

C. E. Wright

SUCCESSION

Cases and Materials

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Preface

It is a truism to say that a student should study law through the source material. Much of this will be readily to hand for the student of the law of succession in his university or polytechnic library; the difficulty for him lies in the amount of it. The aim of this book is to extract for him the key materials which he can then follow up in his own library, and also to direct his attention to the materials of other countries and to committee and commission reports where relevant, in order to develop a critical appreciation of the subject.

In selecting this material I have chosen to follow the growing trend of embracing within the study of the law of succession not only the traditional methods of passing on property on death through a will or the intestacy rules but also some of the other methods alternatively or additionally favoured by large sections of the population such as the lifetime gift, the beneficial joint tenancy and the nomination of pension fund benefits. The second part of the book considers some of the factors that may affect the choice of succession process, predominant of which for the wealthy person is the impact of capital taxation, no prior knowledge of which is assumed for the purpose of the chapters in question. It has been said that a study of tax from its sources is a thankless task for a student as the sources are largely unintelligible; it is hoped that a ruthless pruning of the relevant statutes combined with frequent examples of their application will give the lie to this statement. As few choose to denude themselves of all their property in their lifetime, the passing of property on death will always form a major part of any succession course; the third part of this book is therefore devoted to the winding up of the deceased person's estate. Considerations of space have, sadly, prevented the inclusion of materials relating to the construction of wills and inter vivos documents.

During the final stages of the preparation of the manuscript important changes to the law were introduced, notably in the fields of taxation and insolvency. In the former case, the Budget Speech of March 1986 promised far-reaching changes to capital transfer tax, to be known in future as inheritance tax: these alterations have been included but the relevant extracts are inevitably from the Finance Bill. So far as insolvency is concerned, the new provisions affecting the winding up of the deceased insolvent's estate have been included in so far as they are contained in the Insolvency Act 1985, albeit at the time of writing they have not been brought into force; in so far as they are to be contained in statutory instrument form, those as yet unpublished are perforce omitted.

My thanks are due to my erstwhile mentor, Professor E. C. Ryder, for reading the manuscript: it was his masterly exposition of the subject that first awoke my interest in it. To the extent that some of his thoughts are echoed in

this book the plagiarism is unconscious but inevitable from any student of his. I must also thank Mr O. Philip Wylie of our sister College in Cardiff for kindly reading the taxation chapters for me. Any errors that remain are, of course, my responsibility.

Numerous people have had a hand in typing the manuscript in its various stages. I thank them all, in particular Mrs Barbara Lewis, Mrs Margaret Venning and the staff of a well known firm of West Midlands solicitors; a fly on the wall would have derived much entertainment, one suspects, from the comments of the last-mentioned on the vagaries of academics.

Finally, I must express my gratitude for all the encouragement and support I have received from my family and in particular from my long suffering daughter whose arrival coincided with the contract for this book and whose first words (almost) were, 'Haven't you finished the book *yet*?', a sentiment which Butterworths must often have echoed but were too kind to express direct. My thanks to them for their patience and also for the compilation of the index; my colleague, Patrick Parkinson, kindly prepared the table of statutes and list of cases.

The law is as stated at 1 April 1986 but later alterations have been incorporated at proof stage where possible.

C.E.W.
UWIST
Cardiff
April 1986

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Cross-references

The following works have been cross-referenced, and abbreviated as follows:

Cheshire and Burn	<i>Modern Law of Real Property</i> 13th edn (1982)
Maudsley and Burn	<i>Trusts and Trustees, Cases and Materials</i> 3rd edn (1984)
Mellows	<i>The Law of Succession</i> 4th edn (1983)
Pettit	<i>Equity and the Law of Trusts</i> 5th edn (1984)
Uniform Probate Code (USA)	'Uniform Probate Code' & Uniform State Laws (1983)
Whitehouse and Stuart-Buttle	<i>Revenue Law—principles and practice</i> 3rd edn (1985)
Williams, Mortimer and Sunnucks	<i>Executors, Administrators and Probate</i> 16th edn (1982)

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