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by

J. B. Clark

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BY

J. B. CLARK, M.A., LL.B. (Cantab.)

*of Lincoln's Inn and the North Eastern Circuit, Barrister,
Professor of Law in the University of Newcastle upon Tyne*

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PREFACE

There have been significant changes in the law of succession since the last edition was published in 1977. The most important are the changes made by the Administration of Justice Act 1982, which cover (i) formalities for making a will, (ii) the new remedy of rectification of a will, (iii) revocation of a will by marriage, (iv) the effect of dissolution or annulment of a marriage on a will, (v) gifts to children or remoter descendants who predecease the testator, (vi) the admission of extrinsic evidence to assist in the interpretation of a will, and (vii) the new presumption as to the effect of a gift to a spouse. The Supreme Court Act 1981 has also made some changes in the rules governing grants of probate and letters of administration. As to case law developments a series of decisions on applications made under the Inheritance (Provision for Family and Dependents) Act 1975 has put flesh on the bare bones of the statutory provisions.

I have made some structural changes in this edition. *Donationes mortis causa* and the rule in *Strong v. Bird* are dealt with in the first chapter on the nature of a will and other dispositions taking effect at death. Executors *de son tort* are explained in Chapter 14 on remedies.

I have included precedents of will clauses in the new section on drafting a will in the appendix. The purpose of these precedents is to illustrate the link between drafting and substantive law. After reading this section a student should vow never to copy a precedent blindly but always to ask the question, "why was it drafted in this way?"

I have tried to state the law on the basis of the material available to me on January 1, 1983. The Law Reform Committee Report on the powers and duties of trustees became available too late for me to refer to it.

Looking to the future, the 1983 Finance Bill contains a provision under which capital transfer tax payable in respect of death on unsettled property in the United Kingdom which vests in the deceased's personal representatives is to be treated as part of the deceased's testamentary and administration expenses, unless any contrary intention is shown by the deceased in his will. This provision is not, however, to apply to any death before the Finance Act 1983 is passed. If this provision is enacted in the Finance Act 1983, it will constitute a welcome reform in the law governing the incidence of capital transfer tax on real property but it will not resolve the present uncertainty caused by *Re Dougal* as to the law applicable on an earlier death.

J. B. CLARK

University of Newcastle upon Tyne
April 12, 1983

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