

# QUESTIONS & ANSWERS: WILLS, TRUSTS & ESTATES



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*Multiple-Choice and Short-Answer  
Questions and Answers*

THIRD EDITION

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# PREFACE TO THE THIRD EDITION

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The law governing wills, trusts, and estates in the United States finds its origins primarily in the common law of England. Today, it is increasingly based on statutory law. It is also largely “state law” oriented. Each state has its own set of rules, procedures, statutes, and case law. While there are many common denominators, the law can, and frequently will, differ from state to state. Some of these differences are significant.

To address this reality, most of the problems in this book are to be solved using the law of the hypothetical state of X. It is assumed that X has adopted both the Uniform Probate Code (1990, with amendments through 2011) and the Uniform Trust Code (2000, with amendments through 2011). Throughout the book, the Uniform Probate Code and the Uniform Trust Code are abbreviated “UPC” and “UTC,” respectively. Occasionally, some questions will instruct the student to assume that a particular provision of one of the uniform acts is not part of the law of X or that another relevant statute is to be interpreted a certain way.

If neither the Uniform Probate Code nor the Uniform Trust Code provides the “answer,” it is assumed that X’s courts have adopted a generally accepted principle of the law of wills, trusts and estates. These generally-accepted principles may be the positions taken in a relevant Restatement of the Law published by the American Law Institute or explained in a recognized hornbook or treatise, such as *UNDERSTANDING TRUSTS AND ESTATES* by ROGER W. ANDERSEN (2013), or *PRINCIPLES OF WILLS, TRUSTS & ESTATES* by WILLIAM M. MCGOVERN, SHELDON F. KURTZ AND DAVID M. ENGLISH (2012). At times, reference will be made to the “old reliables” like *BOGERT ON TRUSTS* (1987) and *ATKINSON’S LAW OF WILLS* (1953).

Also, in recognition of the differences in states’ laws, most answers will also attempt to explain how the result may differ in a state that does not follow the position taken by the Uniform Probate Code, the Uniform Trust Code or the “majority” case law rule. Regardless of the state law that the student has learned in class, the key issues are identified, and it is hoped that the relevant answer is discussed for each question.

Further, the practical application of this area of the law continues to evolve. Today, fewer assets pass through probate administration than in the not too distant past. Increasingly, wealth transfers take the form a nonprobate or nontestamentary disposition. The revocable trust has become a popular “will substitute” in many states. Lawyers practicing in this area of law spend increasing amounts of time coordinating the disposition of the client’s life insurance, retirement benefits and bank accounts with the client’s key planning document — either the client’s will or revocable trust. Consequently, many of the questions in this edition reflect this growing trend.

Accordingly, a primary purpose of this book is to test the student’s practice-oriented understanding of this area of the law. This book supplements the student’s casebook and includes questions and answers in eleven main subject areas (plus a final exam) that correspond to basic topics covered in a typical wills, trusts, and estates course. Unfortunately, space does not allow for the coverage of every topic. For example, future interests and the administration of trusts and estates are not addressed as their own topics. However, some future interest and administration issues are integrated into some questions.

When answering most questions, it is suggested that the student (i) identify the type of disposition in question (testamentary, inter vivos, nonprobate, etc.); (ii) identify the parties involved (transferor, transferees, creditors, assignees, etc.); (iii) determine the effective date of the disposition (date of delivery, date of death, date of possession, etc.); (iv) understand the issue presented (who gets what, when, and how); and (v) apply to the facts the appropriate substantive principle (the relevant statute or case law precedent).

In order to focus questions on specific issues, unless otherwise instructed, or the question itself suggests the contrary, the student should assume as follows:

- There are no administration expenses or creditors’ claims that affect the proper conclusion. For example, if a question asks about the proper distribution of an intestate’s estate, simply divide the assets described assuming there are no estate administration expenses or debts of the decedent.
- There are no individuals relevant to determining the proper distributees other than those specifically identified.
- That none of the property is community property unless the question directs your attention to a potential problem. Also, ignore homestead, exempt property, and family allowance rights. Also assume relevant state law has abolished the common law doctrines of dower and curtesy.
- That a decedent’s will was valid and duly admitted to probate. If the question recites that an individual died testate, assume there are no problems with the will, unless the question directs your attention to a potential problem.
- That all trusts are valid, irrevocable express trusts. If the question describes a trust that a settlor has established, assume the trust is valid and enforceable, unless the question directs your attention to the trust’s validity, enforceability, or revocability.

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## *PREFACE TO THE THIRD EDITION*

- That individuals are not married and/or are alive at all relevant times. For example, if the question states that an individual died, assume he or she was single unless the question directs your attention to a potential problem. If the question states an individual was survived by a child, assume that the child is living at all times relevant to any legal analysis involved in the question.

It is not the intent of the author to raise questions concerning whether a couple (opposite sex or same sex) is validly married. The validity of a marriage is typically a matter of the law of the state where the couple is domiciled, but the state of domicile usually recognizes a marriage as valid, if valid where the ceremony was performed or where the couple was previously domiciled. Similarly, it has not been the author's intent to address whether domestic partners or parties to a civil union (or any other similar relations) assume or should assume the status of being "married". Again, that determination is a matter of a particular state's law. Accordingly, this edition assumes that the couple in question has that status of being married under applicable law. For discussion purposes, terms like "spouse" and "marriage" are used to refer to the individuals who have that status and the relationship resulting from that status.

Finally, for any questions involving federal transfer taxes, the student should assume that the American Taxpayer Relief Act of 2012 is in effect as of January 1, 2013 (i.e., that the annual exclusion for gift tax purposes is \$14,000 and that the available exemption amount for transfer tax purposes is \$5.25 million.) The student should also assume that the State of X does not have either an estate or inheritance tax.

Prof. Tom Featherston  
November 15, 2013



# ABOUT THE AUTHOR

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Thomas M. Featherston, Jr., is the Mills Cox Professor of Law at Baylor University's School of Law in Waco, Texas. He earned his J.D. with highest honors from Baylor in 1972. After graduation, he entered private practice in Houston, Texas from 1973 through 1982. He is Board Certified in Estate Planning and Probate Law by the Texas Board of Legal Specialization (originally certified in 1979). He joined the Baylor Law School faculty in 1982, and in 1990, he was appointed to the Mills Cox Chair.

Professor Featherston was elected as an Academic Fellow of the American College of Trust and Estate Counsel in 1991 and a Fellow of the American Bar Foundation in 1993. He is active in both the State Bar of Texas and the American Bar Association. He is a past chair of the Real Estate, Probate and Trust Law Section of the State Bar of Texas and has served on the governing council of the Real Estate, Trust and Estate Law Section of the American Bar Association. He is also the Trusts and Estates Articles Editor for *Probate & Property*, an ABA publication, and is a co-author of West's *Texas Practice Guide — Probate*. He is a frequent author and lecturer in the areas of trusts, estates, marital property, fiduciary administration and other related topics, the subjects that he teaches at Baylor Law School. In 2009, he was honored as the *Distinguished Texas Probate and Trust Attorney* by the Real Property, Probate and Trust Law Section of the State Bar of Texas.

