

Succession, Wills and Probate

Third edition

Caroline Sawyer and Miriam Spero

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Succession, Wills and Probate is an ideal textbook for those taking an undergraduate course in this surprisingly vibrant subject, and also provides a clear and comprehensive introduction for professionals. Against an account of the main social and political themes of succession law, the book gives detailed explanations of core topics such as alternatives to wills and the making, altering and revocation of wills. It also explains personal representatives and how they should deal with a deceased person's estate and interpret and implement the will. Gifts may fail, estates may be insolvent or a person may die intestate, without a will at all. Increasingly relatives and others seek to challenge the will, for example on the grounds of the testator's capacity or under the law of family provision.

This third edition is edited, updated and revised to take account of new legislation and case law across all the relevant issues, including a new final chapter dealing with the potentially contentious issues that are becoming more central to professional work in the field of succession.

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Preface

Despite the growth in recent years of litigation over wills, whether disputing the testator's capacity to make the will or arguing about its contents, the subject of succession is still not appreciated for the lively arena that it is. The law has to find a solution for the fundamental problem of the acquisition of individual wealth – you cannot take it with you when you go – and succession law is the substance and the mechanism for dealing with that.

The game of succession law plays out against a background of the big social issues. One could prohibit inheritance of wealth entirely: that would clearly have major social effects. The law of England and Wales is towards the other end of the spectrum, with no compulsory gifts on death to family members, as is often the case in other countries. But testamentary freedom is limited by potential claims against the estate by family members or dependants who were not reasonably provided for, not to mention the claims of Her Majesty's Revenue and Customs. And the definition of eligible family members has moved with the rapid social changes of recent years, but still remains contentious.

For the individual, ownership of property represents success, security and power. On death, a person is forced to give everything away; the recipients of gifts may be able to pay off debts and live more comfortably, or they may be able to buy life-changing chances such as education or take potentially profitable business risks. The power to change people's lives is literally within the gift of the will-maker, and they may wish to extend the power that goes with their property beyond the grave. One relative may be favoured over another, or cut out entirely; gifts may be conditional on certain actions. Trusts may be set up so the deceased can direct the use of their property, and influence or control their friends and relations, for many years after their death.

The machinery of wills is just as intriguing. There must be ways of interpreting and implementing the testator's words when the question will arise only once they are dead and cannot be asked. Gifts may have been left to people who cannot be identified or found, or who have died. It may be unclear whether a partner is the one they had at the date of the will or the one they were with when they died. Children used to mean those of a marriage, but now potentially includes those who would previously have been considered entirely unrelated, but leaving a list of names risks further births and the testator's death before the will is changed. And the formalities of will-making protect against fraud, but may produce mistakes that need resolution.

The stories of succession case law are no less interesting than other areas of law, and some are true entertainment. Anyone who is interested in families, or in property and tax, or mental capacity – or just how to state your wishes clearly – will find much to amuse in this subject. In the midst of death, all human life is there.

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