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Probate and Trust Proceedings

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Highlights

In determining whether to apply the anti-lapse statute to a gift under a trust, the paramount question is whether such intent against application of the anti-lapse statute is plainly indicated or is shown with a reasonable degree of certainty. In determining whether a testamentary trust expresses the intention that the anti-lapse statute should not apply, the court's analysis is not limited to whether the trust's survivor provision, standing alone, includes specific and conditional language showing a contrary intent; rather, the court must determine whether the trust, viewed holistically in light of the survivor provision, expresses a contrary intention. CCP-PROB 3:13

Federal and state constitutional protections against excessive fines were not violated by the imposition of the statutory double damages penalty against a trustee for misappropriating trust funds, because the penalty was limited, as it provided a fixed multiple of actual damages—twice the value of the property—and applied only to instances of bad faith, and it served the purpose of discouraging fiduciaries and others in positions of trust from abusing their power to the detriment of beneficiaries. CCPPROB 14:34

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