

**WILLS, TRUSTS,
AND ESTATE
ADMINISTRATION
FOR
PARALEGALS**

STEWART



PARALEGAL SERIES

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**WILLS, TRUSTS,
AND ESTATE
ADMINISTRATION
FOR
PARALEGALS**



MARK A. STEWART, J.D.
UNIVERSITY OF CALIFORNIA, LOS ANGELES
MEMBER, STATE BAR OF CALIFORNIA

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PREFACE

ABOUT THIS TEXTBOOK

Wills, Trusts, and Estate Administration for Paralegals is a practice-oriented textbook for the probate paralegal. It serves both as an ideal primary resource in a formal course of study and as a general resource and reference at the workplace. *Wills, Trusts, and Estate Administration for Paralegals* is truly comprehensive in scope—in addition to encompassing all topics one would expect to find under its title, it also includes an in-depth treatment of *protective proceedings* (guardianships and conservatorships) as well as *ethical problems* specific to the working probate paralegal. *Wills, Trusts, and Estate Administration for Paralegals* is written for use in all jurisdictions. Statutes and U.P.C. provisions are included throughout the text for illustration, clarification, and interest. While comprehensive in scope, *Wills, Trusts, and Estate Administration for Paralegals* is not intended as the sole resource in a course of study. The student should also examine the relevant statutes and local court rules in the jurisdiction in which he or she intends to work, as well as consult the federal tax laws and appropriate publications and instructions of the Internal Revenue Service to supplement the tax materials in this text.

The Case-Study Approach

Although *Wills, Trusts, and Estate Administration for Paralegals* provides a solid theoretical foundation for the probate paralegal, its primary concern is with the paralegal's practical, everyday functions. The text immediately brings the student into the law-firm setting by way of two hypothetical case studies. The student follows the text's primary case—the *Estate of Irene Parker*—through the entire process of formal decedents' estate administration, from the initial probate interview to closing the estate. The second case study—involving a married couple named *Walter and Betty Taylor*—serves as a catalyst for exploring the estate-planning process, including the use of *inter vivos* trusts, durable powers of attorney, living wills, and other estate-planning tools and techniques.

Each chapter (except for the final chapter) begins with a *Paralegal Assignment* involving one of the two case studies; the textual materials then provide the student with the knowledge required to carry out the job assignment. References to the appropriate case-file “exhibits” are inserted throughout the text. This format enables the student to examine the textual materials and illustrative forms and legal documents side by side.

ORGANIZATION AND SEQUENCE OF TOPICS

The first chapter includes an overview and a survey of the various forms of property ownership, with particular emphasis on joint ownership between spouses. Chapter 2 begins by examining the laws of intestate succession as a backdrop for a complete discussion of wills in Chapters 2 and 3. The focus of the text shifts to postmortem concerns in Chapter 4, which explores alternatives to formal estate administration and which serves as a prelude to the “main event” in this course of study—formal decedents’ estate administration (Chapters 5 through 8).

Chapters 5 through 8 lead the student chronologically through the process of formal estate administration. Chapter 7 is devoted entirely to the important subjects of estate and gift taxation; the central concern of Chapter 7 is the preparation of the federal estate-tax return (IRS Form 706).

With Chapters 5 through 8 in mind, the student will then appreciate the significance and advantages of implementing a comprehensive estate plan, as discussed in Chapter 9. This chapter includes an overview of both the tax and nontax aspects of estate planning. The subject of planning for incapacity is postponed until Chapter 11, which also includes the subject of protective proceedings (guardianships and conservatorships). The procedural aspects of estate planning, with particular emphasis on the implementation and administration of *inter vivos* trusts, are considered in Chapter 10. The final chapter (Chapter 12) offers a unique and provocative look at various issues of professional responsibility that the probate paralegal will confront at the workplace.

Special Format-Related Features

To aid both the student and the instructor in assimilating the textual materials, the following iconic symbols are shown in the left-hand margin throughout the text:



PRACTICE TIP: The materials elaborate on certain procedural issues discussed immediately preceding the symbol. Practice Tips include procedural shortcuts and practical advice that the working probate paralegal would otherwise learn only through experience.



FOCUS: An issue or procedural matter of particular significance is either repeated or summarized for emphasis.



PARKER ESTATE: The textual materials immediately preceding the symbol are examined in the specific context of the *Estate of Irene Parker*.



TAYLOR TRUST: The textual materials immediately preceding the symbol are examined in the specific context of the estate-planning matter of *Walter and Betty Taylor*.

Most of the figures and tables included in the text are intended to convey ideas rather than to show sample forms and legal documents. A figure

or table might summarize a chapter section, clarify an abstract idea, provide a classification scheme of some sort, or quote a statute or section of the Uniform Probate Code. Sample forms and legal documents are included in the Resource Manual

Examples are included in the textual materials wherever it is likely that the student will require immediate clarification or illustration of an idea or procedure. Each example presents a realistic hypothetical scenario followed by a *Result*. The text includes examples sparingly. Additional examples are included in the Resource Manual as study questions and, in lesser number, as multiple-choice questions.

ABOUT THE RESOURCE MANUAL

The Resource Manual that accompanies this text is not merely a supplement but is actually an essential and integral component of the course of study. The Resource Manual includes the Parker File and the Taylor File, which contain all of the sample forms, legal documents, and correspondence for the Parker and Taylor case studies. The Resource Manual also includes a generous number of study questions and objective questions for each chapter to reinforce and illustrate the textual materials.

ABOUT THE INSTRUCTOR'S MANUAL

The Instructor's Manual includes numerous features designed with the busy instructor in mind. A detailed annotated outline, suitable for lecturing, is provided for each chapter. Additionally, test questions of varying types are provided for each chapter. These test questions are comparable in style and difficulty level to the study questions and objective questions included in the Resource Manual.

ABOUT THE AUTHOR

Mark A. Stewart earned his Juris Doctor degree from the University of California at Los Angeles in 1984, joining the State Bar of California as an active member in November of that year. He has taught courses in Wills, Trusts, and Estates at the Santa Barbara College of Law and at the Ventura College of Law and has also served as adjunct professor at California Polytechnic State University, San Luis Obispo. He brings to this publication his commitment to excellence, his love of teaching, and his cumulative experience as a practicing attorney, educator, and published author. Mr. Stewart currently resides and works in Santa Barbara, California.

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In fondness, I dedicate this book to Dorthy Vader.

Mark Alan Stewart



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1 THE FIELD OF PROBATE LAW

Paralegal Assignment 1

Able, Berman & Cargis is a medium-sized law firm located in your community. The firm has recently established a separate probate department, which currently includes two attorneys, two secretaries, and one paralegal. The firm has decided to hire you as a second probate paralegal in this department to assist in establishing office forms and procedures and to accommodate the increasing volume of business. You will be supervised by Elaine Cargis, a partner of the firm. Ms. Cargis has scheduled an orientation session for you on Friday afternoon, during which you will meet with her and the other probate paralegal.

Ms. Cargis has suggested that as your first task you familiarize yourself with some concepts and terminology fundamental to a probate law practice prior to your orientation on Friday afternoon. She is particularly concerned that you become familiar with the various forms of shared ownership in property, because these concepts are central to a probate law practice and because you will be dealing with them on a daily basis. Ms. Cargis has given you the following materials to review before your orientation. She also has assured you that after your orientation (that is, beginning with Chapter 2), subsequent assignments will relate directly to actual client matters.

WILLS, TRUSTS, AND ESTATE ADMINISTRATION: A BIRD'S EYE VIEW

Wills, trusts, and estate administration deal primarily with the methods and processes of transferring a person's wealth, also referred to as the person's

estate, at death. A deceased person is referred to in the law as a **decedent**. A decedent who fails to provide a method of transferring his or her property upon death is said to have died **intestate**; this death is said to result in **intestacy**. The disposition of intestate property is governed by the laws of **intestate succession**, which generally provide for distribution to the decedent's closest living family member or members. An alternative distribution scheme may be provided for through proper planning, as discussed below.

Estate Planning

Estate planning involves developing a plan for building and preserving one's estate during one's lifetime and for transferring the estate after death. Lawyers, as well as other professional advisers such as financial planners, accountants, and stockbrokers, each serve their own respective function in the estate-planning process. The lawyer's role involves the legal aspects of estate planning, especially as they relate to the protection, proper management, and orderly distribution of an estate upon a person's incapacity or death. The lawyer employs a variety of planning tools to achieve these ends.

The most common estate-planning tool is the **will**. The primary purpose of the will is to provide for the disposition of a person's property after death in accordance with the person's wishes. A person who has died leaving a valid will is said to have died **testate** and is referred to after death as the **testator** of the will. These two terms are derived from the word **testament**, which is a synonym for the term *will*. A will has no legal effect until the person making the will has died; accordingly, a person is free to modify or revoke a will in any way prior to death.

A person may also avoid intestacy by using a trust. A **trust** is a legal entity created generally by a trust agreement executed either during a person's lifetime or after death for the purpose of management and control of the person's property. All trusts involve three essential parties:

1. The *settlor* (also referred to as the *trustor* or *grantor*), who transfers title in certain property to another person
2. The *trustee*, who is given legal title to the property, but must manage and distribute the trust property for the benefit of another person
3. The *beneficiary*, who is entitled to the benefits of the trust (according to its provisions)

Trusts are typically used to delay distribution to the beneficiary, although they may serve several other purposes as well. A **testamentary trust** is established under the terms of a will. Thus, this type of trust is not established and has no legal effect until after the trustor's death. In contrast, an **inter vivos trust** is established and is effective during the settlor's lifetime. The Latin term *inter vivos* means "among or between the living." One of the primary purposes of an *inter vivos* trust is to circumvent formal estate administration (see *Administration of Decedents' Estates and Trust Estates*). Property placed in trust during the settlor's lifetime is not generally subject to estate administration after the settlor's death. Instead, such property is managed