FEBRUARY 2018
Annotated California Bar Questions

Study edition | Original question pages with added highlights and reading pointers.

Practice first: attempt the clean question, then use the numbered notes and online sample responses to compare your reasoning. The full source packet is preserved, including its instructions and library.

Original, ungraded instructional commentary. Not official selected answers, scored student work, or a claim of attorney review.

Source: State Bar of California | 23 original pages, all retained.

Bar Exam Doctor | Published November 4, 2026

FEBRUARY 2018
ESSAY QUESTIONS 1, 2 AND 3

California Bar Examination

Answer all 3 questions; each question is designed to be answered in one (1) hour.

Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and fact upon which the case turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other.

Your answer should evidence your ability to apply the law to the given facts and to reason in a logical, lawyer-like manner from the premises you adopt to a sound conclusion. Do not merely show that you remember legal principles. Instead, try to demonstrate your proficiency in using and applying them.

If your answer contains only a statement of your conclusions, you will receive little or no credit. State fully the reasons that support your conclusions, and discuss all points thoroughly.

Your answer should be complete, but you should not volunteer information or discuss legal doctrines that are not pertinent to the solution of the problem.

Unless a question expressly asks you to use California law, you should answer according to legal theories and principles of general application.

READING POINTERS

Official source page preserved. Use the highlighted pages and corresponding online response for added teaching commentary.

QUESTION 1

Austin recently sold a warehouse to Beverly. The warehouse roof is made of a synthetic material called "Top-Tile." During negotiations, Beverly asked if the roof was in good condition, and Austin replied, "I've never had a problem with it." In fact, the manufacturer of Top-Tile notified Austin last year that the warehouse roof would soon develop leaks. The valid written contract to sell the warehouse specified that the property was being sold "as is, with no warranties as to the condition of the structure."

After Beverly bought the warehouse, the roof immediately started leaking. Beverly hired Lou, an experienced trial lawyer, and executed a valid retainer agreement. Beverly then sued Austin for rescission of the warehouse sale contract, on the bases of misrepresentation and non-disclosure.

At trial, Lou offered the expert testimony of Dr. Crest, a chemical engineer who had testified in other litigation concerning Top-Tile roofs. Lou knew that Dr. Crest had previously testified that, "Top-Tile roofs always last at least five years." Lou also knew from the manufacturer's specifications that Top-Tile roofs seem to last indefinitely, but not in some climates. On cross-examination, Dr. Crest testified that, "Top-Tile roofs never last five years," and that, "Climate is not a factor; Top-Tile roofs fail within five years everywhere in the world." During closing argument, Lou repeated Dr. Crest's statements and also said that Lou's own inspection of the roof confirmed Dr. Crest's testimony.

1. Will Beverly be able to rescind the contract with Austin on the basis of misrepresentation and/or non-disclosure? Discuss.

2. What, if any, ethical violations has Lou committed? Discuss. Answer according to California and ABA authorities.

READING POINTERS

1 Read the answer in context

A literally true historical statement can mislead when it answers a present-condition question while concealing a specific warning of imminent leakage.

2 Risk allocation does not automatically excuse deception

Distinguish a structural warranty disclaimer from consent induced by a knowing half-truth or nondisclosure.

3 Counsel's assertions are not evidence

Analyze personal knowledge in closing separately from the expert's changed opinion and any duty to correct known false testimony.

QUESTION 2

1 County Jail has prominently posted in the inmate dining hall quotations from three of the Ten Commandments as follow: "You shall not kill." "You shall not steal." "You shall not give false testimony against your neighbor." County officials thought these were "good moral principles" that would assist prisoners when they were released.

2 The Jail makes available to inmates copies of the Bible and the Quran (Koran), but no other religious books. Inmate Ivan requested a copy of a religious book central to his recognized, but relatively small, sect. This book urges the religious use of a hallucinogenic sacramental tea. Ivan has requested permission to have the hallucinogenic sacramental tea on a weekly basis as part of his religious observances.

Ivan's request for the book was denied on the basis that it encourages illegal drug usage. His request for permission to have the hallucinogenic sacramental tea was denied for the same reason.

1. What challenges under the United States Constitution, if any, could Ivan reasonably raise to the dining hall quotations, and what is the likely outcome? Discuss.

2. What challenges under the United States Constitution, if any, could Ivan reasonably raise to

3 the denial of his requests for the book and the tea, and what is the likely outcome? Discuss.

READING POINTERS

1 Use the display's actual content

The selected prohibitions have secular criminal-law relevance, but a prominent religious-source presentation can still convey endorsement under the 2018 framework.

2 Religious protection is not a popularity test

Analyze sincerity and neutral treatment. Access to another religion's books is not necessarily a substitute for Ivan's central text.

3 Separate ideas from conduct

Reading about a sacrament and consuming a hallucinogenic substance create different security concerns. The call asks for constitutional, rather than solely statutory, claims.

QUESTION 3

Len, an excellent chef, installed a smokehouse in his backyard three years ago to supply smoked meats to his friends. Len's neighbor, Michelle, enjoyed the mild climate and spent most of her time outdoors. She found the smoke and smells from Len's property very annoying and stopped having parties outdoors after receiving complaints from some of her guests. She asked Len multiple times to stop using the smokehouse, but he rebuffed her requests.

1

Len has frequently invaded Michelle's patio to retrieve his dog when it wandered from home. Michelle put up a "no trespassing" sign and a wire fence between their parcels. After the dog dug a hole under the fence, Len cut some of the wires and entered Michelle's property anyway, telling her that he had been fetching his wandering dog from her patio for at least ten years and wouldn't stop now.

2

Last week, the Town filed suit to condemn Michelle's land for a public park. It tendered to the court as compensation a sum substantially exceeding the prices of comparable parcels recently sold in the neighborhood. Michelle argues that the amount is insufficient because it is substantially less than a sum she turned down for her parcel a few years ago and it does not include compensation for relocation costs.

3

1. If Michelle sues Len regarding his continued use of the smokehouse, what claims, if any, may she reasonably raise, what defenses, if any, may he reasonably assert, and what is the likely outcome? Discuss.

2. If Michelle sues Len regarding fetching his dog, what claims, if any, may she reasonably raise, what defenses, if any, may he reasonably assert, and what is the likely outcome? Discuss.

3. Is Michelle likely to prevail in her argument for additional compensation from Town? Discuss.

READING POINTERS

1 Ordinary sensitivity is the benchmark

Independent complaints support substantial interference. Balance residential harm against utility and possible controls rather than treating an excellent chef as immune.

2 Prove prescription, not merely duration

Determine the governing period, adverse rather than permissive use, continuity, and scope. A retrieval claim does not automatically authorize cutting a fence.

3 Value the parcel at the taking

A rejected offer years earlier is not a constitutional minimum. Distinguish current market value and possible statutory relocation benefits.

FEBRUARY 2018
ESSAY QUESTIONS 4 AND 5

California Bar Examination

Answer both questions; each question is designed to be answered in one (1) hour. Also included in this session is a Performance Test question, comprised of two separate booklets, which is designed to be answered in 90 minutes.

Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and fact upon which the case turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other.

Your answer should evidence your ability to apply the law to the given facts and to reason in a logical, lawyer-like manner from the premises you adopt to a sound conclusion. Do not merely show that you remember legal principles. Instead, try to demonstrate your proficiency in using and applying them.

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READING POINTERS

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QUESTION 4

Claire, a four-year-old girl, went missing. Ike, who regularly provided reliable information to Officer Ava, told her that he had recently overheard Don planning to kidnap a child to raise as his own daughter. Officer Ava's partner, Officer Bert, hurried to the courthouse to apply for a search warrant for Don's house. Meanwhile, Officer Ava rushed to Don's house and knocked on the door. Don answered. Officer Ava told him, "I heard that a missing child might be here," and asked, "Can I come in and look for her?" Don replied, "No." Officer Ava said, "A life is at stake. I am searching your home, whether you want me to or not." Don stepped aside and allowed Officer Ava to enter.

Officer Ava searched the home thoroughly. In a closet in the bedroom, she found a bomb, measuring about 2 feet by 2 feet. In a medicine cabinet in the bathroom, she found several vials of cocaine. While looking under the bed, she found a plain sealed envelope, which she opened, that contained a map with a highlighted route from Don's house to Claire's house. She did not find Claire. Immediately after she completed the search, Officer Bert arrived with a warrant authorizing the "search of Don's home for Claire." Not long afterward, Claire turned up elsewhere unharmed.

Don was charged with: (1) possession of a bomb; (2) possession of cocaine; and (3) attempted kidnapping.

Don filed a motion, under the Fourth Amendment to the United States Constitution, to suppress evidence of the bomb, the cocaine and the map.

1. How should the court rule on the motion to suppress regarding:
   a. the bomb? Discuss.
   b. the cocaine? Discuss.
   c. the map? Discuss.
2. Can Don be found guilty of attempted kidnapping? Discuss.

READING POINTERS

1 Acquiescence is not voluntary permission

Evaluate emergency aid independently of consent. Stepping aside after the officer announces an unavoidable search is not necessarily a free choice.

2 Scope follows the person sought

A closet or space under a bed can hold the child. An ordinary medicine cabinet and a sealed envelope cannot; explain the added intrusion.

3 A later warrant has limits too

The independent warrant can support lawful discovery in child-sized hiding places. It does not automatically authorize searching small containers or cure every prior search.

QUESTION 5

In 2001, Ted, who was married to Wendy, signed a valid will bequeathing all of his property as follows: "$10,000 of my separate property to my daughter Ann; then $2,000 of my separate property to each person who is an employee of my company, START, at the time of my death; and all the rest of my separate property, plus all of my share of our community property to my beloved wife of 20 years, if she survives me." No other gifts were specified in the will.

In 2003, Wendy died.

In 2005, Ted adopted a child, Bob.

In 2006, Ted signed a valid codicil to his 2001 will stating that, "I hereby bequeath $10,000 of my separate property to my beloved son, Bob. All the rest of my 2001 will remains the same."

In 2011, Ted married Nell.

In 2012, Ted and Nell had a child, Carol.

In 2016, Ted died, leaving his 2001 will and his 2006 codicil as his only testamentary instruments. After all debts, taxes, and expenses had been paid, Ted's separate property was worth $90,000, and his share of the community property was worth $100,000. At death, Ted still owned START, which by then had ten employees, none of whom had been an employee of START in 2001.

What rights, if any, do Nell, Ann, Bob, Carol and the START employees have in Ted's estate? Discuss. Answer according to California law.

READING POINTERS

1 Identify the employee class when it closes

The will selects current employees at death. Ordinary employment changes have independent significance; the recipients need not have worked there in 2001.

2 The codicil republishes the plan

Bob is expressly provided for in 2006. Nell and Carol entered the family later, while Wendy's express survival condition failed.

3 Check the whole distribution

The $50,000 separate residue funds Nell's $30,000 and Carol's $20,000 protected shares. The $40,000 named and class gifts can remain intact.

February 2018

California Bar Examination

Performance Test

INSTRUCTIONS AND FILE

READING POINTERS

Official source page preserved. Use the highlighted pages and corresponding online response for added teaching commentary.

MEANEY v. TRUSTEES OF THE UNIVERSITY OF COLUMBIA

Instructions .....

FILE

Memorandum to Applicant from Melissa Saphir.....

Agreement .....

READING POINTERS

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MEANEY v. TRUSTEES OF THE UNIVERSITY OF COLUMBIA

INSTRUCTIONS

1. This performance test is designed to evaluate your ability to handle a select number of legal authorities in the context of a factual problem involving a client.
2. The problem is set in the fictional State of Columbia, one of the United States.
3. You will have two sets of materials with which to work: a File and a Library.
4. The File contains factual materials about your case. The first document is a memorandum containing the instructions for the tasks you are to complete.
5. The Library contains the legal authorities needed to complete the tasks. The case reports may be real, modified, or written solely for the purpose of this performance test. If the cases appear familiar to you, do not assume that they are precisely the same as you have read before. Read each thoroughly, as if it were new to you. You should assume that cases were decided in the jurisdictions and on the dates shown. In citing cases from the Library, you may use abbreviations and omit page citations.
6. You should concentrate on the materials provided, but you should also bring to bear on the problem your general knowledge of the law. What you have learned in law school and elsewhere provides the general background for analyzing the problem; the File and Library provide the specific materials with which you must work.
7. This performance test is designed to be completed in 90 minutes. Although there are no parameters on how to apportion that 90 minutes, you should allow yourself sufficient time to thoroughly review the materials and organize your planned response. Since the time allotted for this session of the examination includes two (2) essay questions in addition to this performance test, time management is essential.
8. Your response will be graded on its compliance with instructions and on its content, thoroughness, and organization.

READING POINTERS

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FOGEL & DAVIS, LLP

One Walton Avenue

Belleville, Columbia

MEMORANDUM

TO: Applicant

FROM: Melissa Saphir

DATE: February 27, 2018

RE: Meaney v. Trustees of the University of Columbia

We have been retained by the Trustees of the University of Columbia to defend them in a breach of contract action.

The late Edward Kemper (Edward) was a wealthy businessman and a generous donor to the University. Pursuant to an agreement, Edward transferred a garden to the Trustees, which the Trustees agreed to retain in perpetuity as the "Kemper Scottish Garden." Sometime later, Edward married Sarah Meaney (Sarah). Before her death two years ago, Sarah had grown quite fond of the Kemper Scottish Garden -- so much so that it came to be known as "Sarah's Scottish Garden." Notwithstanding the agreement, the Trustees recently made the difficult decision to sell the garden so as to use the proceeds for pressing educational purposes.

The plaintiff in the breach of contract action I referred to is Brendan Meaney. Meaney is the only child of Sarah by a prior marriage. By his action, Meaney is seeking to prevent the Trustees from selling the garden.

I believe that we may be able to persuade the court to dismiss Meaney's breach of contract action on the ground that Meaney lacks standing. To confirm my

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belief, I need to determine whether Edward transferred the garden to the Trustees by way of contract or gift and, if by way of gift, by way of what kind of gift.

1 To that end, please prepare an objective memorandum assessing whether Edward did indeed transfer the garden to the Trustees by way of contract or gift and, if by way of gift, by way of what kind of gift. Do not include a statement of facts, but use the facts in your analysis.

READING POINTERS

1 **Assess classification before the hoped-for defense**

The supervisor seeks an objective contract-versus-gift analysis. Do not assume a sale is lawful merely because the present plaintiff may lack standing.

AGREEMENT

The Trustees of the University of Columbia (hereinafter "the Trustees") desire to obtain a garden parcel of real property now owned and occupied by Emily Gordon, located in Belleville, Columbia, commonly known as 625 Sierra Way.

Edward Kemper (hereinafter "Kemper") desires to facilitate such acquisition by acquiring the garden parcel and by transferring it to the Trustees, subject to certain restrictions as provided for herein.

1 Therefore, in consideration of the foregoing, the Trustees and Kemper do hereby agree as follows:

1. Kemper will acquire the garden parcel and transfer it to the Trustees.

2. The Trustees will cause the garden parcel to bear the name "Kemper Scottish Garden," use it for educational purposes, and retain it in perpetuity.

2 Kemper retains the right to modify the terms of this Agreement as necessary and appropriate to its purpose.

Dated: December 18, 1964.

_____*Edward Kemper*_____

Edward Kemper

_____*Harold Williamson*_____

Harold Williamson
Chairman of the Board of Trustees

READING POINTERS

1 Formal words are not conclusive

Collins examines manifested commercial or donative motives. A naming or educational-use promise can accompany a gift even when it imposes a burden.

2 Identify each retained feature separately

Restrictions and a modification power make the gift nonabsolute. They do not automatically establish an express reversion or a successor's personal enforcement right.

February 2018

California Bar Examination

Performance Test

LIBRARY

READING POINTERS

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MEANEY v. TRUSTEES OF THE UNIVERSITY OF COLUMBIA

LIBRARY

Behrens Research Foundation v. Fairview Memorial Hospital
Columbia Court of Appeals (2008) .....

Collins v. Lincoln
Columbia Court of Appeals (2009) .....

Holt v. Jones
Columbia Supreme Court (1994) .....

READING POINTERS

Official source page preserved. Use the highlighted pages and corresponding online response for added teaching commentary.

BEHRENS RESEARCH FOUNDATION v. FAIRVIEW MEMORIAL HOSPITAL

Columbia Court of Appeals (2008)

Behrens Research Foundation (Behrens), a non-profit public benefit corporation, gave Fairview Memorial Hospital (Fairview), a healthcare institution, a gift of $1 million. Fairview had a well-recognized Department of Cardiothoracic Surgery. Behrens had had a longstanding interest in advancing cardiothoracic surgery. Not long thereafter, as a result of various unforeseen changes, including departures of key staff, Fairview closed the department.

Behrens brought the underlying action in the District Court seeking an injunction directing Fairview either to reopen its Department of Cardiothoracic Surgery or to return Behrens' $1 million gift. Fairview moved to dismiss the action under Columbia Rule of Civil Procedure 12(b)(6), claiming that Behrens did not have standing to sue. The District Court granted the motion and entered a judgment of dismissal.

On appeal, Behrens contends that it did indeed have standing to sue.

We disagree.

It is well settled in Columbia that a donor is the master of his or her gift.

Because that is so, a donor can make a gift that is *absolute.* The donor can give property *unconditionally*, without (1) restricting use or disposition of the property, (2) retaining power to modify the gift, or (3) reserving a right to sue to enforce a restriction or to undo the gift in case of a restriction's breach by causing the property to revert to the donor him- or herself or to a third person. When a gift is absolute, the donor has relinquished, and the donee has assumed, full dominion over the property -- i.e., the ability to use or dispose of the property at any time, in any manner, and for any purpose.

READING POINTERS

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But a donor can also make a gift that is *not absolute.* The donor can give property *conditionally*, (1) restricting use or disposition, (2) retaining power of modification, and/or (3) reserving a right of enforcement or reversion. When a gift is not absolute, the donor has not relinquished, and the donee has not assumed, full dominion over the property; rather, both donor and donee share power over the property's use or disposition.

Although a donor is indeed master of his or her gift, the law presumes that a gift is *absolute* unless it clearly appears otherwise. In line with this presumption, the law further presumes that a donor has *not* restricted use or disposition, has *not* retained power of modification, and has *not* reserved a right of enforcement or reversion, unless it clearly appears otherwise.

These presumptions prove fatal to Behrens' position. The record on appeal contains the instrument by which Behrens made its $1 million gift to Fairview. In pertinent part, the instrument recites only that Behrens "hereby delivers" and Fairview "hereby accepts" the gift. Neither expressly, nor by implication, does the instrument evidence any reservation on Behrens' part of a right of enforcement. Behrens did not reserve any such right for itself. We cannot make up for its omission.

Affirmed.

READING POINTERS

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COLLINS v. LINCOLN

Columbia Court of Appeals (2009)

Anita Collins brought an action for declaratory relief in the District Court against Stephen Lincoln, her adult son. In order to resolve various tax questions now pending before the State of Columbia Tax Board, Collins seeks a determination that the instrument by which she transferred certain property to Lincoln reflected a gift rather than a transfer by contract. Following a bench trial, the District Court entered judgment in Collins' favor, issuing the determination that she had sought. Lincoln appeals. We affirm.

The facts are undisputed: By deed dated June 26, 2002, Collins transferred to Lincoln a 260-acre vineyard in Parker County including a 20,000-square-foot Victorian main residence, guest house, pool, tennis courts, sports field, exercise studio, lake, olive orchard, and a stone winery with a tasting room and a permit to produce 5,500 cases of wine a year. The deed recited that Collins transferred the property to Lincoln "in consideration for his promise to use his best efforts to maintain the property in an ecologically sustainable manner." As of the date in question, the assessed value of the property was more than $35 million. Collins was then 65 years old, a widow, and the Chair of the Board of Directors of the Parker County Rural Conservancy, a locally-prominent environmental organization; Lincoln was 30 years old, unmarried, and the Rural Conservancy's Volunteer Coordinator; each was the other's sole living relative.

Property may be passed by gift. The elements of a gift consist of: (1) intent on the part of the donor to make a gift; (2) delivery, either actual or constructive, of property by the donor; (3) acceptance of the property by the donee; and (4) lack of consideration for the gift.

Property may also be passed by transfer by contract. The elements of a transfer by contract consist of: (1) an offer to buy or sell; (2) acceptance of the offer; and (3) consideration passing between the buyer and seller.

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Gifts and transfers by contracts have two similar elements. First, a gift requires delivery by the donor and a transfer by contract requires offer by the buyer or seller. Second, a gift requires acceptance by the donee and a transfer by contract requires acceptance by the seller or buyer.

But one element is different. While a transfer by contract requires the *presence* of consideration, a gift requires the *absence* of consideration. In other words, without consideration, the passing of property is by gift, whereas with consideration, it is by transfer by contract.

Consideration has two requirements. The promisee must bargain with the promisor and must confer, or agree to confer, a benefit or must suffer, or agree to suffer, a burden.

The absence of consideration is clear when a gift is absolute. *See, Behrens Research Foundation v. Fairview Memorial Hospital* (Colum. Ct. App. 2008). In that instance, the donee does not bargain with the donor or confer, or agree to confer, any benefit. Neither does the donee bargain with the donor or suffer, or agree to suffer, any burden. Instead, the donor simply delivers the property and the donee simply accepts it.

But the absence of consideration is not clear when a gift is not absolute. *See, Behrens Research Foundation.* In that instance, the donee could be said to bargain with the donor, and could be said to confer, or agree to confer, a “benefit” on the donor or to suffer, or agree to suffer, a “burden.” Consider the situation in which a university agrees to name a campus building in a donor’s honor or to use the building for a specified purpose. The university could be said to “bargain” with the donor -- negotiating the terms for the naming of the building or its use for the specified purpose -- and to confer, or agree to confer, a benefit or to suffer, or agree to suffer, a burden -- the naming of the building or its use for the specified purpose. Such a “bargain” and “benefit” and “burden” do not preclude a gift.

The presence or absence of consideration does not turn on the presence or absence of

READING POINTERS

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the term “consideration” in the instrument. For example, in *Salmon v. Wilson* (Colum. Supreme Ct. 1971), the Supreme Court held that a deed by which a father transferred 10 acres of land valued at $500,000 to his adult daughter effected a gift, even though the deed recited that he transferred the property to her “in consideration for $500.” The Supreme Court reasoned that, in light of all of the circumstances, the $500 paid by the daughter to her father was “nominal and immaterial,” and it was “clearly” the father’s intent to “donate the land to his daughter and not to sell it to her.”

Ultimately, what controls are the motives manifested by the parties. If the parties are motivated by a desire to buy and sell the property through a commercial transaction, there is a transfer by contract. But if the parties are motivated by a desire to deliver and accept the property through a non-commercial transaction, there is a gift.

Attacking the District Court’s determination that the deed by which Collins transferred the property in question reflected a gift rather than a transfer by contract, Lincoln claims that the deed impliedly recited Collins’ “offer” to transfer the property and his “acceptance” of the offer, and expressly recited the “consideration” -- his “promise to use his best efforts to maintain the property in an ecologically sustainable manner.” The “burden” of a promise to “use best efforts” is hard to quantify. But we have little doubt that it is adequate. Because that is so, such a promise could surely support a transfer by contract. But the fundamental question is whether there was in fact a transfer by contract rather than a gift. The answer is no. From all that appears, Collins and Lincoln were not motivated by a desire to buy and sell the property through a commercial transaction, but instead by a desire to deliver and accept the property through a non-commercial transaction. Collins was Lincoln’s mother, and he was her son. Each was the other’s only living relative, and each was an environmentalist. As the Supreme Court concluded in *Salmon*, so do we conclude here: In light of all of the circumstances, Lincoln’s “promise” to Collins “to use his best efforts to maintain the property in an ecologically sustainable manner” was nominal and immaterial, and it was clearly Collins’ intent to donate the property to him and not to sell it.

Affirmed.

READING POINTERS

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HOLT v. JONES

Columbia Supreme Court (1994)

Almost one hundred years ago, Ralph Polk created the Polk Trust by giving the Trustees of the University of Columbia a parcel of 10 acres in Silveyville, as a campus for the then newly-founded College of Physicians and Surgeons, and a sum of $5 million for the upkeep of the grounds. The Trustees of the University of Columbia are ex officio trustees of the Polk Trust.

Plaintiffs are three trustees of the University of Columbia and the Polk Trust. Defendants are the seven remaining trustees and the Attorney General of the State of Columbia.

Plaintiffs filed a complaint in the District Court. They alleged that defendant trustees had wrongfully diverted assets of the Polk Trust and sought an injunction to prohibit further wrongful diversion.

The Attorney General filed an answer to the complaint, denying plaintiffs' allegation for want of information and belief. In her answer, the Attorney General stated: "The Attorney General has reviewed the management of the Polk Trust and has determined that suit is not warranted."

Defendant trustees moved to dismiss the action on the ground that plaintiffs did not have standing to sue. The District Court granted the motion and entered judgment accordingly. The Court of Appeals affirmed. We granted certiorari.

The sole issue -- which is a question of first impression in Columbia -- is whether plaintiffs, as minority trustees of the Polk Trust, have standing to sue.

In accordance with the common law, all jurisdictions recognize that the Attorney General has standing to sue to enforce provisions of non-private trusts. At the same

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time, a substantial majority of jurisdictions have adopted the position that the Attorney General's standing is not exclusive. These jurisdictions accord standing to any person with a special interest.

The common law recognizes the problem of providing adequate enforcement of provisions of non-private trusts.

The primary type of non-private trust is the so-called charitable trust. A charitable trust is created, as a matter of fact, whenever a settlor manifests an intent to give property, in trust, for a charitable purpose and actually gives the property, in trust, for such purpose.

1 A charitable trust is also created, as a matter of law, whenever a person gives property to an educational, philanthropic, healthcare, or similar institution for an education, philanthropy, healthcare, or similar purpose.

Since there is usually no one who is willing to assume the burdens of suing to enforce the provisions of a non-private trust, the Attorney General has been accorded standing. But, in light of limited resources, the Attorney General cannot reasonably assume the burdens of suing to enforce the provisions of all non-private trusts.

The present case is representative. In her answer, the Attorney General stated that she had determined that suit was not warranted. But she also admitted that she had no information or belief as to plaintiffs' allegation that defendant trustees had wrongfully diverted property of the Polk Trust.

Although the Attorney General has primary responsibility for the enforcement of provisions of non-private trusts, the need for adequate enforcement is not wholly fulfilled by the authority given to him or her. There is no rule or policy against supplementing the Attorney General's standing by allowing standing to persons with a special interest, i.e., persons who are trustees or beneficiaries or would otherwise have an ownership interest in the property.

READING POINTERS

1 Educational purpose can create the trust

Holt recognizes a charitable trust from a gift to an educational institution for an educational purpose without requiring the document to use the word trust.

For this reason, we join the substantial majority of jurisdictions that have adopted the position that the Attorney General's standing is not exclusive. We hold that any person with a special interest has standing to sue to enforce provisions of the trust. 1

The trustees of a non-private trust, as trustees, have a special interest in the trust. The trustees are also in the best position to learn about breaches of trust and to bring the relevant facts to a court's attention.

Therefore, we conclude that plaintiffs, as trustees of the Polk Trust, have standing to sue to enforce its provisions.

Reversed and remanded.

READING POINTERS

1 **Standing is narrower than emotional attachment**

Holt permits appropriate private enforcement but does not give every donor relative or garden admirer a special ownership or beneficial interest.