

*DUKEMINIER
JOHANSON*

**WILLS, TRUSTS,
AND ESTATES**

*Third
Edition*

Little, Brown
and Company

Third Edition

WILLS, TRUSTS, AND ESTATES

Jesse Dukeminier

*Professor of Law
University of California, Los Angeles*

Stanley M. Johanson

*Bryant Smith Professor of Law
University of Texas*



Little, Brown and Company
Boston and Toronto

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Library of Congress Catalog Card No. 83-082694
ISBN No. 0-316-19514-6

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Published simultaneously in Canada
by Little, Brown and Company (Canada) Limited

Printed in the United States of America

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To
J.J.D., L.W.D.
and G.J.

PREFACE

This book is designed for use in a course in decedents' estates and trusts, and as an introduction to estate planning. It is the successor to Dukeminier and Johanson, *Family Wealth Transactions: Wills, Trusts, and Estates* (second edition, 1978). Our basic aim remains as before: to produce not merely competent practitioners in the estates and trusts field, but lawyers who think critically and comparatively about problems and probe alternative solutions.

Although a lot of the law in this field has been settled for centuries, it is necessary now and again to rethink how it should be taught. Old rules die of course, and new rules develop — but the most compelling reason for revision is that every year we learn more and we come to view the body of law differently. We seized the opportunity in preparing the third edition of this work to look anew at the many different ways of disposing of private wealth and the issues raised by these alternative methods. As a result of reconsidering the entire field we made major changes in the organization of materials. We think the new organization has an irresistible logic and makes better pedagogical sense. We rewrote much of the text, and added material to cover explicitly some matters previously dealt with only indirectly. We also wielded a blue pencil discreetly, shortening the book — and the title as well.

We start with inheritance and its limitations, then move to wills and wills substitutes, and then move to trusts. During the last quarter century lawyers have come to regard the trust as the best solution to all sorts of client problems. As a result, trusts have proliferated — large trusts, small trusts, even trusts of one dollar or less. The fiduciary obligation has come to be the most useful and important principle in our society for managing and allocating resources of all types, public as well as private.

In this expansion, the law of private trusts has annexed the law of future interests and powers of appointment, reducing these latter two bodies of law largely to problems of construction of trust instruments and to the Rule against Perpetuities — a rule that curbs overlong trusts. Future interests and powers not created by a trust instrument are becoming increasingly rare in donative transfers. Reflecting this development, this book treats the law of future interests as it has come to be: problems in drafting, construing, and litigating trust instruments.

Our final chapter on taxation of donative transfers is designed to give the student basic knowledge about estate and gift taxes, so that the student as lawyer can (1) handle the usual situations and know when further expert advice is called for or (2) build upon this foundation to become a tax planner. The chapter also serves a unifying function of bringing back together the various kinds of donative transfers analyzed separately in earlier chapters of the book and exploring their different tax costs.

Throughout the book we emphasize the basic theoretical structure and the general philosophy and purposes which unify the field of donative transfers. To this end we have pruned away mechanical matters (such as a detailed discussion of how to probate a will and settle an estate, which is essentially local law, easily learned from a local practice book). So too we have omitted old technical learning and disappearing distinctions of little contemporary importance. At the same time we have sought historical roots of modern law. Understanding how the law became the way it is illuminates both the continuing growth of the law and the sometimes exasperating peculiarities of thought inherited from the past.

We believe the book is a flexible teaching tool. Its organization is such that it can easily be rearranged to fit the demands of a particular curriculum or the preferences of a teacher. Chapters or parts of chapters can be omitted without losing touch with the essential framework which holds together this enormously fascinating and many-faceted area of the law.

Jesse Dukeminier
Stanley M. Johanson

January 1, 1984

Editors' Note: Throughout the book, footnotes to the text and to opinions and other quoted materials are numbered consecutively from the beginning of each chapter. Some footnotes in opinions and secondary authorities are omitted. Editors' footnotes added to quoted materials are indicated by the abbreviation: — Eds.

ACKNOWLEDGMENTS

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