

Ventura County
Est. 1928
BAR ASSOCIATION

Estate
Planning &
Probate
Section

Present:

Heggstad Redux:
The 30th
Anniversary

Presenter:
Hon. Glen Reiser

JAMS
Local Solutions.
Global Reach.

1

HEGGSTAD REDUX

How A
**Heggstad
Petition**
Can Help

Probate vs Heggstad Petition

HOW SPECIFIC DOES THE
HEGGSTAD DECLARATION
NEED TO BE?

CHOICES

QUICK AND EFFICIENT
EX PARTE
HEGGSTAD PETITION RELIEF
www.HeggstadHelp.com

**HEGGSTAD
MOTION**
WHAT YOU NEED TO KNOW

Heggstad
Petitions

WHAT IS THE
HEGGSTAD PETITION?
HOSTED BY BILL GROSS | PAUL VELASCO

"HEGGSTAD HELP"
Presented by California Attorney
Robert P. Bergman

What is a
Heggstad Petition?

Let Law Work
for You

HEGGSTAD HELP

2

ONE ORDER OF HEGGSTAD, PLEASE



3

3

PRE-NANCY

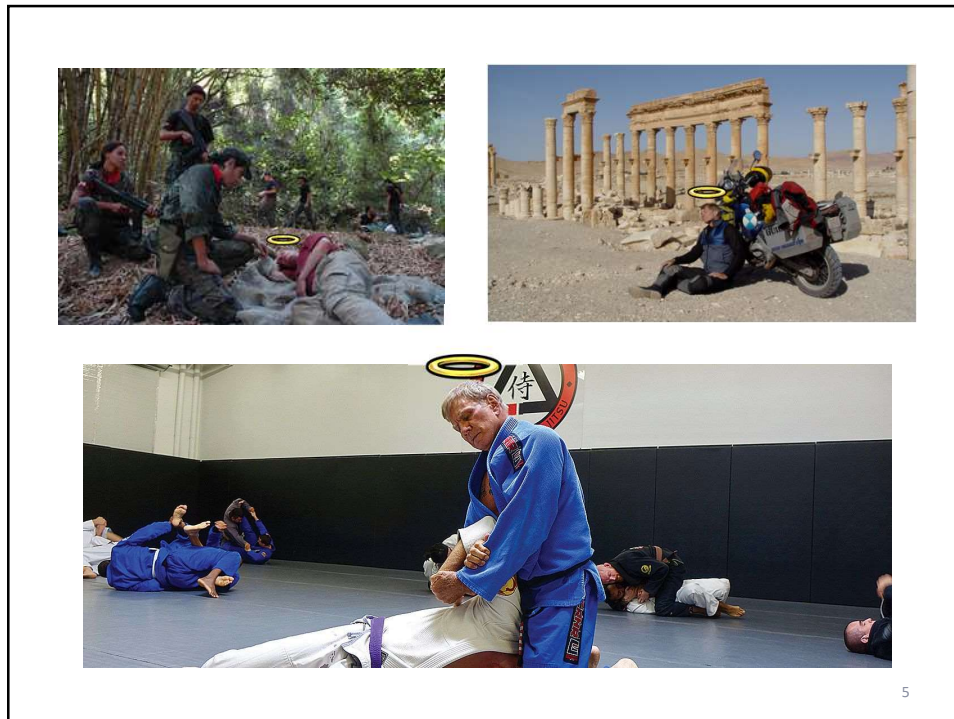


POST-NANCY



4

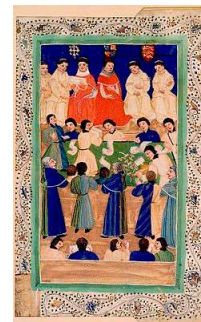
4



5

THE COURT OF CHANCERY

- Created in the 12th century to assist returning crusaders (feoffors to use), who had conveyed ownership of their lands to a trustee (feoffee to use) to manage lands and collect and pay feudal dues.
- The King referred the issues to the Lord Chancellor, who almost invariably would return the lands to the returning crusader as a matter of equity (cestui que use).



6

PROBATE CODE §15202

“A trust is created
only if there is trust
property.”



7

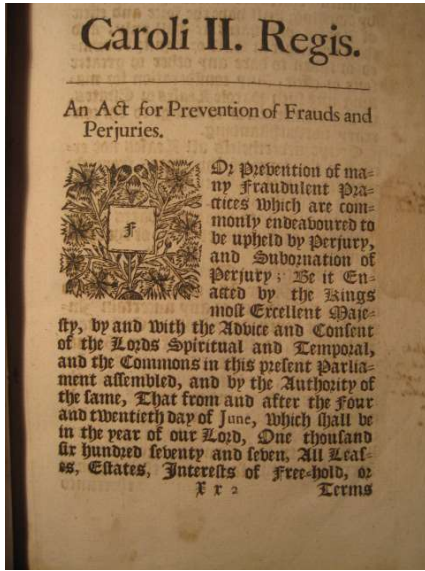
REST. 3RD TRUSTS §41

An expectation or hope of receiving
property in the future, or **an interest
that has not come into existence ...
cannot be held in trust.**”

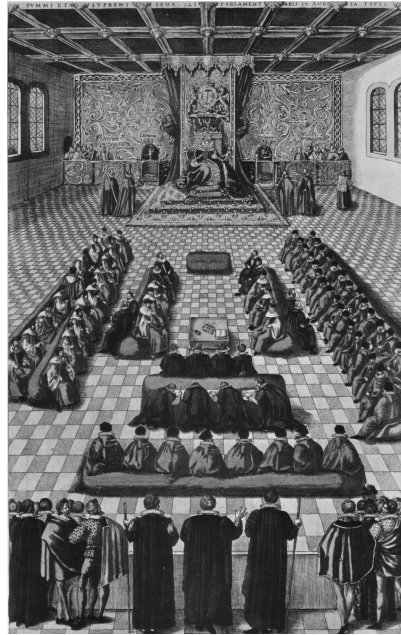


8

8



June 20, 1677



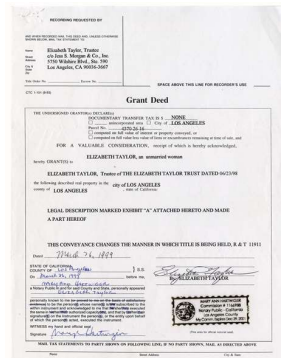
9

9

CIVIL CODE §1624

“(a) The following contracts are invalid, unless they, or some note or memorandum thereof, are writing and subscribed by the party to be charged...

... (3) **An agreement ... for the sale of real property, or an interest therein;**”



10

10

BEVERAGE v. CANTON PLACER MINING CO.
 (1955) 43 Cal. 2d 769, 774

“To satisfy the statute of frauds,
the memorandum affecting the
 sale of real property **must so**
describe the land that it can be
identified with reasonable
certainty.”



11

ALAMEDA BELT LINE v. CITY OF ALAMEDA
 (2003) 113 Cal. App. 4th 15 , 21

“[Parol] evidence **may not** be
 used to supply a description
 that the parties **entirely**
omitted from the writing.”



12

12

ESTATE OF HEGGSTAD (1993)

16 Cal.App.4th 943



- In 1989, Halvard Heggstad is an unmarried man with two adult children, Glen and Susan.
- May 10, 1989, Halvard signs a trust and pour- over will.
- The **trust** contains a “**Schedule A**” which identifies a “Partnership interest in **100 Independence Drive**, Menlo Park, California”



13

13

ESTATE OF HEGGSTAD (1993)

16 Cal.App.4th 943

- Halvard does not have a partnership interest in 100 Independence Drive, Menlo Park, but he does own an **undivided 34.78% interest**.
- Halvard does not formally convey 100 Independence Drive to his trust.
- Halvard marries Nancy Rhodes in June 1989.
- Halvard dies October 20, 1990.



14

14

ESTATE OF HEGGSTAD (1993)

16 Cal.App.4th 943

- Nancy is an omitted spouse under Halvard's will, entitled to one-third of the probate estate. Nancy takes *nothing* under the trust.
- Glen, as successor trustee, asks the court to find that 100 Independence Dr. is a trust asset
- Nancy, as an omitted spouse under the will, asks the court to find that title was never perfected and she takes one-third of 100 Independence Dr. as an omitted spouse.



15

ESTATE OF HEGGSTAD (1993)

16 Cal.App.4th 943



- The Court of Appeal finds as a matter of common law that Halvard's **written declaration of trust is sufficient to create a trust in 100 Independence Dr., Menlo Park.**
- The Court of Appeal, though finding in favor of trustee Glen, rules that **Glen "errs when he argues** that order to uphold the trust, **we must view the trust document as a valid conveyance** of the property to the trust."



16

POST-HEGGSTAD RECURRENT ISSUES

- **Real property refinance** where the settlor or co-settlers reconvey to themselves to accommodate lender underwriting requirements and then fail to reconvey.
- Institutional **accounts** identified on Schedule A, including short-term certificates of deposit, **reinvested** by the settlor or co-settlers in new accounts with new numbers.
- Merger or acquisition of identified Schedule A institutional accounts into new companies without settlor or co-settlor involvement.



17

17

OSSWALD v. ANDERSON (1996) 49 Cal.App. 4th 812

- Otto and Heidi Osswald sign an **irrevocable** trust in 1987, referencing a Schedule A, but no schedule is attached.
- Otto and Heidi also sign a notarized quitclaim deed to their joint tenancy home in Huntington Beach to the 1987 trust, but it was never recorded, and only a photocopy could be found. [A letter in the estate planner's file said here is a copy, I will record the original.]



18

18

OSSWALD v. ANDERSON (1996)
49 Cal.App. 4th 812

- Despite the irrevocable 1987 trust, the lawyer has Otto and Heidi sign a new irrevocable trust in 1988, this one **appointing Heidi's son Gary as trustee**. The 1988 trust **does have a Schedule A**, identifying the home in Huntington Beach. Gary refuses to accept trusteeship because he wants nothing to do with Otto.
- A quitclaim deed of the HB property to the 1988 trust is also signed and this time recorded by the lawyer, but it nevertheless "erroneously" names Otto and Heidi as both fiduciary grantors and grantees.



19

19

OSSWALD v. ANDERSON (1996)
49 Cal.App. 4th 812

- In 1990, Otto and Heidi convey the Huntington Beach property **as co-trustees** of the 1988 trust to Heidi. (Hint—they are not co-trustees of the 1988 trust.) In 1991, Heidi reconveys the HB property back to herself and Otto in joint tenancy.



20

20

OSSWALD v. ANDERSON (1996)

49 Cal.App. 4th 812

- In 1991, Otto impregnates “Linda”, and Heidi then dies of a heart attack.
- Later in 1991, Otto signs a new trust in favor of Linda and her baby, disinherits Gary, created a new but revocable trust, sells the Huntington Beach house, and **dies the day after escrow closes**. [A title company insures this?]
- Gary argues that the Huntington Beach house was still in the 1988 trust. Linda claimed the trust was never properly funded.



21

21

OSSWALD v. ANDERSON (1996)

49 Cal.App. 4th 812

- The Court of Appeal found the 1987 trust invalid because the trust was never properly funded, and the copy of the unrecorded deed was inadequate to transfer the Huntington Beach property.
- The Court of Appeal found the 1988 trust invalid because, unlike *Heggsted*, Otto and Heidi did not name themselves as co-trustees, and the recorded deed was to the wrong grantee (should have been to Gary as trustee).



22

22

OSSWALD v. ANDERSON (1996) 49 Cal.App. 4th 812

- The Court of Appeal found the 1990 quitclaim deed to Heidi invalid because Otto and Heidi signed as grantor co-trustees of the 1988 trust and were not in fact co-trustees.
- Linda and the baby win.

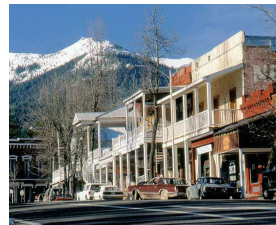


23

23

ESTATE OF POWELL (2000) 83 Cal. App. 4th 1434

- William and Myrtle, husband-and-wife, own a house in Weaverville (Trinity County) in joint tenancy.
- In 1988, William and Myrtle execute a family trust, which includes an attached Schedule A identifying their Weaverville home.
- In 1991, William and Myrtle execute a new trust, which again includes an attached Schedule A identifying the Weaverville home.



24

ESTATE OF POWELL (2000)

83 Cal. App. 4th 1434

- William and Myrtle fail to perfect the transfer by recorded deed.
- Myrtle dies in 1995. William revokes the trust.
- William contends that he owns Weaverville property because (1) there is no recorded document severing the joint tenancy and because (2) he revoked the trust.
- The Court of Appeal, citing *Heggstad*, holds that **the inclusion of the Weaverville home on the trust Schedule A was sufficient to transfer Myrtle's one-half of the asset to the trust.**



25

25

KUCKER v. KUCKER (2011)

192 Cal.App. 4th 90

- 84-year-old Mona Berkowitz of TO signed an irrevocable *inter vivos* trust on June 29, 2009.
- Along with the trust, Mona signed a general property assignment stating:
- **"I... hereby assign, transfer and convey to Mona S. Berkowitz, trustee of the [Trust], all of my right title and interest in all property owned by me, both real and personal property and wherever located."**



26

26

*KUCKER v. KUCKER (2011)*192 Cal.App. 4th 90

- On October 29, 2009, Mona signs an amendment and restatement of the trust, specifically transferring to the trust her shares of stock in eleven specific corporations and funds.
- Mona dies the following month. **The 2009 amendment does not include Mona's 3017 shares of stock in Medco Health Solutions, Inc.**
- Mona's successor trustees ask on Heggstad" petition that the Medco shares be deemed assets of Mona's trust.

medco[®]

27

27

*KUCKER v. KUCKER (2011)*192 Cal.App. 4th 90

- "The probate court erred by not ruling that **the General Assignment was effective** to transfer the Medco shares to the trust."
- "The **General Assignment** and pour-over will show that the Trustor **intended to transfer all of her personal property** to the Trust."



GENERAL ASSIGNMENT

- Use of General Assignment --
- Disadvantage --
 - It may fund the trust with assets that were not intended to be included (motor vehicles, other assets not intended to be in trust)



28

28

KUCKER v. KUCKER (2011)

192 Cal.App. 4th 90

- “The General Assignment was *ineffective* to transfer the Trustor’s real property to the Trust.”
- “To satisfy the statute of frauds, the General Assignment was required to describe the real property so that it can be identified.”
- “The statute of frauds does not apply to... a transfer [of personal property].”



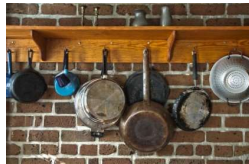
29

29

KUCKER v. KUCKER (2011)

192 Cal.App. 4th 90

- The Court of Appeal cites the CEB treatise to discuss general assignments of personal property signed concurrently with a trust agreement:
- “[S]uch a general assignment of personal property is a commonly used estate planning tool: ‘some practitioners have clients periodically assign all (or substantially all...) assets to the trust so that a *Heggstad* petition (Prob.C. §850(a)(3)) can be used to capture any overlooked items’”

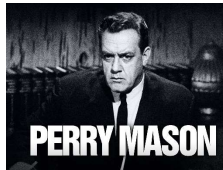


30

KUCKER v. KUCKER (2011)

192 Cal.App. 4th 90

- The Court of Appeal also cites the CEB treatise to consider the issue of after-acquired assets (Rest.3rd Trusts §41), recommending that counsel:
 “[A]dvise the client to **return periodically** [to the attorney’s office] to execute a general assignment of all or substantially all of their assets to the trust so that a *Heggstad* petition (Prob.C. §850(a)(3)) can be used to **capture any later acquired items not titled in the name of the trust.**”



31

31

POST-KUCKER RECURRENT ISSUES

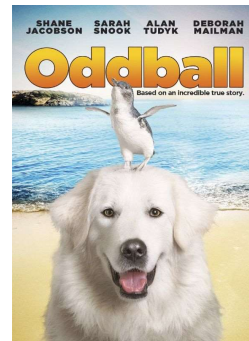
- Conflicting contractual beneficiaries** of bank, brokerage and other institutional accounts.
- Existing** brokerage **accounts** where **new securities** are added by the settlor to the same account number after the trust and all amendments have been executed.
- Brokerage accounts where **dividends** are **reinvested** and added to existing shares on the direction of the settlor, after the trust document and all amendments have been executed.
- Additional monies** added by the settlor to a bank account after the trust document and all amendments has been executed.



32



THE SAN DIEGO CASES



33

33

UKKESTAD v. RBS ASSET FINANCE, INC. (2015) 235 Cal.App. 4th 156

- Larry Mabee signed the trust restatement on December 7, 2012.
- Larry dies on December 16, 2012.
- In the trust restatement, Larry:
“... hereby assigns, grants and conveys to the Trustees of this instrument **all of the Grantor’s right, title and interest in and to all of his real and personal property**... wherever situated

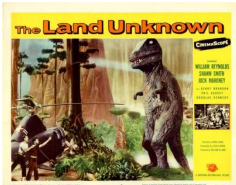


4

34

UKKESTAD v. RBS ASSET FINANCE, INC.
(2015) 235 Cal.App. 4th 156

- Though **unstated** and **undiscernible** from the trust or any schedule, Larry owns 1025 Bobler Dr., Vista, and a condominium in Indio.



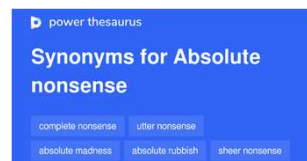
- **Directly applying** *Beverage, Alameda Belt Line, Heggstad, Powell, and Kucker*, Judge (now Justice) Keley in the trial court finds that the settlor's **personal property, but not his real property, is a trust asset.**

35

35

UKKESTAD v. RBS ASSET FINANCE, INC.
(2015) 235 Cal.App. 4th 156

- Successor co-trustee Ukkestad appeals. Adopting a “flexible, pragmatic” view of the Statute of Frauds, the Court of Appeal finds that **the boilerplate language “all of [settlor’s] real and personal property... wherever situated”, will be**, through extrinsic evidence to identify all of Larry’s real property, **sufficient to satisfy the Statute of Frauds.**
- The Court of Appeal in *Ukkestad* says the contrary language in *Kucker* is dicta.

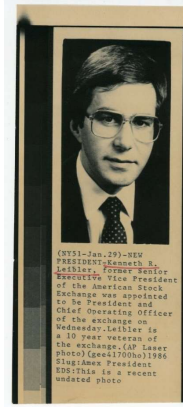


36

CARNE v. WORTHINGTON (2016)

246 Cal.App. 4th 548

- Kenneth Liebler signs a revocable *inter vivos* trust in 1985. As trustee of his trust, Kenneth received fiduciary title to 6236 Via Regla in La Jolla



- In 1992, Kenneth amends the trust, removing his daughter Melanie as beneficiary in favor of grandchildren, including grandson Dylan.

37

CARNE v. WORTHINGTON (2016)

246 Cal.App. 4th 548

- Kenneth signs a new trust in 2009, identifying 6236 Via Regla on Schedule A. **Kenneth's 2009 trust appoints Melanie as trustee.**
- Kenneth's 2009 trust distributes his assets *per stirpes*.



- Kenneth dies prior to formally conveying 6236 Via Regla to Melanie as trustee of the 2009 trust.

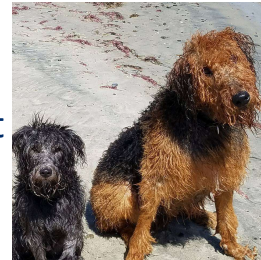
38

38

CARNE v. WORTHINGTON (2016)

246 Cal.App. 4th 548

- Melanie petitions to confirm the validity of the 2009 trust. Dylan objects, alleging that the 2009 trust was never funded because 6236 Via Regla was still in the 1985 trust, and never transferred to Melanie as 2009 successor trustee.
- Following *Osswald*, Judge Bostwick agrees with Dylan, as Kenneth did not own Via Regla as an individual, and the 2009 trust does not purport to transfer assets in Kenneth's capacity as 1985 trustee.



39

39

CARNE v. WORTHINGTON (2016)

246 Cal.App. 4th 548

- Without adopting any of the parties' arguments, and challenging statements in *Heggstad* to the contrary, the Court of Appeal finds that **for all intents and purposes, Kenneth's 2009 Trust is a deed** to 6236 Via Regla.



=



- Finding the 2009 Trust itself to be a valid conveyance, the Court of Appeal found **no reason** for Kenneth **to separately deed** the property to his trust **by recorded instrument**.

40

40

WHAT DOES IT MEAN ?

- In light of *Ukkestad*, doesn't every store bought form trust agreement blindly transferring "all my real and personal property" satisfy the Statute of Frauds ? Does the Statute of Frauds still exist as to trusts, and if so, how ?
- In light of *Carne v. Worthington*, if every *inter vivos* trust agreement identifying property is the equivalent of a real property conveyance, does *Heggstad* have any continued vitality ?



41

41

BAREFOOT v. JENNINGS (2020)

8 Cal. 5th 522

"As one court explained, interpreting section 17200 as we do here 'not only makes sense as a matter of judicial economy, but it also recognizes the probate court's inherent power to decide all incidental issues necessary to carry out its express powers to supervise the administration of the trust.' (*Estate of Heggstad, supra*, 16 Cal.App.4th at p. 951.)"



42

42



TODAY'S TOPIC What is a Heggstad Petition?

FIXING BROKEN TRUSTS
Heggstad and Trust Modification Petitions in California

Robert P. Bergman, Esq.
I was born in Tripoli, Libya to an Italian mother and then adopted by an American Air Force officer and his family. After traveling across the ocean on an ocean liner, I arrived in the United States where my father was stationed at an Air Force base in Michigan. Later, we moved to an Air Force base in Colorado Springs, Colorado, where I became a citizen at the age of four and a half. For years, we moved around various Air Force bases in Denmark and Virginia. In 1966, my father retired from the Air Force and moved the entire family to Silicon Valley, where I have lived ever since.

My original intention was to be a high school history teacher and although I still have a love of history, that is not the kind of teaching I do now. During my senior year of college, I decided to pursue a law degree and eventually received my Juris Doctor from Santa Clara University School of Law.

I did not get out to study estate planning in law school, and it wasn't until I was working with a small firm in San Jose that I was even introduced to the topic. Through my firm, I began doing seminars on living trusts. After leaving that firm, I continued doing seminars throughout America and the world for the next 30 years. I have spoken at over 100 seminars.

WHAT'S AN 850 PETITION?


- Asks the court to declare an omitted asset as property of a revocable living trust.
- Sometimes is called a "Heggstad petition".
- Useful when an asset is accidentally left outside a trust.
- Saves time and money by avoiding a full probate proceeding.

More at dhttrustlaw.com

LAW OFFICES OF DANIEL A. HUNT



Heggstad Help

43



Greiser@jamsadr.com

44