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Is A Trust Always A Person?

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Yesterday's post discussed Justice Grimes' opinion that while a trust must always act through a trustee, a trust is a "person" that may associate in a partnership under the California Uniform Partnership Act of 1994 (Cal. Corp. Code § 26200 *et seq.*). *Han v. Hallberg*, 2019 Cal. App. LEXIS 475. In reaching this conclusion, Justice Grimes leaned heavily on the definition of "person" in the UPA:

"Person' means an individual, corporation, business trust, estate, trust, partnership, limited partnership, limited liability partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity."

Cal. Corp. Code § 16101(13).

The reference in the statute to "*other* legal or commercial entity" might be construed to imply that a trust is a person only if it is in fact a legal or commercial entity. However, Justice Grimes rejected this implication on the grounds that the statutory list of persons includes estates as well as business trusts.

It remains to be seen whether the Supreme Court will side with *Han* or the Fourth District Court of Appeal's earlier, seemingly contrary, holding in *Presta v. Tepper*, 179 Cal. App. 4th 909 (2009). It also remains to be seen whether *Han* will be extended to the General Corporation Law which does not define "person". Section 18 of the Corporations Code (which is not part of the General Corporation Law but governs the GCL) defines "person" as including a corporation as well as a natural person. Section 18 makes no mention of trusts. Depending on whether you interpret "includes" in Section 18 as restrictive or illustrative, a trust either is not or is a person under the GCL.

For a discussion of the ambiguous meaning of "includes", see this [post](#) by Ken Adams.

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