<u>Beverly Hills Bar Association – Trusts & Estate Section</u>
<u>July 2018 Case Updates</u>

<u>Estate of Post, First District, Div. One, 2018 S.O.S. 3217</u>

In this case, the ex-wife and the Decedent owned a joint term life insurance policy. The primary beneficiary of the policy was the ex-wife, and the contingent beneficiaries were the decedent's children. The Decedent and ex-wife divorced prior to his death. The dissolution judgment awarded decedent the full ownership of the policy. Prior to his death, decedent also executed a handwritten codicil expressly omitting ex-wife from inheriting under his Will. The Codicil did not reference the life insurance policy. A few days after executing the handwritten codicil, the decedent died. At the time of his death, his ex-wife was still named as the beneficiary of his life insurance policy.

The decedent's sister filed a petition for probate to confirm that the decedent's children were the rightful beneficiaries of the policy. The ex-wife objected to the petition claiming she was in a domestic partnership with the decedent for roughly one year before his death. The ex-wife also asserted that the Policy was not part of the decedent's estate. Ultimately, the probate court awarded the policy proceeds to the children as the "proper and rightful beneficiaries."

On appeal, the ex-wife continued to assert that the policy was not part of the decedent's estate, and as a result, the probate court did not have jurisdiction over the proceeds of the policy. On appeal, the court concluded that because the life insurance policy was not part of the estate, the probate court lacked subject matter jurisdiction to evaluate whether the ex-wife was the rightful beneficiary of the policy. Thus, the probate court order was void.

South Dakota v. Wayfair, Inc., No. 17-494, S.C. (2018)

In this case, the court overturned *Quill Corporation v. North Dakota*, the 1992 Supreme Court case. In *Quill* case, the Court held that the Constitution bars states from requiring businesses to collect sales tax, unless they have a substantial connection to the state. Justice Anthony Kennedy noted that the *Quill* decision caused states to lose annual tax revenue up to $33 billion.

Recently, South Dakota enacted a law that required all merchants to collect a 4.5% sales tax if they have more than $100,000 in annual sales or more than 200 transactions within the state. State officials sued three large online retailers, Wayfair, Overstock.com, and Newegg, for violating the law.

The Supreme Court held that internet retailers can be required to collect sales tax even in states where they have no physical presence, upholding the South Dakota law. The decision did not decide whether states may seek sales tax retroactively, which South Dakota's law does not permit.

California Estate Tax for College Access Fund Initiative (#17-0038)

The California Estate Tax for College Access Fund Initiative would have enacted a graduated estate tax on the value of taxable estates and gifts, starting at $3.5M:

1) 12% on estates valued between $3.5M-4M

2) 15% on estates valued between $4M-4.5M

3) 17% on estates valued between $5M-5.49M

4) 22% on estates valued over $5.49M

The goal of the initiative was to increase student aid funding at California public colleges and universities by enacting a dedicated estate tax. The initiative proposed that a few billion dollars would be raised by this measure.

On June 12, 2018, sponsors of the initiative withdrew the proposal to place it on the ballot.

PLR 201825003

In PLR 201825003, the IRS stated that an outright gift to a foreign museum of a remainder interest in an art collection, following a reserved lifetime usufruct, qualifies as a completed gift for gift tax purposes.

The gift agreement allowed the donor to revoke the gift if:

1) The donee did not comply with specific requirements in the agreement regarding the housing, display and exhibition of the artwork;

2) The laws in the donee's country could not be replaced by a different set of laws prior the transfer;

3) The donee could not become privately owned; or

4) The laws in the country of the donee could be changed so as to cause the donor to be taxed in connection with the transfer of the artwork to the donor.

Because these conditions were not in the donor's control, the donor did not retain control over the beneficial enjoyment of the transferred remainder interest. Thus, it was a completed gift.