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Wills, Trusts, and Estates EXAMPLES & EXPLANATIONS Seventh Edition

EXAMPLES & EXPLANATIONS

Wills, Trusts, and Estates

Seventh Edition

Gerry W. Beyer



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Wills, Trusts, and Estates

Seventh Edition

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Published by Wolters Kluwer in New York.

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Printed in the United States of America.

1 2 3 4 5 6 7 8 9 0

ISBN 978-1-4548-9170-3

Library of Congress Cataloging-in-Publication Data

Names: Beyer, Gerry W., author.

Title: Wills, trusts, and estates / Gerry W. Beyer, Governor Preston E. Smith
Regents Professor of Law, Texas Tech University School of Law.

Description: Seventh edition. | New York : Wolters Kluwer, [2019] | Series:
Examples & explanations series | Includes bibliographical references and
index.

Identifiers: LCCN 2018051015 | ISBN 9781454891703

Subjects: LCSH: Wills—United States. | Trusts and trustees—United States. |
Estate planning—United States. | LCGFT: Study guides.

Classification: LCC KF755 .B488 2019 | DDC 346.7305—dc23

LC record available at <https://lcn.loc.gov/2018051015>

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Preface

Wills, Trusts, and Estates: Examples and Explanations covers intestate succession, wills, trusts, estate administration, nonprobate assets, wealth transfer taxation, disability and death planning (including elder law concerns), and malpractice and professional responsibility. I designed this book to augment *Wills, Trusts, and Estates* and related courses that expose students to estate planning, decedents' estates, and trusts. This book also provides essential background and review material for students taking advanced courses in estate planning, elder law, and wealth transfer taxation. The discussion, along with the examples and explanations, covers both the theoretical and practical applications of the legal concepts.

I have attempted to present the material in a lively, lucid, and conversational style to grab and hold your interest. Sections begin typically with a discussion of the applicable concept (including policies and basic "rules") followed by a series of examples (hypothetical questions) accompanied by explanations (answers). I am confident that this "learning-by-doing" approach will enable you to master the concepts and enjoy yourself in the process. The exercises in this book also let you evaluate how well you can apply what you have learned.

Working through problems is one of the best ways to understand intestacy, wills, and trusts concepts. For example, it is one thing to learn about per stirpes, per capita, per capita by representation, and per capita at each generation in the abstract, but the differences really strike home only when you see the tremendous impact they can make on an heir's inheritance depending on which view local law adopts. Likewise, full appreciation of concepts such as exoneration, ademption, abatement, and lapse cannot be achieved until you see their effect on the distribution of a testator's estate.

Practical suggestions are liberally sprinkled throughout the book. You will also find sample will and trust provisions. These features should help you to appreciate the "real world" application of your law school course and help motivate you to study. Wills, trusts, and estates is the only subject that will apply to all of your clients eventually. As Shakespeare wrote in *King Henry IV*, "death...is certain to all, all shall die." You can appreciate the value of being able to draft wills and trusts which avert legal problems and help alleviate some of the emotional stress and financial costs surrounding this undeniable and inescapable fact.

Preface

Organization and Scope of This Book

Part I focuses on intestate succession. Issues relating to the distribution schemes for property are covered first, followed by how different types of persons (e.g., adopted children and children born out of wedlock) fit into these schemes. Part I ends with a discussion of assorted intestate succession issues such as advancements and disclaimers.

Part II is the book's comprehensive coverage of wills. The first chapter details the requirements of a valid will followed by chapters exploring changes in the testator's circumstances, will revocation, will interpretation and construction, and will contests.

Part III presents an overview of estate administration. As the details of administration are heavily dependent on local law, this section is relatively brief and highlights the typical procedure and the issues that frequently arise.

Part IV deals with nonprobate transfers such as inter vivos gifts, joint tenancies, multiple-party accounts, life insurance, and annuities. These assets must be removed from the decedent's holdings at death before applying the terms of the applicable intestacy statute or will to determine the property's new owner.

Part V examines trusts beginning with reasons people use trusts, trust creation issues, trust administration matters, and trust enforcement methods. Subsequent chapters discuss the related topics of resulting and constructive trusts.

Part VI covers other estate planning concerns. This part includes discussions of (1) the basics of federal gift and estate taxation to familiarize you with fundamental concepts such as the annual exclusion, applicable exclusion amount, marital deduction, and bypass planning; (2) methods available to plan for a person's property management and health care decisions upon disability, as well as the death event itself, including durable powers of attorney, living wills, anatomical gift documents, and instruments to control the final disposition of the body; and (3) a discussion of negligent will and trust drafting and a review of the most common ethical concerns that arise in a wills, estates, and trusts practice.

Three other features of this book are of special importance. The Casebook Correlation Tables located at the end of the introductory materials have two columns. The first is the table of contents of the casebook and the second is a list of the sections of this book you should read in connection with the casebook material. There are tables for ten of the most popular casebooks.

Second, in the Comprehensive Examples and Explanations appendix, I have included lengthy problems and answers you may use to practice applying your knowledge when a variety of issues are found in one fact situation. In other words, these Examples and Explanations are similar to

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the type of complex questions you might see on a law school or bar examination question.

The third special feature is the Sample Will (including a testamentary trust) form also found in the appendix. The form includes extensive annotations so that you can see the interplay between the legal concepts and how they are put to use in an actual document.

Seventh Edition Enhancements

Although the seventh edition retains the basic structure and content of the previous editions, I made a number of changes to reflect recent developments and trends as well as to enhance the usefulness of the book. Below is a list of some of the significant changes in the seventh edition:

1. The *Tax Cuts and Jobs Act* enacted in 2017 and its impact on Federal income, gift, estate, and generation-skipping transfer taxes
2. Same-sex marriage and the rights of same-sex partners
3. Medicaid planning
4. Physician-assisted suicide
5. Physician Orders for Life-Sustaining Treatment
6. Updated casebook correlation tables reflect new editions of the major casebooks
7. Text and examples updated and “fine-tuned” to enhance readability and pedagogical value

How to Use This Book

Wills, Trusts, and Estates: Examples and Explanations is designed to be used in three ways:

Read in the order presented. You may study the material in the order presented. This order is designed to trace the traditional organization of wills, trusts, and estates casebooks and law school courses. An alternative approach, gaining in popularity, is to cover the nonprobate assets discussed in Part Four first, because these assets are removed from a decedent’s estate before the rules of intestate succession or the terms of the decedent’s will are applied.

Read in the order covered by your professor. You may read the material in the order covered by your professor in class. Using the Casebook Correlation Tables and the Table of Contents as guides, you should have no difficulty correlating your professor’s syllabus with the relevant chapters of this book.

Use as a reference tool. You may use the book to assist your study on an issue-by-issue basis. Consult the comprehensive Index to locate quickly the material relevant to your inquiry.

Preface

Recommendations and Advice

Probate law is very dependent on state law. A will valid in one state may be totally ineffectual in another. If you already know the state in which you intend to practice, you may want to obtain a copy of your state's probate code and see how the examples discussed in this book would be resolved under your state's law. You will then be in a better position to give advice to your future clients. In addition, you will have an easier time preparing for and taking the bar exam because the bar examiners of almost every state regularly test on wills, estates, and trusts.

Many professors teaching wills and trusts require their students to purchase a copy of the Uniform Probate Code (UPC) and the Uniform Trust Code (UTC) so that they have common statutes to examine. To aid in this process, this book makes frequent reference to the relevant UPC provisions from the Official 1993 Text, as amended in 2008, and the UTC.

Although the basic law of wills, trusts, and estates is relatively static, significant developments frequently occur. You may access updates to this book at <http://www.ProfessorBeyer.com>. In addition, if you detect any problems with this book or have suggestions for future editions, I would greatly appreciate your sharing them with me. You may e-mail me at gwb@ProfessorBeyer.com.

Good luck in your course and in your legal career.

Gerry W. Beyer
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August 2018

Acknowledgments

The author wishes to thank the following individuals for their assistance in the preparation of this book:

Wolters Kluwer Law & Business Personnel: Noah J. Gordon, Stephanie Thomas, and Gayathri Balaji

Student Assistants: J. Ernesto Flores and Eduardo P. Sosa

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Cases and Materials on Gratuitous Transfers (6th ed. 2013)

Mark L. Ascher, Elias Clark, Grayson M.P. McCouch,
and Arthur W. Murphy

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Cases and Text on the Law of Trust (9th ed. 2012)

George G. Bogert, Dallin H. Oaks, H. Reese Hansen,
Stanley D. Neeleman

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Estates and Trusts: Cases and Materials (5th ed. 2015)

Stewart E. Sterk and Melanie B. Leslie

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