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No-Contest-Clause in Estate Instruments: Contests in CA Probate Codes and Cases

INTRODUCTION

Upon taking the Wills and Trusts class, I decided to practice a simple will. Something that I learned is no contest clause. The will provision including the no contest clause that is "Should any of my beneficiaries in this will contest it in any manner, I revoke any gift to him or her, and direct that his or her share of any gift be disposed of as if he or she had predeceased me." I hesitated whether I use it for my will because I became little sensitive to read that clause even though I am the one who hoping that my beneficiaries would not contest on my generous inheritance. This clause is "no contest clause (in terrorem clause), and it is one general way of expression of no contest clause.

Testators seem to keep in mind that it is my purpose to dispose my assets and insulted a dogmatic bigotry of no contest clause with the attorney's help. But attorneys seem not to carefully advise some consequences because they are already deceased and the enforcement of will is left to beneficiaries who has unknowledgeable facts behind the creation of the wills and trusts and blocked by in terrorem clause.

Furthermore, there are always hidden dangers of fraud, undue influence, unsound mind to create, or injustice. Testators are no longer available to verify what all this is about in a will. Final resort is that the beneficiaries have to put all their efforts, enormous time, and legacies to look for fair and the justice.

In contrast, no contest clause should put in a will or trust because that is the testator's wish to distribute his lifelong assets without unnecessary family dispute upon the testator's generous gifts. Some testators set their will with specific issues on his asset distribution. The distribution of personal assets is neither the problems under the matter of law nor the public matters in modern society. They want to exercise their money matters even after death, but anyway it is already not in testator's hand.

After taking into the consideration, not many of the beneficiaries are going to be interested in legal resolution as long as it is reasonable and fair. Thus, it is better leave to the beneficiaries if there is unjustly enriched or punishable liability on decedent's way of dispose. However, no contest clause is discouraging beneficiaries' law suits even though they have specific issues to clear their doubts because they are worried about forfeiture of their successions. This study examines such questions as what is no contest clause, what are the boundaries of the contest, how the CA's probate court cases affected is, and what is the problem.

I. WHAT IS NO CONTEST CLAUSE

A. Purpose of No Contest Clause

In 1898, the United States Supreme Court agreed that enforcing *in terrorem* clauses was rational because it is consistent with "good law and good morals." [1]

Numerous cases and attorney are indicated that no contest clauses have been recognized in California since 1909, when a California Supreme Court determined that no contest clauses are “valid” and “enforceable.”

Most of the will’s no contest clause use similar words to show the conditions what testator wants to do upon their property’s disposition. Sometimes a will shows the testator’s specific requests about family disruption into the testamentary instrument rather than prevent. Some wills are carefully drafted to protect a testator’s executor to carry out the will. Nonetheless, many cases have been filed to request the court decision either it was misrepresented the language use in terrorem clause or testator’s observed probable cause of disruption. The terrorem languages are usually warned that if beneficiary contest, they ended “one dollar,” “forfeit,” or consider as a “predeceased… without issue.”

B. Words used in No Contest Clause on the Cases

In *Estate of Lynn* (1952) 109 Cal. App. 2d 468**,** The will dated April 11, 1941 sixth paragraph reads: "I have purposely made no provision for any other person, whether claiming to be an heir of mine or not, and if any person, whether a beneficiary under this will or not mentioned herein, shall contest this will or object to any of the provisions hereof, I give such person so contesting or objecting the sum of one dollar, and no more, in lieu of the provision which I have made or which I might have made herein for such person so contesting or objecting."

In *Genger v. Delsol* (1997) 56 Cal. App. 4th 1410**,** contains “ if any beneficiary under this trust, singly or in conjunction with any other person or persons, contests in

any court the validity of this trust or of a deceased settlor's last will or seeks to obtain an adjudication in any proceeding in any court that this trust or any of its provisions or that such will or any of its provisions is void, or seeks otherwise to void, nullify, or set aside this trust or any of its provisions, then that person's right to take any interest given to him or her by this trust shall be determined as it would have been determined if the person had predeceased the execution of this Declaration of Trust without surviving descendants."

In *Burch v. George* (1994) 7Cal.4th 246, 866 P. 2d 92 [27 Cal.Rptr.2d 165], is used language for no-contest clause that "in the event that any beneficiary under this Trust…seeks to obtain in any proceeding in any court an adjudication that this trust or any of its provisions…is void, or seeks otherwise to void, nullify or set aside this Trust or any of its provision, then the right of that person to take any interest given to him or her by this Trust shall be determined as it would have been determined had such person predeceased the execution of this trust instrument without issue."

In *Estate of Ferber* (1998) 66 Cal App.4th 244 [77 Cal Rptr. 2d 774], testators requested to the attorney a strongest prescription of clause to prevent the litigation in order to protect his executor. The clause reads in relevant part: "If any devisee, legatee or beneficiary under this Will, or any legal heir of mine or person claiming under any of them (a) contests this Will or, in any manner, attacks or seeks to impair or invalidate any of its provisions… (c) challenges the appointment of any person named as an executor, (d) objects in any manner to any action taken or proposed to be taken by my Executor, whether my Executor is acting under court order, advice of proposed action or otherwise, (e) objects to any construction or interpretation of my Will, or any provision of

it, that is adopted or proposed by my Executor, (f) unsuccessfully requests the removal of any person acting as an executor, (g) conspires with or voluntarily assists anyone attempting to do any of these things, or (h) refuses a request of my Executor to assist in the defense of any such proceeding, then in that event I specifically disinherit each such person, and all legacies, bequests, devises, and interests given under this Will to that person shall be forfeited as though he or she had predeceased me without issue, and shall augment proportionately the shares of my estate going under this will to, or in trust for, such of my devisees, legatees and beneficiaries who have not participated in such acts or proceedings...."

In *Tunstall v. Wells* (2006) 144 Cal.App.4th 554 [50 Cal. Rptr. 3d 468], “Wells expressed a clear intention to treat Elizabeth's three sisters as a group, by awarding each of them the same bequest and subjecting them to the condition that a contest by any one of them would void the bequests to all three sisters.” Thus, if one of them contests, and then the other two sister’s gifts are also revoked and would go to the other daughter Elizabeth.

Harshest request to inherit the legacy is appeared as to encourage of severance the family relationship. In *Girard Trust Co. v. Schmitz* (1941) 129 NJ.Eq.444, 20A.2d21**,** Schmitz showed real hatred siblings among others in his testamentary trust, he provided that “four of his siblings would share his estate so long as none of them had any contact with another brother and sister whom the testator hated.”

In *Lange v. Nusser* (2011)Cal: Court of Appeal, 4th Appellate Dist., 3rd Div., Paragraph 3.3 of the trust directed that the trustee "make the following gifts, free of

taxes" at Lange's death: "(1) The trustee is directed to use any or all of the trust estate, as is required, at the sole discretion of the trustee, to care for any cats that are in the possession of the settlor at the time of her demise or incapacity." Testator gave one daughter to be a trustee and have 58 % of her residual beneficiary interest in the trust and giving 42% to two of her other children and one grandchild.

II. WHAT IS THE MEANING OF CONTEST AND WHAT IS NOT CONTEST

The recognizable of no contest clause court case *Estate of Hite* (1909) 155 Cal. 436,101 P. 443 states that "But wherever an opponent uses the appropriate machinery of the law to the thwarting of the testator's expressed wishes, whether he succeed or fail, his action is a contest." [2] Yet , other court said that the meaning of contest in a no contest clause is depends on the language used in. It cannot rewrite to avoid forfeiture even though it is written with unequivocally expressed languages. [3]

It is a fact that the bottom line of the contest results in forfeiture in California according to the languages in most of the cases. In Estate of Miller, Estate of Hite, and Estate of Fuller, unanimously indication that a "contest" of a will may result in a forfeiture in California if the will contains a properly drawn in terrorem clause denouncing contests and providing for forfeiture in such circumstances.

Recently, in January 1, 2010, the meaning of contest has been changed due to pass SB 1264. According to attorney Keith Codron, under the new law, no contest clause in a testamentary instrument will be enforceable only against "direct contests" lacking probable cause, probable cause, and only two types of "indirect contests" that is expressly provided the application with no contest clause based on pleading to

challenge a transferred property is not the decedent's and based on creditor's claim. Thus, no contest clause may partly enforceable. [4]

A. The Meaning of Contest

1. In Cases

In *Estate of Miller* (1964) 230 Cal. App. 2d 888, explained that the testatrix of the will used word "contest" that is the legal meaning because the drafter was an attorney at law and legal technician. Thus, it should be the technical meaning that is defined in the Probate Code. 106. It also said that lawyers and judges would normally read the word "contest" as it is employed in the probate code in connection with wills (Prob. Code, div. 3, ch. 2, arts. 1 and 2, 370-385) while probate proceeding.

Extensive California authority set the general validity of no contest clauses to disinherit a contesting beneficiary throughout the cases from more than a century. In *Burch v. George*, "no contest clause is properly enforceable against a surviving spouse who, under the terms of a will or trust instrument, brings a contest against that instrument based on the assertion of community property rights to estate property."[5] *Estate of Hite* illustrates that "No contest clauses are valid in California and are favored by the public policies of discouraging litigation and giving effect to the purposes expressed by the testator."[6]

2. Probate Codes

Section 21305, subdivision (f), includes within the definition of a "pleading" that could constitute a "contest" any "response, objection, or other document filed with the court that expresses the position of a party to the proceedings."

In *Lange v. Nusser* (2011) Cal: Court of Appeal, 4th Appellate Dist., 3rd Div. mentioned that the case filed in 2008 when section 21305 was in effect and the case decision was made in 2009. Since the new code do not states it will affect retroactively, the appeal court apply section 21305 still.[7] The situation indicated that if there are no indication of retrospective application in of the legislative history, and then it should bound by ordinary rule of construction.[8]

In new law effected from January 1, 2010, Section part 3 in 21310 was added (a) “Contest means a pleading filed with the court by a beneficiary that would result in a penalty under a no contest clause, if the no contest clause is enforced.” Nonetheless, there is no clear definition of categories what is contest to trigger no contest clause. This may conclude that no contest clause is technical language to interpret with throughout whole estate instrument, intention, and circumstances combined.

B. Not the meaning of the contest

1. In cases

CA court has held not the meaning of the contest which is not ended to be a subject of forfeiture in a variety of cases.

(a) “A claim to property in the estate made on the ground that it is community property and, therefore, distributable to the surviving spouse rather than under the will is not as rather recently said forfeiture ’contest.’" [9][10]

(b) “It is not a "contest" when there is an attempt to enforce a claim for money.”[11][12]

(c) "When there is an attempt to secure specific property which is apparently in the estate. It is not a contest."[13]

(d) "A motion for dismissal of a probate proceeding on the ground of lack of jurisdiction is not a contest." [14]

(e) "The opposition to distribution which would result in changing the recipient of estate property."[15]

(f) "It is the privilege and right of a party beneficiary to an estate at all times to seek a construction of the provisions of the will."[16] "An action brought to construe a will is not a contest within the meaning of the usual forfeiture clause, because it is obvious that the moving party does not by such means seek to set aside or annul the will, but rather to ascertain the true meaning of the testatrix and to enforce what she desired." [17]

2. Probate Codes

Many times, legislature enacted and codified in Probate Codes §§ 21305-21307 to limit not in the meaning of no contest clause for the certain challenges to testamentary instruments: it was those involving allegations of forgery, revocation, or provisions involving self-interested drafters or witnesses, transfer to a disqualified person, or those statutorily declared to be protected by public policy.

Another enactment codified for some issues under the § 21305 Subdivision (a) provides: "The following action shall not constitute a contest unless expressly identified in the no contest clause as a violation of the clause lack of due execution. (3) Lack of capacity. (4) Menace, duress, fraud, or undue influence…." [18]

C. Direct Contest

New law has been passed SB1264 and changes were made in Probate Codes, there are definitions of “contest” or “direct contest,” under § 21310 – 21315. In §21311 states that no contest clause shall only be enforced against three types which is direct contest, probable cause, and two of the indirect contest which is the property is not the transfer’s from the beginning or file of creditor’s issues. [19]

1. Section 21310 (b) specified direct contest

Direct contest" means a contest that alleges the invalidity of a protected instrument or one or more of its terms, based on one or more of the following grounds:[20]

(1) Forgery.

(2) Lack of due execution.

(3) Lack of capacity.

(4) Menace, duress, fraud, or undue influence.

(5) Revocation of a will pursuant to Section 6120, revocation of a trust pursuant to Section 15401, or revocation of an instrument other than a will or trust pursuant to the procedure for revocation that is provided by statute or by the instrument.

(6) Disqualification of a beneficiary under Section 6112, 21350, or 21380.

III. HOW AFFECTED ON CA’S PROBATE COURT CASES

A. **Estate of Lynn, 109 Cal. App. 2d468 – Cal: Court of Appeal 1952**

John, a friend beneficiary along with two other niece beneficiaries was awarded 1/3 of the estate from the testator. John sued the executor bank. In result, John actually benefitted from the Lynn's "one dollar provision."

In 1942, Lynn created a will. John received 1/3 of the estate from Lynn, but there was insufficient property in estate after pay all priority for payment set by probate code without abatement of the beneficiaries' legacies. The trial court made an order that since he is not kindred of the testatrix, he is the first person to wholly abate and be fully exhausted before the two nieces if necessary to abate corpus under the Probate Code section 752.

Interpretation of the appeal court the testatrix Lynn's will must have had some reason for including the "one dollar provision" into the will. In the fourth paragraph of the will claimed d she wanted equal distribution of her legacy even though John is not kindred. The nieces did not even appear the court or file any actions. In that case, the executor of the bank could not qualify any claim under the Probate Code Section 1080. Thus, the final court decision was that John should share equal 1/3 from the balance of the estate.

B. **Estate of Miller, 230 Cal. App. 2d 888 –Cal: Court of Appeal 1964**

Millers' three daughters, Mrs. Hartman, was an income beneficiary of the trust and her deceased husband was also named as a beneficiary of the trust after her death. Two daughters would each receive one third of the estate outright, but Mrs. Miller set up a trust with one-third of the assets for her daughter who had alcoholic problem under Mrs. Miller's attorney Mr. Burke E. Burford. However, the daughter, Mrs. Harman has

absolute power to inspect all records. When she discovered an accounting problem which has done by Mr. E. Burford, she petitioned accounting problem to the court.

Later on, she recovered from her alcoholism and asked for help to start doctor's profession under the means and circumstance of the phrase "support and maintenance." However, one nephew who a contingency beneficiary is objected that Mrs. Hartman's attempt to remove an executor Mr. Burford is a violation against in terrorem clause which is discretion of granted to the trustee.

The court said that action brought to construe a will is not a contest within the meaning of the forfeiture clause. Thus, the trustee obviously failed to carry the fiduciary duties. The court easily inference from the obvious facts that "if Mrs. Hartman had reestablished herself prior to the drawing of her mother's will she would have shared her parents' property with her two sisters." Mrs. Miller's intention in creating the trust was to provide support and maintenance of Mrs. Hartman's hard time of life due to her alcohol problem. If the income is insufficient, the executor has a duty to use the power of invasion to the corpus of the trust property to support and maintain Mrs. Harman to live the life style of the Harman family. Hence, the contingency beneficiary's cross-appeal of objection on the final decree of distribution had no way of convincing the court pointing out Mrs. Hartman's violation in terrorem clauses.

C. **Burch v. George, 866 P. 2d 92 – Cal: Supreme Court 1994**

Frank Burch and attorney drafted his integrated estate plan in December 1988. It consisted of a will along with an inter vivos trust, insulting no contest clauses in the trust instrument. In his will, he designated his fifth wife Marlene, his mother, children from a

prior marriage, and other relatives as beneficiaries. In December 1985, he married Marlene and died in March 1989. After his death Marlene proposed petition that half of her community property is included in his trust. Furthermore, Pacific Coast's pension plan was transferred into his family trust rather than her trust even though she is 100% beneficiary under the Employee Retirement Income Security Act of 1974 federal law.

The court ruled that these petitions are contest against Frank's no contest clause if she pursues the law suit because it will ruin the entirety of Frank's estate plan. According to the testimony of Frank's attorney, he considered all possibilities of distribution in the separate trusts and generously allocated her shares in her trust instead of those stocks and pension plan. At the time of decision, there is no exception but to enforce the no contest clause in these circumstances. No contest clause was affirmed to use as estate planning devices by Legislature either. (Stats, 1990, ch, §14.)

D. Genger v. Delsol 56 Cal. App. 4th 1410 – Cal; Court of Appeal, 1st Appellate Dist., 1st Div. 1997

Richard Genger married his second wife Sachiko from 1982 to 1994 until his death. During his life, he operated his father's company with his brother. In 1979, they formed another company named Tri-Pacific inc. Robert Delsol, a husband of Genger's only daughter Elisabeth from his first wife is a successor trustee. Genger set the trust through his company's vice president of finance and signed it later during his wife's presence. He provided Sachiko about three Million dollars in assets which included: the house, the IRA, the pension plan, and the forgiveness of the mortgage of the house. At the time of signing the agreement, she was concerned about the stock value worth

being less than the whole house package. The documents were informed, including the dispositions by Sachiko's own attorney.

Genger's integrated estate plan has three documents which provided a declaration of trust, a pour-over will, and the corporation stock redemption agreement. The core provision was creator's Tri Pacific stocks as being redeemable as exchange for transferring the Alameda house to Sachiko after his death. Sachiko pleaded three complaints. The first pleading was against Robert Delsol who is a successor trustee and Tri-Pacific, and that was a contest within the terms of the no contest clause. However, Sachiko's request for a determination of the enforceability of the no contest clause would not be a contest because of the safe harbor code. Even though it was a valid and enforceable against no contest clause, she proposed a challenge to nullify the redemption agreement to return the stock to his estate because the corporate stock value worth $3.6 million far more than the exchange of the house. Yet declaratory relief is not available to decide section 21306 and 21307 question. She must pursue her contest first for section 21306 and 21307, but there was no further action.

F. Tunstall v. Wells, 50 Cal. Rptr.3d 468 – Cal: Court of Appeal, 2nd Appellate Dist., 1st Div. 2006

This study must discuss what the most important public policy is behind no contest clause. Testator provided that three daughters should each receive $50,000. All other assets would be distributed to Robert, Jr. and Elizabeth. Elizabeth designated as the successor trustee after his death. In his will, he also provided the no contest clause to read, "For the purpose of this paragraph, if any one of the trustor's daughters,

ROBYN, JUDITH and/or DIANNE, should be the contesting person as described above, then in that event the gift to all three daughters are hereby revoked." In 2005, he passed away leaving five children. His daughter Robyn filed, and the trial court decided that this clause is "contrary to public policy." However, appeal court found that it is little different from ordinary no contest clauses, but it does not violate any statutorily or judicially established public policies in California. It is "favored by the same public policy considerations that support traditional, individual specific testamentary forfeiture clauses." His intention was clearly, strictly described without doubts.

G. Lange v. Nusser, Cal: Court of Appeal, 4th Appellate Dist., 3rd Div. 2011

The Three beneficiaries filed a complaint against the other beneficiary daughter executor who lived in their mother's house without paying rent in order to take care of three cats. They lost their case because it against directly against "cat provision" in the no contest clause and forfeited their benefits. In order to recover the forfeited benefits, they had to file a petition.

In appeal, they challenged only one part of the judgment: the finding of their violation on the trust's no contest clause. Citing Probate Code, section 21305, subdivision (b)(9), which is safe harbor provision. It is not a contest under the code if beneficiary sought only an "interpretation." Also pursuant to section 21305, subdivision (b)(9), a pleading "regarding the interpretation of the instrument containing the no contest clause does not violate a no contest clause as a matter of public policy." Finally judges concluded that appellants' petition is not ruin the provisions of the trust because it is seeking to compel Nusser to find alternative placements for the cats first, sell the

house, and distribute the residue to the beneficiaries under the decedent's prior request. Consequently, the petition was not a contest within the meaning of the no contest clause, and appellants did not forfeit their beneficial interests under the trust.

IV. WHAT IS THE PROBLEM

A. Rarely Void of No Contest Clause for the Family Relationship Matters

It is true that the Second and Third Restatements of Trusts and certain treatises state a provision in a testamentary instrument may be void as against public policy if it encourages disruption of a family relationship.[21]

In the case of *Girard Trust Co. v. Schmitz,* (N.J. Eq. 1941) 20 A.2d 21*,* a testator created a testamentary trust providing that four of his siblings would share his estate so long as none of them had any contact with another brother or sister whom the testator hated. The New Jersey equity court found no statutory prohibition against such a provision or any violation of a traditional common law duty; nonetheless, it ruled that the conditions violated public policy.[22] The court created a new rule on equitable grounds without prior decisions on the subject that family protection is the origin of society and all government as well as the purpose of government and laws. Thus, "any act, be it in the form of covenant, contract, or condition, testamentary or otherwise, which tends to disrupt the family must be held, on principles of the common law, to be void as against public policy." [23]

On one hand, a court does not want to waste time consuming family litigation that may be justified using the in terrorem clause. On the other hand, a court also does not want a feud between the family members because of testator's personal bitter and

hateful condition upon disposition in a no contest clause. However, most of the terrorem clause has not been void even though it actually encourage family feud against the society's policy which is considering a family relationship.

B. Time Consuming "Safe Harbor" Pass Rule

Testator's no-contest clauses must be balanced with the public policy interest of allowing beneficiaries to access the courts and prevention of the probate of wills that were legitimately procured by some type of wrongdoing on the part of the transferor or a third party.[24] In Alper v. Alper (N.J. 1949) 65 A.2d737.740 the wills are mostly identified as commonly contested based on one of six grounds, or well balanced on public policy because it affect on society, so it is codified as a boundary of contests. The six grounds are lack of testamentary capacity, fraud, undue influence, improper execution, forgery, or subsequent revocation by a later will. [25]

When the *in terrorem* provision is held valid and enforceable, one who has fraudulently or through undue influence, created a will or trust, will be unjustly enriched and remain free from liability. [26] The only people with an incentive to challenge this unjust enrichment are usually deterred by the threat of losing their respective share of the will or trust, which ultimately absolves the wrongdoer of any punishment. [27]

In most of the research cases,' beneficiaries are afraid to forfeit their gifts. When they heard the proposed action is against no contest clauses from the "safe harbor" decision, they usually decided not to go further. The cases that decide to contest anyway and win was against public policy or probate codes. When they loose and

forfeited the legacy, they sue again to get another interpretation from the appeal court to reobtain the forfeiture. It seems more time consuming process punishing wrongdoers.

C. Discrepancy with the Laws and Court's Opinions

There is a problem caused by the discrepancy in the probate court's opinions on, whether the judge strictly construes or broadly construes the no contest clause. Due to the own probate court's opinion discrepancy, whether strictly construes the no contest clause or broadly construes is appeared to be a problem. In Estate of Kaila (2001) 94 Cal.App.4th 1122 [114 Cal. Rptr. 2d 865], the appellant argued the following "Section 21304 showed the Legislature intended courts to strictly construe no contest clauses by interpreting the plain meaning of an instrument's words without consideration of extrinsic evidence" along with the decision of Jacobs-Zorne v. Superior Court (1996) 46 Cal.App. 4th 1064 [54 Cal. Rptr.2d 385]. **[28]** But court said that they are more convinced footnote 8 in *Burch v.George* case, extrinsic evidence is admissible to show ambiguities and interpret no contest clauses sited from Section 6111.5 which provides: "Extrinsic evidence is admissible…to determine the meaning of a will or a portion of a will if the meaning is unclear." [29]

More serious discrepancy appeared that in *Burch v.George* (1994) 7Cal.4th 246, 866 P. 2d 92 [27 Cal.Rptr.2d 165], dissenting judge indicated that Family Code §760 said that "all property acquired by a married person during the marriage is presumed to be community property,"[30] but testator switched her share of half of community property to some other property which was he believed that property should be more generous gifts to his wife and insult an in terrorem clause.

Family Code §1100 and 1101 specifically indicates that “a spouse may not convey or dispose of community personal property without the written consent of the other spouse, and grant the non-consenting spouse a right of action against the other spouse for breach of that duty to obtain consent.” [31] But probate court seems ignore the family law and preempt the testator’s estate instrument with no contest clause. It just shows the dissonance between family law and probate law.

CONCLUSION

A no contest clause or in terrorem clause in a will or trust instrument creates a condition upon inheritance. The United States Supreme Court mentioned its rational practice in 1898 and agreed enforcing *in terrorem* clauses as “good law and good morals.” Decades of establishing cases about a no contest clause, will be bound by different settings in the Probate Codes Section 21310-21315 from 2010 due to the passing of SB2164 by Harman. Sections 21301, 21303, 21305, or 21307-21308 or 21320 are no longer in use. There is no longer “safe harbor” when asking the court to check whether the claim is a boundary of contest on the decedent’s estate instruments. That does not mean the case’s decisions will be different. It gives more guide lines in direct contest, and it becomes partially enforceable in the no contest clause.

The study identified that a no contest-clause is enforceable and it uses strict construction to make an interpretation in California. However it also allows interpreting with the extrinsic evidence if the contents of the clause are vague. It requires interpreting throughout the whole estate instrument, intention, and circumstances

combined if it is unclear. It was intentionally created for discouraging family disputes; not for the purpose of forfeiting the beneficiaries.

The study found that most of the cases that were filed are time consuming. I conclude that it is because a no contest clause in the estate instruments, is up to the testator's personal choice of condition not bounded by the certain moral or guided by intestate law. In most cases, the individual's no contest clause in a will is treated prior above the certain rules or morals as long as these goals are not fundamentally harm to the society in general and balance with the public policy interests. After testator's creation, an attorney use final touch of technical no contest clause to prevent litigation. Thus, it is an attorney's job to convince legal guide lines with the family law or ERISA to the testators.

Problems has been identified such as collide with other laws, oxymoron public support between testator and beneficiaries, time consuming first step to pass the safe harbor provision, or dependable of judge's own discretion. Even the executive committee of the Trusts and Estates section of the California State Bar recommended that the Legislative make no contest clauses unenforceable in 2005; nonetheless, it still valid, enforceable, favored from public policy. It may be difficult to force out from using no contest clause in the estate instruments because California has strongly supported the no contest clause's valid enforcement with the common law bases and independently settled Probate Codes.

This study started from just irritating and disturbing harsh no contest clause words such as "one dollar" inheritance, considered as "predeceased," "forfeiture," or "without issue." It is the testator's accumulated lifelong assets, but there are also other

family members' supportive life styles behind that. Thus, the research supports the idea that testator's should not insult the "harsh" no contest clause for the purpose of preventing any unnecessary family disputes. The no contest clause warned it would eliminate inheritance; not only for the contestant, but for the contestant's next generation.

Endnotes

[1] *Smithsonian Inst. V. Meech* (1898) 169 U.S. 398, 415

[2] *Estate of Hite* (1909) 155 Cal. 436,101 P. 443

[3] *Burch v.George* (1994) 7Cal.4th 246, 866 P. 2d 92 [27 Cal.Rptr.2d 165]

[4] Keith Codron, New Rules in California for 'No Contest' Clauses, www.trusts-estates.lawyers.com/ Trusts & Estates Blog, January 12, 2010. April 3, 2012.

[5] *Burch v.George, supra,* 7Cal.4th 246, 866 P. 2d 92, 27 Cal.Rptr.2d 165

[6] *Estate of Hite, supra,* 155 Cal. 436,101 P. 443

[7] *Lange v. Nusser* (2011) Court of Appeal, 4th Appellate Dist., 3rd Div.

[8] *Brenton v. Metabolife Intern., Inc.*(2004) 116 Cal.App.4th 679 [10 Cal. Rptr. 3d 702]

[9] *Estate of Miller (1964)* 230 Cal.App.2d 47

[10] *Colden v. Costello* (1942) 50 Cal.App.2d 363,122 P.2d 959

[11] *Estate of Dow* (1957) 149 Cal. App.2d 47

[12] *Estate of Madansky* (1938) 29 Cal.App.2d 685, 85 P.2d 576

[13] *Estate of Miller (1964)* 230 Cal. App. 2d 888

[14] *Estate of Crisler* (1950) 97 Cal.App.2d 198

[15] *Estate of Price* (1942) 56 Cal.App.2d 335,132 P.2d 485

[16] *Estate of Miller, ibid.*

[17] *Estate of Miller, ibid.*

[18] Probation Code Section 21305 Subdivision (a)

[19] S. 1264, §174(2008)

[20] S. 1264, §174(2008)

[21] *Tunstall v. Wells* (2006) 144Cal.App.4th 554 [50 Cal. Rptr. 3d 468]

[22] *Tunstall v. Wells, ibid.*

[23] *Tunstall v. Wells, ibid.*

[24] Ryann Lamb (2011) Will Contests in Texas: Did the Codification of the Good Faith and Probable Cause Exception Render in Terrorem Clauses Meaningless? www.baylor.edu/content/services/document.php/162360.pdf

[25] *Alper v. Alper* (N.J.1946) 65 A.2d737, 740

[26]Gerry w. Beyer, *Texas Practice Series:Texas Law of Wills §52.9* (3d ed. 2002)

[27]Jack Leavitt, *Scope and Effectiveness of No-Contest Clauses in Last Wills and Testaments*, 15 Hastings L.J. 45,45 (1963)

[29]*Estate of Kaila* (2001) 94 Cal.App.4th 1122 [114 Cal. Rptr. 2d 865]

[30] *Burch v.George* (1994) 7Cal.4th 246, 866 P. 2d 92 [27 Cal.Rptr.2d 165]

[31] *Burch v.George, ibid.*