

RITCHIE, ALFORD AND EFFLAND'S
ESTATES AND TRUSTS
CASES AND MATERIALS

JOEL C. DOBRIS
STEWART E. STERK

UNIVERSITY CASEBOOK SERIES

RITCHIE, ALFORD & EFFLAND'S

ESTATES AND TRUSTS

CASES AND MATERIALS

by

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PREFACE

We are the proud inheritors of the classic casebook long edited by John Ritchie, Neill H. Alford, and Richard W. Effland. During the course of the past four decades and eight editions, this casebook has been a leader in its field. We are privileged to build on that foundation.

Times change, however, and so do the needs of teachers and students of trusts and estates. We have rewritten this book from cover to cover. We have tried to retain the best of the cases and materials used by Professors Ritchie, Alford, and Effland. Our primary goal has been to make this a book that confronts the problems estates and trusts lawyers face at the turn of the millennium.

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. One goal was to avoid presenting material in a way that would cause student eyes to glaze over. And we have 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 the niceties of legal doctrine. Most estates lawyers, however, are not litigators; they are office lawyers who focus on drafting and planning to avoid litigation. We have designed this book to emphasize drafting and planning issues. 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. This book is not designed for a course in taxation, but 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 materials incorporate the significant changes made in the Taxpayer Relief Act of 1997. At schools where most estates and trust students take separate courses in estate and gift taxation or estate planning, it is, of course, possible to skip the tax material we have included. The materials also incorporate the significant changes made in the Revised Uniform Principal and Income Act of 1997.

At many schools, curricular pressures have reduced the number of hours available for studying estates and trusts. We have streamlined this book to make it easier for students and teachers to use the book without having to do too much cutting and pasting. 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 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. We note the following:

Roger W. Anderson, *Understanding Trusts and Estates* (1994)

Thomas E. Atkinson, *Law of Wills* (2d ed. 1953)

Lawrence H. Averill, *Uniform Probate Code in a Nutshell* (4th ed. 1993)

Paul G. Haskell, *Preface to Wills, Trusts and Administration* (2d ed. 1994)

William M. McGovern, Sheldon F. Kurtz, & Jan Ellen Rein, *Wills, Trusts and Estates* (1988)

Mark Reutlinger, *Wills, Trusts and Estates: Essential Terms and Concepts* (1993)

Thomas L. Shaffer & Carol Ann Mooney, *The Planning and Drafting of Wills and Trusts* (3rd ed. 1991)

Finally, this book represents the work product of many people. First and foremost, we owe a debt of gratitude to our predecessors, John Ritchie, Neill Alford, and Richard Effland, for their pioneering efforts. We would also like to thank the following students for their tireless research assistance: Katy Filner (Davis '98), Jennifer Dauer (Davis '95), David Owen (Davis '96), Aneke Plimier (Davis '97), Charlie Stevens (Davis '96), Morgen Bowers (Cardozo '99), Edward Goldstein (Cardozo '98), Jacqueline Lipson

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