

ESTATES AND TRUSTS

CASES AND MATERIALS

FOURTH EDITION

STEWART E. STERK

MELANIE B. LESLIE

JOEL C. DOBRIS

FOUNDATION PRESS

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by

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PREFACE

This book is designed entirely for teaching and learning. We have assembled questions, problems, and notes to focus student attention on critical issues. We have tried to be crisp, and to present material in ways that will keep students awake and engaged. We have also tried wherever possible to use recent cases, both because recent cases highlight the issues of greatest current significance, and because recent cases demonstrate that even in areas which have supposedly been settled for decades, lawyers without the necessary skills, or lawyers who take inadequate care, can generate unwanted litigation for their clients and for the families of those clients.

Any course book dominated by appellate cases, including this one, permits and encourages teachers and students to explore legal doctrine from the perspective of policymakers and litigators. Most estates lawyers, however, are not litigators; they are lawyers who focus on drafting and planning to avoid litigation. We have designed this book to integrate drafting and planning issues with discussions of doctrine and policy. Many of the notes, questions, and problems ask students what they would do, as drafters and planners, to avoid the litigation that resulted from the planning and drafting decisions made by the lawyers in the principal cases reproduced in the book.

We seek not only to provide a thorough introduction to the doctrinal rules surrounding trusts, powers of appointment, and other wealth transmission devices, but also to show students why a client would find it advantageous to use these devices. Wherever possible, we have organized materials functionally so that students understand why a lawyer would want to use a particular technique before we consider the legal rules that govern the techniques.

Many of the clients who generate the most lucrative business for estates lawyers have one principal goal in mind: tax avoidance. The 2010 estate tax legislation significantly reduces the number of people subject to the federal estate tax, and we have reduced our treatment of the tax accordingly. At the same time, we believe that law students can more fully appreciate the importance of many of the devices they study (particularly trusts and powers of appointment) if they have at least a rudimentary understanding of the federal estate tax. We have incorporated a brief introduction to estate taxation early in the book, and we have built on that basic introduction in later chapters. The chapters that include tax issues are designed so that the teacher who does not wish to cover tax can easily exclude those materials.

At many schools, curricular pressures have reduced the number of hours available for studying estates and trusts. At the same time, we

recognize the need to provide some flexibility for teachers who want to highlight different areas of the course. We believe that a teacher should be able to cover the entire book in a five-credit course. At the same time, we recognize that most schools (including our own) do not allocate five credits to a course on Estates and Trusts. The format of the book is designed to make it easily adaptable to a three or four-credit survey course, or to separate two-credit courses on “Wills” and “Trusts”.

Although neither of us routinely uses power point slides in the classroom, we have found them useful for diagramming family relationships and illustrating problems related to intestate succession, the elective share and future interests. We are happy to make our (very pretty) slides available to teachers who adopt the book. To access the slides, visit our Foundation Press author website at www.sterklesliedobris.com. Once there, follow the steps to request a password.

Although we believe that most students should be able to master the material in this book without recourse to outside materials, students who are looking for additional textual material on Estates and Trusts are blessed with a number of excellent study aids. For students interested in a combination of textual material and additional problems (with solutions), we suggest Melanie B. Leslie and Stewart E. Sterk, *Trusts & Estates (Concepts and Insights)* (2nd ed. 2011). Other fine books include:

Roger W. Andersen, *Understanding Trusts and Estates* (4th ed. 2009)

Lawrence H. Averill, *Averill’s Black Letter Outline on Wills, Trusts, and Future Interests* (3d ed. 2005).

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Finally, although Joel Dobris did not actively participate in the preparation of this edition, his handiwork remains evident throughout the casebook. We remain grateful for the guidance and wit he has provided during the course of this (and past) editions. Both we and the book are far richer for the contributions Joel has made over the course of numerous editions.

STEWART E. STERK
MELANIE B. LESLIE

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