating to [one's] own health care, including the decision to have life-sustaining treatment w/held or w/drawn." (Prob. Code, § 4650(a).)
- Health care: any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect a patient's physical or mental health condition. (Prob. Code, § 4615.)

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Harrod v. Country Oaks Partners, LLC (2024) 15 Cal. 5th 939.

What Is A Healthcare Decision

and typically included in a POA

- Selection and discharge of health care providers and institutions
- Approval or disapproval of diagnostic tests, surgical procedures, and programs of medication, including mental health conditions
- Whether to provide, w/hold, or w/draw artificial nutrition and hydration and all other forms of health care, including CPR
- Consent or refuse tests, drugs, surgery, any medical care or services, artificial nutrition and hydration
- Release medical records

What is Not A Healthcare Decision

but may be included in a POA

- Personal care
  - Where principal will live, meals, hiring household employees, transportation, mail, recreation and entertainment
- Nomination of a conservator of P or E
- Directing dispositions of remains and decisions effective after principal's death

Holding: A standalone arbitration agreement would be "markedly dissimilar" from agreements about who provides medical care or what care they provide. Agent did not have power to bind principal to arbitration under this POA/ACHD.

70

Grossman v. Wakeman (2024) 104 Cal.App.5th 1012.

"Not the client!"

In Civil Legal Malpractice Case arising from Estate Planning, Attorney owed duty to his client, not to the client's child and grandchildren

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Grossman v. Wakeman (2024) 104 Cal.App.5th 1012.

- Attorney/Firm appeals from legal malpractice judgments entered against them following a jury trial.
  - Appellant's client was Dr.
  - Respondents were not appellant's clients – 1 of Dr.'s children and 2 grandchildren.
- Dr. dies; $18m estate, left all to his 4th wife (even though she was independently wealthy) (married 14 years before his death)
- Jury found respondents were the intended beneficiaries of the documents and that appellants breached the standard of care in the preparation of documents
- Court of Appeal reversed and remanded
  - Insufficient evidence to show Attorney/Firm owed a duty of care to respondents because there is no "clear, certain and undisputed evidence of [Dr.'s] intent" to benefit respondents by leaving his estate to them instead of his wife.

72

Grossman v. Wakeman (2024) 104 Cal.App.5th 1012.

- Appeal:
  - Whether a lawyer sued for professional negligence owed a duty of care to the plaintiff is a question of law and depends on a judicial weighing of the policy considerations for and against the imposition of liability under the circumstances
    - Negligence in a legal malpractice action is ordinarily a question of fact
      - Degree of care and skill required to fulfill a professional duty
      - Expert testimony
    - The existence of duty is generally a question of law
      - Predicate question is whether the duty exists
        - Question of law for the court alone, not expert testimony
    - Absent a duty, plaintiffs cannot establish an element of their malpractice cause of action.

73

Grossman v. Wakeman (2024) 104 Cal.App.5th 1012.

- Cal. Supreme Court has articulated 8 factors bearing on whether a lawyer should owe a duty to a nonclient.
- Balance the factors.
- A lawyer has a duty to a nonclient third party only if the client's intent to benefit that third party (in the way the third party asserts in their malpractice claim is
  - CLEAR, CERTAIN, and UNDISPUTED
- Follows: *Gordon v. Ervin Cohen & Jessup LLP* (2023) 88 Cal.App.5th 543.
  - Remember?
    - "[S]uch a duty would obligate [appellants] to act as a sounding board and babysitter, effectively requiring them to 'second guess' [settlor's] otherwise clear directive"
- Heightened standard reduces an undue burden on the profession
- Here, Attorney/Firm did not owe child/grandchildren a duty to draft the restatement of the trust to leave the estate to them and not the settlor's wife.
  - Evidence of Dr.'s alleged intent to leave to them was not clear, certain, and undisputed

74

Prang v. Los Angeles County Assessment Appeals Bd. (2024) 15 Cal.5th 1152.

"Tax Stuff"

"Change in ownership" depends on pro rata beneficial ownership interests in corporate real property by shareholders, whether or not they hold voting stock

75

In re Marriage of Diamond (2024) 15 Cal.App.5th 550.

"Family Court Borrows from Probate"

Spouse in dissolution proceeding alleged duress and mental incapacity, and thereon sought to set aside judgment. Family Code does not define such terms. Family Court borrowed definitions from Prob. Code, § 810 and CCP § 372(a)(4).

The ruling was kosher!

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Conservatorship of K.Y. (2024) 100 Cal.App.5th 985.

"Don't Do the Moot Boot"

Although appeal from order granting LPS dismissed as moot, expeditious presentation of appeals needed.

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Conservatorship of K.Y. (2024) 100 Cal.App.5th 985.

- Scenario
  - Jury trial found K.Y. gravely disabled (LPS conservatorship).
  - K.Y. timely filed a notice of appeal.
  - Many extensions (briefing) throughout proceeding requested by K.Y., Public Guardian.
  - LPS conservatorship (re-)appointment order lasts for 1 year only by operation of law.
  - After 1 year, Public Guardian filed a petition to renew the conservatorship and asked court to dismiss the appeal as moot.
  - K.Y. argued appeal not moot, but even if it is, court should exercise discretion to address the merits of the appeal based on
    - The public importance of the issues raised,
    - Their likely continuing impact on her and others, and
    - The potential difficulty of resolving such an appeal before the expiration of a 1-year conservatorship.
  - K.Y. accepted reappointment of the conservatorship, thus, little likelihood she will suffer collateral consequences on the finding of grave disability on the first petition.

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Conservatorship of K.Y. (2024) 100 Cal.App.5th 985.

- Appeals in Cases Involving Inherent Risk of Mootness
  - Dismissal of appeals for mootness is not uncommon in LPS Act conservatorship cases, as in other cases that involve challenges to 1-year civil commitment orders.
  - "We recognize that there can be unavoidable delays . . . that render it exceedingly difficult, if not impossible, for the parties to brief, and the court to adjudicate, an appeal before the order expires or a new commitment order is sought and obtained"
  - "There are doubtless cases in which mootness can be avoided by taking advantage of procedures available for expedition."
  - In this case, all was timely w/o extensions of briefing schedule by approx. 5 months.

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Conservatorship of K.Y. (2024) 100 Cal.App.5th 985.

- *"Our intent here is not to assign blame; we acknowledge that '[f]or a variety of legitimate reasons, counsel may not always be able to prepare briefs or other documents w/in the time specified in the rules of court' and that '[i]f good cause is shown the court must extend the time.' Nonetheless, when requesting an extension of time, counsel should be mindful of the expiration date of the conservatorship order and should inform the court of that date so that good cause may be evaluated properly."*
- CRC, rule 8.63 (a): good cause intended to balance competing policies:
  - Time limits prescribed by the rules
  - Expeditious conduct of appellate business
  - Public confidence in the efficient administration of appellate justice
  - Effective assistance of counsel
  - Adequate time to prepare clear, concise, and complete briefs that assist the courts.

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Conservatorship of K.Y. (2024) 100 Cal.App.5th 985.

- Guidance:
  - "Counsel (whether for the appellant or the respondent) may wish to address whether the requested extension would significantly compromise the court's ability to adjudicate the appeal before the expiration of the civil commitment order if no exception to mootness applies, or whether the appellant contends that the appeal is one that warrants the court's discretionary review if it is likely to be moot before a decision can be rendered."

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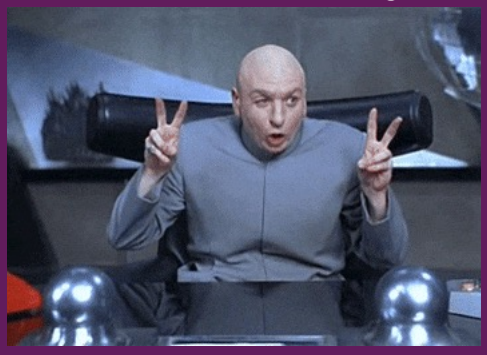
Conservatorship of T.B. (2024) 99 Cal.App.5th 1361.

"Statute's Time 'Limit' was Directory, Not Mandatory"

Delay in commencing LPS conservatorship trial did not violate Welf. & Inst., § 5350 because time limit in statute was directory and not mandatory, but court abused discretion in failing to consider all factors of CRC 3.1332 when granted continuances and denied dismissal



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Conservatorship of T.B. (2024) 99 Cal.App.5th 1361.

- LPS Court trial: Found T.B. gravely disabled, appointed conservator.
- T.B. appealed, arguing the trial court violated Welf. & Inst., § 5350(d)(2) and due process when it failed to commence her trial w/in 10 days of her demand for trial and denied her motions to dismiss the proceedings on the basis of the delay.
- Welf. & Inst., § 5350(d)(2): In 2023, Legislature amended to add, "Failure to commence the trial within [10 days of a demand for trial] is grounds for dismissal."
- Court of Appeal:
  - The time limit for commencing trials set forth in amended § 5350(d)(2) is *directory*, *not mandatory*, and that dismissal for failure to comply with the time limit is discretionary.
    - Preserved judicial discretion re: dismissal
    - Avoided impinging on courts' inherent authority to control dockets and decide cases
  - Trial court abused its discretion in denying T.B.'s motions to dismiss the proceedings, but reversal not required because T.B. did not demonstrate prejudice

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Julie R. Woods, Probate Attorney
Updated 1/2/25

Annual Case Updates

January-December 2024

Trusts and Estates

Asaro v. Maniscalco (2024) 103 Cal.App.5th 717. (D080874)

Settlement agreement did not release beneficiary's claims for breach of fiduciary duty against trustee of irrevocable trust.

Estate of Flores (2024) 98 Cal.App.5th 619. (B320383)

Probate Code section 11700 proceeding determining persons entitled to estate did not foreclose or determine rights or interests of individual who had previously assigned his right to estate.

Estate of Williams (2024) 104 Cal.App.5th 374. (D083713)

Father's exclusion of other known children from trust indicated his intent to benefit only two named children, thereby precluding his unknown child's claim to a share of the estate.

Godoy v. Linzer (2024) 106 Cal.App.5th 765. (B330725)

A restraint on a beneficiary's ability to sell property to anyone but the other beneficiaries and only for well below market value was unreasonable.

Grossman v. Wakeman (2024) 104 Cal.App.5th 1012. (B329459)

Attorney owed no duty of care to disinherited son and grandchildren where it was not clear that client intended his trust to benefit disinherited individuals.

Haggerty v. Thornton (2024) 15 Cal.5th 729. (S271483)

A trust may be modified under Probate Code section 15401 unless the instrument provides an explicitly exclusive method of modification, or otherwise expressly precludes the use of revocation procedures for modification.

Hamlin v. Jendayi (2024) 105 Cal.App.5th 1064. (A167695)

Despite not being trustees or trust beneficiaries, probate court did not err in granting intestate heirs standing to contest trust provisions under Probate Code section 17200.

Harrod v. Country Oaks Partners, LLC (2024) 15 Cal.5th 939. (S276545)

Health care agent's power of attorney over principal's health care decisions did not include authority to bind the principal to a separate, optional arbitration agreement presented with other admissions paperwork.

Key v. Tyler (2024) 102 Cal.App.5th 365. (B322246)

A lack of no-contest clause in an amendment to a trust with a no-contest clause did not mean that assets under the amendment were exempt from forfeiture.

Newell v. Superior Court (Rollins) (2024) ___ Cal.App.5th ___. (B339383)

Petitioner's lis pendens on property bought with trust assets was proper because her probate claims affected title to the property.

Newman v. Casey (2024) 99 Cal.App.5th 359. (A165210)

While trial court properly issued restraining orders in elder abuse case, it exceeded its statutory authority by issuing a subsequent order voiding the transfer deed.

Prang v. Los Angeles County Assessment Appeals Board (2024) 15 Cal.5th 1152. (S266590)

"Change in ownership" measures proportional beneficial ownership interests in corporate real property by corporate stock generally with no special analysis as to whether the stock is voting or non-voting.

Reich v. Reich (2024) 105 Cal.App.5th 1282. (B332714)

Because IRAs are nonprobate transfers, decedent's widow was not entitled to omitted spouse's share of decedent's IRA whose beneficiaries were separate trusts created by the decedent's testamentary trust.

Smith v. Myers (2024) 103 Cal.App.5th 586. (C098169)

Amendment to trust did not constitute a "promise" or "agreement" subject to the one-year statute of limitations set forth in Code of Civil Procedure section 366.3.

Trotter v. Van Dyck (2024) 103 Cal.App.5th 126. (D081916)

Decedent's emails seeking to amend her trust were not electronically "signed" writings under the Uniform Electronics Transaction Act because they did not constitute "transactions" as defined by the statute.

Young v. Hartford (2024) 106 Cal.App.5th 730. (G064034)

Trial court's Probate Code section 15642(e) order suspending defendant's trustee's and trust protector's powers was a provisional remedy, thus not final and appealable.

Conservatorships

Conservatorship of K.Y. (2024) 100 Cal.App.5th 985. (A166825)

Because continually requesting extensions posed the risk of mooting a conservatorship case, it behooves counsel to mind conservatorship order deadlines and notify the court accordingly.

Conservatorship of T.B. (2024) 99 Cal.App.5th 1361. (A167919)

Trial court's abuse of discretion in granting trial continuances did not require reversal of ultimate conservatorship order.

Guardianships and Dependency

Dora V. v. Superior Court (Los Angeles County Dept. of Children and Family Services (2024) 104 Cal.App.5th 987. (B332985)

> Legal guardian appointed by the juvenile court was not entitled to a presumption of reunification services with minor.

H.A. v. Superior Court (San Joaquin County Human Services Agency (2024) 101 Cal.App.5th 956. (C099704)

> Agency and juvenile court failed to meet Indian Child Welfare Act's statutory duty to further inquire when its investigation ceased after parents validated they had no Native American background.

In re A.K. (2024) 99 Cal.App.5th 252. (C097776)

> Order terminating biological father's parental rights was reversed after juvenile court and County agency failed to follow statutorily-mandated notice requirements.

In re Dezi C. (2024) 16 Cal.5th 1112. (S275578)

> Failure to conduct an adequate inquiry under the Indian Child Welfare Act requires conditional reversal to comply with the statute's inquiry provisions.

In re D.M. (2024) 101 Cal.App.5th 1016. (E082401)

> Termination of parental rights was appropriate despite failure to inquire with extended family regarding child's possible indigenous heritage because the child was placed in temporary custody pursuant to a warrant.

In re Kenneth D. (2024) 16 Cal.5th 1087. (S276649)

> Absent exceptional circumstances, a reviewing court may not consider postjudgment evidence to conclude an inadequate Indian Child Welfare Act inquiry was harmless.

In re L.B. (2024) 98 Cal.App.5th 512. (A167363)

> Inquiry into dependent child's possible Native ancestry was inadequate where the record indicated the existence of extended family members that were not asked whether the child was a Native child.

In re P.H., Jr. (2024) 98 Cal.App.5th 992. (B321592)

> Indian Child Welfare Act did not require tribal notice of dependency proceedings without a reason to know the child was a Native child despite statements regarding parents' possible tribal ancestry.

In re S.G. (2024) 100 Cal.App.5th 1298. (B330106)

> Once minor parent consistently failed to utilize reunification services, termination of parental rights was appropriate to protect the child's need for prompt resolution of his custody.

In re Samantha F. (2024) 99 Cal.App.5th 1062. (E080888)

Duty of inquiry about child's possible Native American ancestry extended to all available family members regardless of how child was removed from custody.

In re T.R. (2024) 107 Cal.App.5th 206. (B329240)

A juvenile court that selected legal guardianship as the permanent plan for a child and terminated dependency jurisdiction retained authority to ensure compliance with the Indian Child Welfare Act.

In re V.S. (2024) 104 Cal.App.5th 1154. (B332310)

Juvenile court abused its discretion in choosing, *sua sponte*, guardianship over adoption.

In re Zoe H. (2024) 104 Cal.App.5th 58. (E082653)

Jurisdictional findings are not prima facie evidence for removal other than a finding of severe physical abuse of children under five.

Family

C.C. v. D.V. (2024) 105 Cal.App.5th 101. (A168514)

Stipulated restraining order was a finding that restrained party had perpetrated domestic violence, triggering statutory rebuttable presumption that awarding the perpetrator custody was detrimental to the best interest of the child.

C.C. v. L.B. (2024) 106 Cal.App.5th 1323. (B331558)

Sperm donor lacked standing to seek presumed parent status under Family Code section 7611 because he knowingly consented to terminating his parental rights.

E.G. v. M.L. (2024) 105 Cal.App.5th 688. (H051526)

Social media posts revealing personal information (doxing) of a parent's former romantic partner constituted the course of conduct necessary to grant a restraining order.

Feehan v. Superior Court (Seto) (2024) 105 Cal.App.5th 38. (A170984)

Courts have the authority to issue pendente lite visitation when a petitioner makes a prima facie case for parentage.

G.G. v. G.S. (2024) 102 Cal.App.5th 413. (B331994)

A domestic violence restraining order should be renewed in the absence of intentional violations of the initial order if the protected person had a reasonable apprehension of future abuse.

In re Andrew M. (2024) 102 Cal.App.5th 803. (G063462)

A showing that the child would derive a connection to a larger extended family was not a sufficient basis to preserve parental rights and reject proceedings for a permanent adoption.

In re G.R. (2024) 106 Cal.App.5th 96. (B332699)

An alleged father had no standing as an aggrieved party to an order requiring his visits be monitored.

In re Marriage of Shayan (2024) 106 Cal.App.5th 76. (B323455)

Judgment for attorney fees entered by the family court did not expire until fully satisfied, so writ of execution issued more than 10 years after the judgment's entry was proper.

Marriage of Cady and Gamick (2024) 105 Cal.App.5th 379. (B326716)

Welfare and Institutions Code section 12350 does not absolve parents of the duty to support an adult disabled child under Family Code section 3910.

Marriage of Dadashian (2024) 102 Cal.App.5th 392. (A163185)

Because one spouse had exclusive access and information to couple's asset, trial court was required to apply *Margulis* to shift burden on managing spouse to account for missing asset.

Marriage of Diamond (2024) 106 Cal.App.5th 550. (B321833)

Spouse seeking to set aside judgment due to mental deficit failed to provide evidence of mental incapacity.

Marriage of Wiese (2024) 102 Cal.App.5th 917. (G060819)

Family Code section 1101, pertaining to spousal fiduciary duties, only encompasses breaches relating to community property and not separate property.

Mueller v. Mueller (2024) 102 Cal.App.5th 593. (A166577)

A confidentiality clause in an agreement that repeatedly and explicitly stated that it created no enforceable rights was not enforceable.

N.M. v. W.K. (2024) 100 Cal.App.5th 978. (A168081)

When a petitioner seeks a domestic violence restraining order, a respondent who has already responded to the petition is not entitled to a continuance of the hearing on the request "as a matter of course."

Civil Procedure

Alafi v. Cohen (2024) 106 Cal.App.5th 46. (H050485)

Trial court's failure to issue requested statement of decision was prejudicial error given that it forestalled appropriate appellate review.

Bai v. Yip (2024) 107 Cal.App.5th 188. (A169027)

Instead of dismissing pro se plaintiffs' complaint, trial court should have treated pro se plaintiffs' revised response to defendants' demurrer as an amended complaint.

Bassi v. Bassi (2024) 101 Cal.App.5th 1080. (H049873)

Domestic violence restraining order was not struck even though some of anti-SLAPP movant's activity was protected because restraining order petition had requisite minimal merit.

Blauser v. Dubin (2024) 106 Cal.App.5th 918. (G063715)

Addition of trial court's signature with "it is so ordered," did not transform order granting nonsuit into an appealable order.

California Capital Insurance Co. v. Hoehn (2024) 17 Cal.5th 207. (S277510)

California Supreme Court invalidated the judicially created two-year limit to bring CCP section 473(d) motions to set aside judgments not void on their face.

Casola v. Dexcom, Inc. (9th Cir. 2024) 98 F.4th 947. (23-55403)

For removability, an electronically submitted complaint is not "filed" in California state court until it is acknowledged as officially filed by the court clerk.

City of Los Angeles v. PricewaterhouseCoopers, LLP (2024) 17 Cal.5th 46. (S277211)

Section 2023.030 of the Civil Discovery Act gives courts authority to address egregious forms of misconduct not otherwise addressed by the Act.

Doe WHBE 3 v. Uber Technologies, Inc (2024) 102 Cal.App.5th 1135. (A167458)

No abuse of discretion where trial court judge not only appropriately applied correct legal standard but also ensured that plaintiff understood and stipulated to *forum non conveniens* issues.

Eagle Fire and Water Restoration, Inc. v. City of Dinuba et al. (2024) 102 Cal.App.5th 448. (F086052)

Trial court retained jurisdiction to enforce settlement agreement because cross-complaint had not been dismissed yet and, therefore, the case remained "pending litigation."

Gazal v. Echeverry (2024) 101 Cal.App.5th 34. (B327668)

Plaintiff's fraud claims did not arise from protected speech, but rather from the alleged misconduct that occurred after defendant encouraged plaintiff to donate.

Gorobets v. Jaguar Land Rover North America, LLC (2024) 105 Cal.App.5th 913. (B327745)

Plaintiff's rejection of simultaneous offers to compromise warranted cost shifting where one offer was invalid but the other was valid, and the plaintiff failed to achieve a more favorable judgment.

Greisman v. FCA US, LLC (2024) 103 Cal.App.5th 1310. (A166919)

Defense counsel's on-the-record oral stipulation to settlement terms was sufficient to render the settlement agreement enforceable, so it was not error to enter judgment pursuant to its terms.

Haidet v. Del Mar Woods Homeowners Assn. (2024) 106 Cal.App.5th 530. (D082923)

No continued right to voluntary dismissal without prejudice after amending complaint to omit a defendant; instead, the trial court has discretion to dismiss with prejudice upon motion by either party.

In re M.T. (2024) 106 Cal.App.5th 322. (F086891)

Request to seal entire record should have been granted because requestor's safety and privacy interests in concealing her transgender identity overcame the public's right of access.

JHVS Group, LLC v. Slate (2024) 107 Cal.App.5th 30. (F087324)

Trial court's preliminary injunction was void based upon a lack of fundamental jurisdiction over two individual defendants who were never served.

Katayama v. Continental Investment Group (2024) 105 Cal.App.5th 898. (G063872)

Trial court erred in determining that plaintiff's response to requests for admission, including waived objections, failed Code of Civil Procedure section 2033.220 "substantial compliance" requirement.

LCPFV LLC v. Somatdary, Inc. (2024) 106 Cal.App.5th 743. (B325599)

Trial court properly refused to award excessive fees and damages during default judgment process to plaintiff that ramped up legal activity after notice defendant would not participate in proceedings.

Littlefield v. Littlefield (2024) 106 Cal.App.5th 815. (A167764)

Anti-SLAPP statute mandated granting of attorney's fees where motion was frivolous, as no reasonable attorney would conclude that plaintiff's petition sought to impose liability based on any protected activity.

Lorch v. Superior Court (Kia Motors America, Inc.) (2024) 101 Cal.App.5th 1266. (D083609)

Petitioner's peremptory challenge to judge reassigned to her case filed before trial began was timely where the parties were notified of the reassignment via telephone call from the court clerk.

Luo v. Volokh (2024) 102 Cal.App.5th 1312. (B323878)

Plaintiff's restraining order petition was properly stricken as a strategic lawsuit against public participation targeting defendant's writings about her history of pseudonymous litigation.

Marriage of Moore (2024) 102 Cal.App.5th 122. (A165038)

Fees and costs incurred during mediation occurring after motions to compel discovery were filed were not compensable via sanctions award because they were not costs of bringing the motions. Trial court improperly included mediation-related fees and costs incurred after filing a motion to compel in sanctions award, which were not reasonably incurred as a part of bringing the motion.

Marriage of Tara and Robert D. (2024) 99 Cal.App.5th 871. (D080977)

Trial court's error in refusing to grant continuance after permitting attorney's withdrawal on eve of trial was not prejudicial where appellant's contentions were merely suggestive of disadvantage.

Medallion Film LLC v. Loeb & Loeb LLP (2024) 100 Cal.App.5th 1272. (B323356)

Letter from attorney with alleged misrepresentations was not protected prelitigation conduct because it was a request to avoid litigation.

Moten v. Transworld Systems, Inc. (2024) 98 Cal.App.5th 691. (E078871)

Anti-SLAPP motion to strike should not have been granted based on litigation privilege where plaintiff's claims were based on violations of the Rosenthal Act because litigation privilege did not apply.

Ofek Rachel, Ltd. V. Zion (2024) 106 Cal.App.5th 1119. (B333959)

In post-judgment enforcement proceedings, trial courts may impose attorney's fees against a nonparty for failure to comply with the court's order.

People v. SanMiguel (2024) 105 Cal.App.5th 880. (B328160)

No substantial likelihood that peremptory challenge to juror was based on his race where trial court also observed the behaviors proffered as the basis for the challenge.

Robles v. City of Ontario (2024) 106 Cal.App.5th 574. (G064119)

Plaintiffs had right to seek additional attorney fees incurred while seeking enforcement of stipulated judgment because the plain language of their agreement so provided.

Slone v. El Centro Regional Medical Center (2024) 106 Cal.App.5th 1160. (D082341)

Appellant's failure to fairly summarize facts in his opening brief resulted in him waiving his claims that insufficient evidence supported the trial court's findings.

W. Bradley Electric v. Mitchell Engineering (2024) 100 Cal.App.5th 1. (A167137)

Refusing to set aside attorney's unauthorized dismissal of cross-complaint was not an abuse of discretion where the client failed to act promptly to rectify the situation, ratifying the dismissal.

Vines v. O'Reilly Auto Enterprises (2024) 101 Cal.App.5th 693. (B327821)

Trial court erred in granting interest on attorneys' fees award from the date of the original judgment, rather than the new judgment after reversal on appeal.

WasteXperts, Inc. v. The City of Los Angeles (2024) 103 Cal.App.5th 652. (B325299)

Declaratory relief claim did not arise from protected prelitigation activity where the dispute would exist even if defendant had not sent prelitigation correspondence.

Contracts

BTHHM Berkeley, LLC v. Johnston (2024) 100 Cal.App.5th 1220. (A166242)

Despite defendant's claim that he did not intend to be bound, settlement term sheet was enforceable under CCP section 664.6.

JJD-HOV Elk Grove, LLC v. Jo-Ann Stores, LLC (2024) ___ Cal.5th ___. (S275843)

Cotenancy provision in retail lease reflected parties' agreement regarding acceptable alternative performance of negotiated obligations and was enforceable.

Rattagan v. Uber Technologies, Inc. (2024) 17 Cal.App.5th 1. (S272113)

A plaintiff may assert a fraudulent concealment claim arising from the performance of a contract if the elements of the claim can be established independently and the tortious conduct exposes plaintiff to a risk of harm beyond the parties' reasonable contemplation.

Samuelian v. Life Generations Healthcare, LLC (2024) 104 Cal.App.5th 331. (G061911)

Where owners sell only partial interest in company, reasonableness standard rather than void per se must be applied to determine whether noncompete clause is valid.

Vaghashia v. Vaghashia (2024) 106 Cal.App.5th 188. (B331073)

Party was judicially estopped from seeking to vacate settlement agreement that it had previously moved to enforce even though the trial court adopted an adverse interpretation of the agreement.

Evidence

Audish v. Macias (2024) 102 Cal.App.5th 740. (D081689)

Trial court did not abuse its discretion by admitting limited evidence about plaintiff's future eligibility for Medicare and expected amounts Medicare might pay for future medical services.

Huntsman-West Foundation v. Smith (2024) 104 Cal.App.5th 1117. (E081025)

Trial court properly granted summary judgment for defendant, who had no control over premises on which plaintiffs' property was stored and eventually lost.

Marriage of Lietz (2024) 99 Cal.App.5th 664. (G061866)

Trial court properly sustained objection to questions seeking to elicit expert testimony on case-specific fact about which the expert lacked independent knowledge and had not been independently proven by evidence.

People v. Baugh (2024) ___ Cal.App.5th ___. (A166277)

Trial court did not err by refusing to order prosecutor to obtain evidence regarding victim witness' alleged schizophrenia diagnosis.

People v. Caratachea (2024) ___ Cal.App.5th ___. (D082799)

Trial court was not required to conduct a *sua sponte* Evidence Code section 352 inquiry where attorney did not request exclusion.

People v. Lozano (2024) 101 Cal.App.5th 366. (A165646)

Deceased victim's statement to her mother regarding protracted pattern of sexual abuse was not admissible under the excited utterance hearsay exception because there had been time for her to reflect.

People v. Rafael B.D.R. (2024) 101 Cal.App.5th 385. (A167246)

Trial court erred by denying motion for a new trial following newly discovered evidence: a confession by defendant's ex-wife that her family intentionally invented abuse allegations to deport defendant.

Real Property

City of Alameda v. Sheehan (2024) 105 Cal.App.5th 68. (A168300)

Though trial court erred in determining that notice to pay rent or vacate required name of natural person not entity, judgment for tenant was still affirmed because of notice's other inaccuracies.

Di Martini v. Superior Court (Gupta) (2024) 98 Cal.App.5th 1269. (A168529)

A claimant must seek court permission before filing a second *lis pendens* on the same property in a subsequent proceeding.

Kaur v. Dual Arch International (2024) ___ Cal.App.5th ___. (F086272)

Qualified, not absolute, immunity applied to trustee's communications during nonjudicial foreclosure.

Lazar v. Bishop (2024) ___ Cal.App.5th ___. (B321752)

Cause of action for real estate broker's breach of fiduciary duty was assignable where the complaint only sought to recover damages related to property and pecuniary interests.

Sam v. Kwan (2024) 101 Cal.App.5th 556. (B314426)

Summary judgment based on bona fide purchaser doctrine was improperly granted when there were obvious factual disputes as to whether purchaser was adequately diligent.

Zavala v. Hyundai Motor America ___ Cal.App.5th ___. (D082747)

Disagreeing with *Gorobets v. Jaguar Land Rover North America*, simultaneous 998 offers to the same party may be valid to shift costs.

Remedies

Garcia v. Tempur-Pedic North America, LLC (2024) 98 Cal.App.5th 819. (E079859)

Despite deposition not actually occurring, trial court's consideration of whether to award incurred deposition costs was appropriate.

Howell v. State Dept. of State Hospitals (2024) ___ Cal.App.5th ___. (A168526)

Failure to directly address prevailing plaintiff's unopposed request for prejudgment interest required remand.

LCPFV LLC v. Somatdary, Inc. (2024) 106 Cal.App.5th 743. (B325599)

Trial court properly refused to award excessive fees and damages during default judgment process to plaintiff that ramped up legal activity after notice defendant would not participate in proceedings.

Yaffee v. Skeen (2024) 106 Cal.App.5th 1281. (C097746)

Reversal required where inadmissible evidence of reasonable value of medical services received by insured plaintiff may have resulted in recovery of amounts paid by neither the plaintiff nor his insurer.

Torts

A.L. v. Harbor Developmental Disabilities Foundation (2024) 102 Cal.App.5th 477. (B322729)

Regional Center had no duty to protect disabled individual from sexual assault by third-party vendor employee where employee had no previous history of questionable behavior.

McCurdy v. County of Riverside (2024) 106 Cal.App.5th 1103. (D083420)

After a successful habeas petition, petitioner's claim against County was subject to 6-month presentation window for tort claims.

Shalghoun v. North Los Angeles County Regional Center, Inc. (2024) 99 Cal.App.5th 929. (B323186)

Regional center had no duty to protect employees of a residential facility that accepted a developmentally disabled person as a resident, despite facility's request that regional center relocate the resident.

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Judges and Attorneys

Dickson v. Mann (2024) 103 Cal.App.5th 935. (D081851)

Law firm had no third-party claim on funds paid under flat fee arrangement despite a provision stating the money was earned on receipt because it had not yet provided any legal services.

Friends of the South Fork Gualala v. Dept. of Forestry & Fire Protection (2024) 105 Cal.App.5th 517. (A168163)

Trial court did not err in denying application for disability accommodation where numerous continuance accommodations had already been granted and significantly delayed the CEQA lawsuit.

Masimo Corporation v. The Vanderpool Law Firm, Inc. (2024) 101 Cal.App.5th 902. (G061829)

Law firm's withdrawal from representation did not insulate it from sanctions for its prior discovery misuse.

Merrick v. Lau (2024) ___ Cal.App.5th ___. (B322994)

Notwithstanding the trial court judge's unprofessional comment, judgment was affirmed when record showed no evidence of bias.

North American Title Company v. Superior Court (Cortina) (2024) 17 Cal.5th 155. (S280752)

Statement of disqualification alleging judicial bias must be presented at the earliest practicable opportunity after discovery of facts constituting grounds, and failure to do so is forfeiture of the right.

People v. Ferenz (2024) 99 Cal.App.5th 1032. (H049430)

Defendant could not replace appointed counsel because she provided adequate representation considering the evidence and charges.

Simers v. Los Angeles Times Communications, LLC (2024) 104 Cal.App.5th 940. (B323715)

Despite plaintiff's counsel's misconduct leading to the need for another trial, trial court did not abuse its discretion in awarding her attorney's fees.

Syre v. Douglas (2024) 104 Cal.App.5th 280. (E080594)

Denying motion to disqualify counsel was appropriate where prospective client did not provide relevant confidential information to an attorney or demonstrate she would be harmed by the information provided.