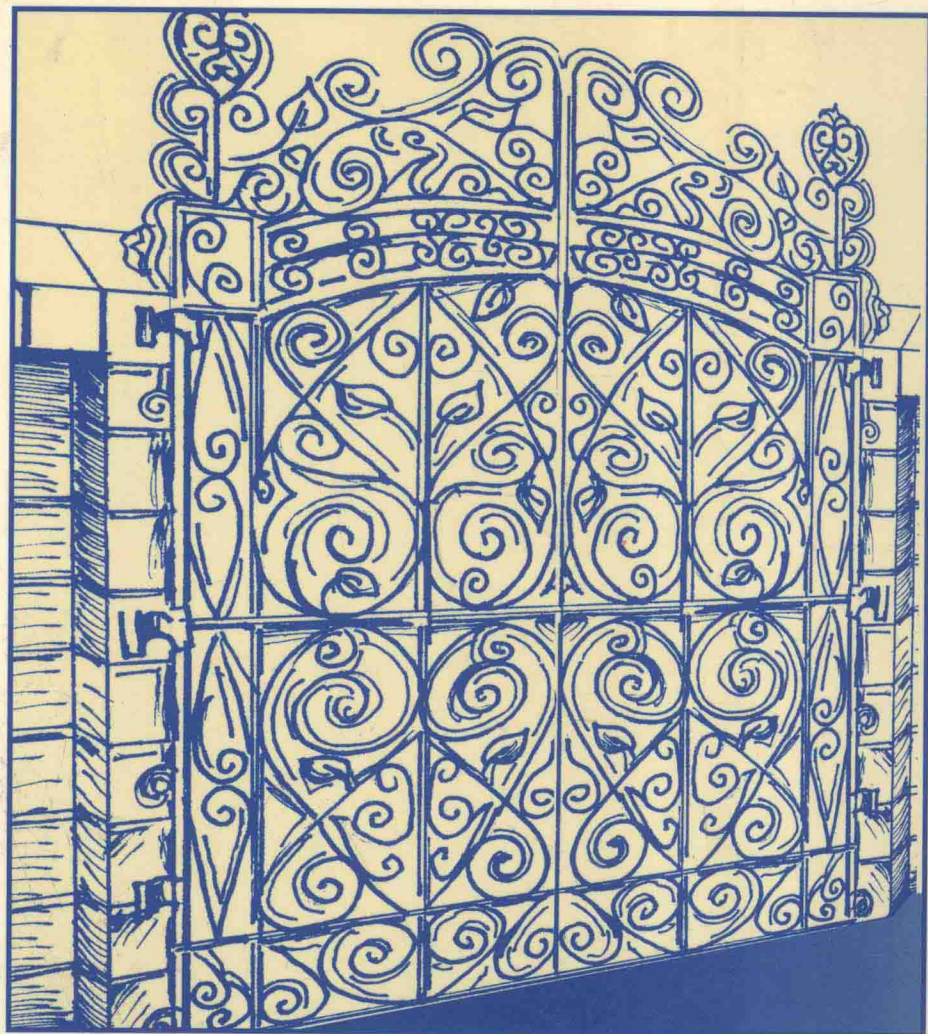


EXAMPLES & EXPLANATIONS

# Wills, Trusts, and Estates

Third Edition

Gerry W. Beyer



ASPEN  
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# WILLS, TRUSTS, AND ESTATES

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Examples and Explanations

*Third Edition*

Gerry W. Beyer

*Professor of Law  
St. Mary's University School of Law*

**ASPEN**  
PUBLISHERS

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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.

## *Organization and Scope of This Book*

**Part One** 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 One ends with a discussion of assorted intestate succession issues such as advancements and disclaimers.

**Part Two** 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 Three** 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 Four** 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 Five** 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 Six** 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 by-pass 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.

### *Third Edition Enhancements*

Although the third 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 third edition:

- Casebook Correlation Tables.
- Comprehensive Examples and Explanations.
- Coverage of the Health Insurance Portability and Accountability Act (HIPAA).
- Updated discussion of Rule Against Perpetuities reform and increasing acceptance of self-settled spendthrift trusts.
- Expanded coverage of the Uniform Prudent Investor Act.

- Enhanced treatment of the 1997 version of the Uniform Principal and Income Act.
- Discussion of the right of sepulture.
- Updated discussion of same-sex relationships.

The first two of these are the most significant. The Casebook Correlation Tables 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 that you should read in connection with the casebook material. There are six tables for six of the most popular casebooks.

In the Comprehensive Examples and Explanations appendix, I have included lengthy problems and answers with which you may 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 the type of complex questions you might see on a law school or bar examination.

### *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 quickly locate the material relevant to your inquiry.

### *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 and the Uniform Trust Code 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 and the UTC. Please note, however, that this book is not designed to provide a comprehensive review of these uniform laws because only about eighteen states have enacted some version of the UPC and the UTC has been enacted in less than ten jurisdictions.

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](mailto:gwb@ProfessorBeyer.com).

Good luck in your course and in your legal career.

St. Mary's University  
January 2005

GERRY W. BEYER



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## Correlation Table for:

### Gratuitous Transactions (4th ed. 1999)

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

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A. Introduction	See generally Chapters 2 and 3
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D. Surviving Spouse: Community Property	§2.3.4
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## Correlation Table for:

### Estates and Trusts: Cases and Materials (2d ed. 2003)

Joel C. Dobris, Stewart E. Sterk, and Melanie B. Leslie

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