

California Wills and Trusts

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Cases, Statutes, Problems, and Materials

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CAROLINA ACADEMIC PRESS
Durham, North Carolina

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ISBN 978-1-61163-674-1
eISBN 978-1-5310-0840-6
LCCN 2015955457

Carolina Academic Press, LLC
700 Kent Street
Durham, North Carolina 27701
Telephone (919) 489-7486
Fax (919) 493-5668
www.cap-press.com

Printed in the United States of America

*To the lovely Gerri—asking you to marry me was the best question I've ever asked;
To my children (Carolyn, Paul, John, and Kristin) and grandchildren
(Quinn and Ronan)—the pride and joy of my life; and
To my students—from whom I've learned so much.*

Peter T. Wendel

*To my two sons, Mark and Brian—you give me immeasurable love and pride
To my students; past, present and future—
you are my family who gives me purpose in work
To my colleague and friend Peter—you gave me years of friendship and
the chance to work with you on this book*

Robert G. Popovich

Contents

Table of Cases	xxi
Table of Statutory Material	xxvii
Preface	xxxiii
Chapter 1 · Introduction and the Wills & Trusts Landscape	3
I. The Subject of Wills and Trusts	3
II. Quick Overview: Probate versus Nonprobate	3
A. Probate Property	4
B. Nonprobate Property	5
III. An Estate Planning Perspective	7
Problems	9
<i>In re Succession of Plummer</i>	10
Notes	14
IV. Professional Responsibility—Ethical Issues	15
<i>Lucas v. Hamm</i>	15
Notes	20
V. A Brief Word about Estate Planning	22
VI. But What if ...	23
Chapter 2 · The California Intestate Scheme	25
I. Overview: What Is an Intestate Scheme?	25
II. The California Intestate Scheme: Who Takes How Much	26
III. The Decedent’s Property	28
A. Overview	28
1. Single Individual: Separate Property Assumption	28
2. Concurrent Estates	29
B. Marriage and Property Rights	30
1. The Non-Community Property Approach	30
2. The Community Property Approach	30
a. The Partnership Model	30
b. The Classification Process	31
c. Treatment at Death	32
IV. The Mechanics of the California Intestate Scheme	33
A. Calculating the Share of the Surviving Spouse	33
Problems	33
B. The In-Law Inheritance Statute	34

Problems	36
Note	37
V. The Survival Requirement	37
A. The California Survival Approach	40
Notes	41
Problems	42
VI. Calculating the Share of the Issue	43
A. The Simple End of the Spectrum: Children Only	43
1. Calculating One's Degree of Relationship	43
B. The First Variation: Children and Grandchildren	43
C. Second Variation: Taking by Representation	44
D. Third Variation: No Live Takers in the First Generation	45
E. Fourth Variation: The Shares for the Deceased Parties	
Survived by Issue	46
Notes and Problems	47
F. Miscellaneous Doctrines Relating to Calculating Shares of Issue	48
1. Half-Bloods	48
2. Inheriting through Two Lines	49
VII. Calculating the Share of the Next of Kin	49
A. The California Approach	52
Problem	52
Note	52
Chapter 3 · Who Qualifies as an Heir under the	
California Intestate Scheme?	53
I. Overview	53
II. Spouse	53
A. Traditional Marriage	54
B. Same-Sex Couples	54
1. Registered Domestic Partners	54
2. Same-Sex Marriage	54
C. Putative Spouses	55
Notes	56
D. Cohabitants	57
Note	59
III. Issue	60
A. Introduction	60
B. The "Ideal" Nuclear Family	61
C. Natural Parents Married	63
D. Child Born Out of Wedlock	64
<i>Estate of Griswold</i>	65
Notes	69
E. Adoption	70
<i>Estate of Dye</i>	71

Notes and Problems	73
F. Intent to Adopt	75
1. Equitable Adoption	75
<i>Estate of Ford</i>	76
Notes	81
2. Attempted Adoption	81
Notes	82
<i>Estate of Joseph</i>	82
Notes	85
Problem	85
G. Child Born after Natural Parent's Death	85
1. Posthumously Born Child	85
Notes	86
2. Posthumously Conceived Child	86
<i>Woodward v. Commissioner of Social Security</i>	87
Notes	91
Chapter 4 · Miscellaneous Doctrines That May Affect an Heir's Share	93
I. Overview	93
II. The Advancement Doctrine	93
Notes	95
Problems	95
III. The Slayer Doctrine	96
A. Introduction	96
<i>In re Mahoney's Estate</i>	96
B. The California Approach	98
Notes	100
IV. The Disclaimer Doctrine	100
<i>Dyer v. Eckols</i>	101
Notes	103
Problems	104
Chapter 5 · Testamentary Capacity	107
I. Overview	107
II. General Testamentary Capacity	108
<i>Estate of Mann</i>	108
Notes	112
Problems	117
III. Defects in Testamentary Capacity	118
A. Insane Delusions	118
<i>In re Honigman's Will</i>	118
Notes	121
Problems	124
B. Undue Influence	125

<i>In re Estate of Henault</i>	126
Notes	131
<i>In re Moses' Will</i>	135
Notes	141
C. Fraud	147
<i>In re Bottger's Estate</i>	148
Notes	151
Problem	151
D. Duress	151
E. Elder Abuse	152
<i>In re Estate of Lowrie</i>	153
F. Tortious/Intentional Interference with an Expectancy	155
Notes	160
Chapter 6 · Wills Act Formalities	161
I. Introduction	161
II. Attested Wills	161
A. The Traditional Approach	162
<i>In re Groffman</i>	162
Notes	165
B. Response to Traditional Approach	166
Notes and Problems	169
<i>Estate of Stoker</i>	170
<i>Estate of Ben-Ali</i>	172
C. Continuing and Evolving Issues	176
1. The Writing Requirement	176
Problems	176
2. The Signature Requirement	178
Problems	180
3. The Witness Requirement	181
Problem	181
<i>In re Tracy's Estate</i>	183
Problems	184
D. The "Interested" Witness	186
Notes	187
Problem	187
E. "Swapped-Wills"	188
F. Real Life — Practice versus What Is Permitted by Statutes and Courts	189
III. Holographic Wills	189
<i>Estate of Billings</i>	190
<i>In re Estate of Williams</i>	191
Notes	201
<i>In re Estate of Johnson</i>	201

Notes and Problems	205
<i>Estate of Wong</i>	206
Notes and Problems	211
Chapter 7 · Will Revocation	215
I. Introduction	215
A. The Traditional Approach	215
<i>Thompson v. Royall</i>	215
Notes	218
II. Express Revocation	218
A. Introduction	218
B. Revocation by Writing	219
1. Codicil versus Will	219
Problems	220
2. Revocation by Writing: Expressly versus by Inconsistency	221
Problems	222
C. Revocation by Act	222
1. The Physical Act	223
Problems	224
III. Implied Revocation	224
A. Implied Revocation by Act	224
<i>Estate of Obernolte</i>	225
Notes	227
Problems	228
B. Implied Revocation by Operation of Law	229
1. Same-Sex Couples	231
Note	232
Problem	232
IV. Revival of Revoked Wills	233
<i>In re Estate of Heibult</i>	234
Notes	237
Problem	237
V. Dependent Relative Revocation (“DRR”)	238
<i>Kroll v. Nehmer</i>	238
Notes	244
Problems	247
Chapter 8 · Components of a Will	251
I. Introduction	251
II. Integration	251
A. Attested Will	251
B. Holographic Will	252
Notes	252
Problem	252

III. Republication by Codicil	253
<i>In re McCauley's Estate</i>	254
Notes	256
Problems	257
IV. Incorporation by Reference	257
A. Classic Incorporation by Reference	258
<i>Simon v. Grayson</i>	258
Notes	261
B. Modern Trend—Tangible Personal Property List (Relaxation of Incorporation by Reference)	262
Problems	264
V. Acts of Independent Significance	264
<i>In re Tipler</i>	266
Problems	269
VI. Contracts Concerning Wills	270
Note	272
Chapter 9 · Construing Time of Death Gifts	273
I. Introduction	273
<i>Mahoney v. Grainger</i>	273
<i>Fleming v. Morrison</i>	274
Note	275
II. Extrinsic Evidence to Help Construe a Will	275
A. Drafting Mistakes	277
1. Common Law Approach	277
2. Modern Trend Approach	279
3. The California Approach	280
<i>Estate of Taff</i>	280
Notes	283
<i>In re Estate of Duke</i>	285
Notes	292
Problems	293
III. Types of Testamentary Gifts; Failure	295
A. Types of Testamentary Gifts	295
Problems	296
B. Failure of Testamentary Gift	297
<i>In re Estate of McFarland</i>	298
Note	299
Problem	301
IV. Change in Beneficiary—Default Construction Rules	301
A. Lapse	301
B. Anti-Lapse	302
<i>Estate of Lensch</i>	303
Notes	306

Problems	309
C. Class Gifts	310
<i>Cain v. Dunn</i>	310
Notes	313
Problems	315
V. Change in Testator/Transferor's Property—	
Default Construction Rules	316
A. Ademption	316
1. Ademption by Extinction (“Ademption”)	316
<i>Estate of Austin</i>	318
Notes	322
Problems	325
2. Gifts of Stock	325
Problems	327
3. Ademption by Satisfaction (“Satisfaction”)	328
Notes and Problems	329
B. Exoneration	330
Problems	330
C. Abatement	331
Problem	332
Chapter 10 · Family Protection	333
I. Introduction	333
A. Marital Property and Spousal Protection at Time of Death	333
B. Migrating Couples	336
C. Quasi-Community Property	337
Problems	339
II. Pretermitted Spouse	340
<i>Estate of Shannon</i>	340
Notes	344
Notes and Problems	345
III. Pretermitted Child/Accidentally Omitted Child	346
<i>Estate of Mowry</i>	347
Notes	350
Problems	353
Chapter 11 · Nonprobate Transfers	355
I. Overview	355
II. Life Insurance Contract Exception	355
A. Traditional Common Law Approach	355
<i>Wilhoit v. Peoples Life Ins. Co.</i>	355
B. Modern Trend Approach	359
<i>In re Estate of Lahren</i>	360
Notes	364

Problem	364
III. Joint Tenancy	365
A. Introduction	365
B. Creation—Real Property	366
Problems	368
C. Creation—Multiple-Party Financial Accounts	369
Problems	371
D. Marital Property: Taking Title as Community Property versus	
Joint Tenancy	372
E. Community Property with Right of Survivorship	374
IV. Legal Life Estate and Remainders	374
A. Common Law Approach	374
Problem	375
Note	375
B. Modern Trend Approach	375
1. Transfer-on-Death Deed	375
<i>In re Estate of Roloff</i>	376
<i>Sheils v. Wright</i>	378
Notes	380
C. The California Approach	381
1. Background	381
2. Creation	381
3. Consequences of Recording	382
4. TOD Deed's Effect on Concurrent Estate	383
5. Revocation	384
6. Disqualification	384
7. Creditor's Rights	384
Problems	385
V. <i>Inter Vivos</i> Trusts	385
A. <i>Inter Vivos</i> Trust as a Will Substitute	385
B. Costs	386
C. Time	388
D. Control	388
E. Privacy	389
F. Out-of-State Real Property	390
G. Incapacity	391
1. Managing Assets	391
2. Health Care Decisions and End-of-Life Instructions	392
Chapter 12 · Trusts: Creation and Revocability	395
I. Overview	395
A. Conceptual Understanding	395
1. <i>Inter Vivos</i> Gift—Outright Gift	395
2. <i>Inter Vivos</i> Gift in Trust	396

a. The Trust as a Bifurcated Gift	396
b. Requirements to Create a Trust	399
<i>Hermann v. Brighton German Bank Co.</i>	400
II. Trust Creation	403
A. Intent to Create a Trust	403
<i>In re Kearns' Estate</i>	403
Notes	407
Problems	407
B. Trust Funding	409
1. Third Party as Trustee	409
<i>Uber v. Hoffmann</i>	409
Note	413
2. Settlor as Trustee	413
<i>Estate of Heggstad</i>	414
Notes	416
Problems	418
C. Ascertainable Beneficiaries	419
1. "Ascertainable"	419
<i>Armington v. Meyer</i>	419
Notes	420
Problems	421
2. Honorary Trusts—Noncharitable Purpose Trusts	422
<i>In re Voorhis' Estate</i>	422
Notes	423
Problem	428
D. Writing Requirement	429
1. Failed <i>Inter Vivos</i> Trust	429
<i>Steinberger v. Steinberger</i>	429
Notes	432
2. Failed Testamentary Trust	433
<i>Pickelner v. Adler</i>	433
Note	438
Problems	438
III. Trust Creation and Pour-Over Clauses	439
A. Introduction: <i>Inter Vivos</i> versus Testamentary Trusts	439
B. A Testamentary Pour-Over Provision	441
Notes and Problem	443
C. Uniform Testamentary Additions to Trusts Act	443
<i>Clymer v. Mayo</i>	444
Notes and Problems	451
IV. Trust Revocability	453
A. Default Rule	453
B. Mechanics of Revoking a Trust	454
<i>Masry v. Masry</i>	455

Notes	458
Problems	461
Chapter 13 · Trust Life: Beneficiary’s Perspective	463
I. Scope of Beneficiary’s Interest	463
A. Beneficiary’s Interest: Mandatory versus Discretionary	463
<i>Marsman v. Nasca</i>	463
Notes	469
Problems	474
B. Scope of Discretion—Modern Trend	476
<i>Strojek ex rel. Mills v. Hardin Cty. Bd. of Supervisors</i>	476
Notes	480
Problems	482
II. Creditor’s Rights and Spendthrift Trusts	483
A. Third Party as Beneficiary	483
<i>Duvall v. McGee</i>	483
Notes	492
Problems	497
B. Self-Settled Trusts	498
<i>Rush Univ. Med. Ctr. v. Sessions</i>	499
Notes	503
Problems	506
III. Beneficiary-Compelled Termination of an Irrevocable Trust	507
<i>In re Estate of Bonardi</i>	508
Notes	512
Problem	515
IV. Modification of Irrevocable Trust	516
A. Modifying a Trust’s Dispositive or Administrative Terms	516
<i>In re Riddell</i>	517
Notes	521
Chapter 14 · Trust Life: Trustee’s Perspective	527
I. Overview—A Historical Perspective	527
II. Trustee’s Powers and Third-Party Liability for Transacting with a Trustee	528
A. Common Law Approach	528
B. Modern Trend Approach	528
1. The Trustee’s Powers	528
2. Protection for Third Parties Who Deal with a Trustee	530
Problem	531
III. The Office of Trusteeship	531
A. General Duty to Administer the Trust	533
IV. The Core Duties	533
A. Duty of Loyalty	534

<i>Wilkins v. Lasater</i>	534
<i>Fulton Nat'l Bank v. Tate</i>	539
Notes	543
Problems	547
B. Duty to Be Impartial	549
<i>Delaware Trust Co. v. Bradford</i>	550
Notes	553
<i>Hearst v. Ganzi</i>	553
Notes	557
Problems	557
<i>In re Heller</i>	559
Note	562
Problem	562
C. Duty to Act Prudently	563
1. Articulating the Duty	563
2. Historical Evolution of the Investment Duties	563
3. The Prudent Man Approach	565
4. The Prudent Investor Approach	565
<i>Estate of Collins</i>	567
Notes	572
Problems	574
V. The Ancillary, Administrative Duties	576
A. Related to the Trust Property	576
1. Duty to Collect Trust Property	577
Problems	577
2. Duty to Segregate Trust Property	578
<i>Matter of Goldstick</i>	578
Notes	579
3. Duty to Properly Care for the Trust Property	580
Problem	581
B. Related to the Trust Beneficiaries	581
1. Duty to Inform Party of Beneficiary Status	582
2. Duty to Disclose Terms of the Trust	582
<i>Fletcher v. Fletcher</i>	582
Notes	586
3. Duty to Account for Trust's Administration	587
<i>Cook v. Brateng</i>	587
Notes	593
VI. To Whom Does the Trustee Owe These Fiduciary Duties?	595
A. Traditional Rule	595
B. Inter Vivos Revocable Trust	595
<i>In re Estate of Giralдин</i>	595
Problem	605

Chapter 15 · Charitable Trusts	607
I. Charitable Trust Creation	607
A. Charitable Purpose	607
<i>Shenandoah Valley Nat'l Bank of Winchester v. Taylor</i>	607
Notes	615
Problems	619
B. Unascertainable Beneficiaries	621
<i>In re McKenzie's Estate</i>	621
Problem	624
II. Standing to Enforce	625
<i>Patton v. Sherwood</i>	625
Notes	629
III. Power to Modify—The Doctrine of Cy Pres	631
<i>In re Elizabeth J.K.L. Lucas Charitable Gift</i>	632
Notes	642
Problem	647
Chapter 16 · Powers of Appointment	649
I. Introduction	649
A. Conceptual Introduction	649
B. Terminology	651
C. Powers of Appointments—General versus Special	652
<i>Jenkins v. United States</i>	653
Notes	656
D. Standard Applicable to Exercise	660
II. Creation of a Power of Appointment	660
<i>In re Kuttler's Estate</i>	660
Notes	664
A. Special Power of Appointment	665
B. General Power of Appointment	665
Problems	667
III. Exercise of a Power of Appointment	667
A. Inter Vivos—Timing of Exercise	667
B. Testamentary Power—Timing of Exercise	668
<i>Carmichael v. Heggie</i>	668
Notes	670
Problem	671
C. Manner of Exercise	671
<i>In re Passmore</i>	671
Notes	675
Problem	680
D. Atypical Exercise Scenarios	681
1. Appointment in Trust; Creating a New Power of Appointment	681

2. Appointee Dies before Appointment Effective:	
Lapse and Anti-Lapse?	682
<i>Dow v. Atwood</i>	682
Notes	684
E. Flawed Blended Exercises	686
1. Selective Allocation	687
2. Capture	687
IV. Failure to Exercise a Power of Appointment	688
<i>Crawford v. Crawford</i>	689
Notes	691
Index	693

Table of Cases

- Andersen v. Hunt*, 196 Cal. App. 4th 722 (2011), 116
- Armelin v. Armelin*, No. B161395, 2003 WL 22146528 (Cal. Ct. App. Sept. 18, 2003), 439
- Armington v. Meyer*, 236 A.2d 450 (R.I. 1967), 419
- Ashburner v. MacGuire*, 2 Bro. C.C. 108 (Ch. 1786), 316
- Attorney Grievance Comm'n of Maryland v. Sachse*, 693 A.2d 806 (Md. Ct. App. 1997), 548
- Bank of New York v. Black*, 139 A.2d 393 (N.J. 1958), 677
- Bank v. Bank Lumber Co.*, 543 P.2d 588 (Okla. Civ. App. 1975), 559
- Beckwith v. Dahl*, 205 Cal. App. 4th 1039 (Ct. App. 2012), 156
- Benjamin v. Woodring*, 268 Md. 593 (1973), 121
- Board of Regents v. Davis*, 14 Cal. 3d 333 (1975), 112
- Brezinski v. Brezinski*, 463 N.Y.S.2d 975 (1983), 372
- Bridge v. Kedon*, 163 Cal. 493 (1912), 42
- Cain v. Dunn*, 241 So. 2d 650 (Miss. 1970), 310
- Carmichael v. Heggie*, 506 S.E.2d 308 (S.C. 1998), 668
- Clymer v. Mayo*, 473 N.E.2d 1084 (Mass. 1985), 444
- Cook v. Brateng*, 262 P.3d 1228 (Wash. Ct. App. 2010), 587
- Crawford v. Crawford*, 296 A.2d 388 (Md. 1972), 689
- Delaware Trust Co. v. Bradford*, 59 A.2d 212 (Del. Ch. 1948), 550
- DeMaris v. Asti*, 426 So.2d 1153 (Fla. Dist. Ct. App. 1983), 21
- Dickinson v. Wilmington Trust Co.*, 734 A.2d 605 (Del. Ch. 1999), 667
- Dow v. Atwood*, 260 A.2d 437 (Me. 1969), 682
- Dunmore v. Dunmore*, No. C063910, 2012 WL 267725 (Cal. Ct. App. Jan. 30, 2012), 531
- Duvall v. McGee*, 826 A.2d 416 (Md. 2003), 483
- Dyer v. Eckols*, 808 S.W.2d 531 (Tex. App. 1991), 101
- Elden v. Sheldon*, 46 Cal. 3d 267 (1988), 58
- Estate of Austin*, 113 Cal. App. 3d 167 (Ct. App. 1980), 318
- Estate of Ben-Ali*, 216 Cal. App. 4th 1026 (2013), 172
- Estate of Billings*, 64 Cal. 427 (1884), 190
- Estate of Buck*, 29 Cal. App. 4th 1846 (Ct. App. 1994), 646
- Estate of Cleveland*, 17 Cal. App. 4th 1700 (1993), 82
- Estate of Collins*, 72 Cal. App. 3d 663 (1977), 567

- Estate of Dye*, 92 Cal. App. 4th 966 (2001), 71
- Estate of England*, 233 Cal. App. 3d 1 (Ct. App. 1991), 368
- Estate of Ford*, 82 P.3d 747 (Cal. 2004), 76, 288
- Estate of Griswold*, 24 P.3d 1191 (Cal. 2001), 65
- Estate of Hafner*, 184 Cal. App. 3d 1371 (1986), 56
- Estate of Heggstad*, 16 Cal. App. 4th 943 (1993), 414
- Estate of Joseph*, 949 P.2d 472 (Cal. 1998), 82
- Estate of Lensch*, 177 Cal. App. 4th 667 (Ct. App. 2009), 303
- Estate of Leslie*, 37 Cal. 3d 186 (1984), 56
- Estate of Mann*, 184 Cal. App. 3d 593 (1986), 108, 131
- Estate of McCabe*, 224 Cal. App. 3d 330 (Ct. App. 1990), 179
- Estate of Mowry*, 107 Cal. App. 4th 338 (Ct. App. 2003), 347
- Estate of Obernolte*, 91 Cal. App. 3d 124 (Ct. App. 1979), 225
- Estate of Powell*, 113 Cal.App. 670 (1931), 122, 459
- Estate of Shannon*, 224 Cal. App. 3d 1148 (Ct. App. 1990), 340
- Estate of Southworth*, 59 Cal. Rptr. 2d 272 (Ct. App. 1996), 211
- Estate of Stevenson*, 11 Cal. App. 4th 852 (1992), 82
- Estate of Stoker*, 193 Cal. App. 4th 236 (Ct. App. 2011), 170, 222
- Estate of Taff*, 63 Cal. App. 3d 319 (Ct. App. 1976), 280
- Estate of Thornton*, 1 Cal. 2d 1 (1934), 337
- Estate of Vargas*, 36 Cal. App. 3d 714 (1974), 57
- Estate of Velarde*, No. A133760, 2013 WL 364305 (Cal. Ct. App. 2013), 368
- Estate of Wong*, 40 Cal. App. 4th 1198 (Ct. App. 1995), 206
- Estate of Wood*, 32 Cal. App. 3d 862 (Ct. App. 1973), 681
- Fabian v. Lindsay*, 765 S.E.2d 132 (S.C. 2014), 21
- Farmer's Bank of State of Del. v. Howard*, 258 A.2d 299 (Del. Chan. 1969), 372
- Fiduciary Trust Co. v. First National Bank of Colorado Springs, Colorado*, 181 N.E.2d 6 (Mass. 1962), 687
- First Nat. Bank of Birmingham v. Currie*, 380 So. 2d 283 (Ala. 1980), 482
- First Nat. Bank of Catawba Cty. v. Edens*, 286 S.E.2d 818 (N.C. Ct. App. 1982), 476
- Flannery v. McNamara*, 738 N.E.2d 739 (Mass. 2000), 294
- Fleming v. Morrison*, 72 N.E. 499 (Mass. 1904), 274
- Fletcher v. Fletcher*, 480 S.E.2d 488 (Va. 1997), 582
- Fulton Nat'l Bank v. Tate*, 363 F.2d 562 (5th Cir. 1966), 539
- Ganier's Estate v. Ganier's Estate*, 418 So. 2d 256 (Fla. 1982), 345
- Garatie-Symons v. Levenson*, No. B203156, 2009 WL 258102 (Cal. Ct. App. Aug. 24, 2009), 416
- Golson v. Dunlap*, 14 P. 576 (Cal. 1887), 549
- Guest v. Frazier*, No. B225938, 2011 WL 986200 (Cal. Ct. App. Mar. 22, 2011), 576
- Guy v. Liederbach*, 459 A.2d 744 (Pa. 1983), 21
- Hearst v. Ganzi*, 145 Cal. App. 4th 1195 (2006), 553
- Hermann v. Brighton German Bank Co.*, 16 Ohio N.P. (n.s.) 47 (1914), 400

- Hollingsworth v. Perry*, 133 S. Ct. 2652 (2013), 55
- Holt v. College of Osteopathic Physicians and Surgeons*, 61 Cal.2d 750 (1964), 629
- In re Alegria's Estate*, 87 Cal. App. 2d 645 (Ct. App. 1948), 122
- In re Beldon's Estate*, 71 P.2d 326 (Cal. Ct. App. 1937), 277
- In re Bottger's Estate*, 14 Wash. 2d 676 (1942), 148
- In re Brown*, No. O.C.NO.1435 IV, 2005 WL 3753142 (Pa. Com. Pl. Dec. 29, 2005), 417
- In re Buck's Estate*, 196 P.2d 769 (Cal. 1948), 326
- In re De Mars' Estate*, 67 P. 374 (Cal. Ct. App. 1937), 619
- In re Domestic Partnership of Ellis*, 162 Cal. App. 4th 1000 (Ct. App. 2008), 57
- In re Elizabeth J.K.L. Lucas Charitable Gift*, 261 P.3d 800 (Haw. 2011), 632
- In re Estate of Bonardi*, 871 A.2d 103 (N.J. Super. Ct. 2005), 508
- In re Estate of Boyer*, 868 P.2d 1299 (N.M. Ct. App. 1994), 421
- In re Estate of Breeden*, 208 Cal. App. 3d 981 (Ct. App. 1989), 619
- In re Estate of Duke*, 61 Cal. 4th 871 (2015), 285
- In re Estate of Giralдин*, 290 P.3d 199 (Cal. 2012), 595
- In re Estate of Heibult*, 653 N.W.2d 101 (S.D. 2002), 234
- In re Estate of Henault*, G025278, 2002 WL 1335602 (Cal. Ct. App. June 19, 2002), 126
- In re Estate of Johnson*, 630 P.2d 1039 (Ariz. 1981), 201
- In re Estate of Lahren*, 886 P.2d 412 (Mont. 1994), 360, 371
- In re Estate of Leleu*, No. A092532, 2002 WL 1839249 (Cal. Ct. App. 2002), 372
- In re Estate of Lieberman*, 909 N.E.2d 915 (Ill. App. Ct. 2009), 575
- In re Estate of Lowrie*, 118 Cal. App. 4th 220 (2004), 153
- In re Estate of McCarty*, 211 Cal. App. 2d 23 (Ct. App. 1962), 252
- In re Estate of McFarland*, 167 S.W.3d 299 (Tenn. 2005), 298
- In re Estate of Peck*, 335 P.2d 185 (Cal. Dist. Ct. App. 1959), 621
- In re Estate of Peters*, 526 A.2d 1005 (N.J. 1987), 181
- In re Estate of Roloff*, 143 P.3d 406 (Kan. Ct. App., 2006), 376
- In re Estate of Rosasco*, 927 N.Y.S.2d 819 (Sur. 2011), 132
- In re Estate of Russell*, 444 P.2d 353 (Cal. 1968), 282, 289, 305
- In re Estate of Williams*, 155 Cal. App. 4th 197 (2007), 191
- In re Ferrall's Estate*, 258 P.2d 1009 (Cal. 1953), 474
- In re Groffman*, 1 W.L.R. 733 (Probate Div. 1969), 162, 189
- In re Guardianship of Eisenberg*, 719 P.2d 187 (Wash. Ct. App. 1986), 547
- In re Heller*, 849 N.E.2d 262 (N.Y. 2006), 559
- In re Honigman's Will*, 168 N.E.2d 676 (N.Y. 1960), 118
- In re Kearns' Estate*, 225 P.2d 218 (Cal. 1950), 403
- In re Kuttler's Estate*, 325 P.2d 624 (Cal. Ct. App. 1958), 660
- In re Latimer Trust*, 78 A.3d 875 (Del. Ch. 2013), 625
- In re Liapis' Estate*, 88 Pa. D. & C. 303 (P. Orph. 1954), 619
- In re Lyon's Estate*, 67 Pa. D. & C.2d 474 (1974), 428

- In re Mahoney's Estate*, 126 Vt. 31, 220 A.2d 475 (1966), 96
- In re Marriage Cases*, 76 Cal. Rptr. 3d 683 (2008), 55
- In re McCauley's Estate*, 71 P. 512 (Cal. 1903), 254
- In re McIntyre*, 48 N.Y.S. 785 (1897), 577
- In re McKenzie's Estate*, 227 Cal. App. 2d 167 (Ct. App. 1964), 621
- In re Moore's Estate*, 92 Cal. App. 2d 120 (1949), 179
- In re Moses' Will*, 227 So. 2d 829 (Miss. 1969), 135
- In re Passmore*, 416 A.2d 991 (Pa. 1980), 671
- In re Riddell*, 157 P.3d 888 (Wash. Ct. App. 2007), 517
- In re Robbins' Estate*, 371 P.2d. 573 (Cal. 1962), 620
- In re Succession of Plummer*, 847 So.2d 185 (La. App. 2003), 10
- In re Sutro's Estate*, 102 P. 920 (Cal. 1909), 620
- In re Tipler*, 10 S.W.3d 244 (Tenn. App. 1998), 266
- In re Tracy's Estate*, 182 P.2d 336 (Cal. Ct. App. 1947), 183
- In re Trust Created by Lottie P. Silliman, dated December 29, 1950*, No. A10-590, 2010 WL 5071339 (Minn. Ct. App. Dec. 14, 2010), 475
- In re Voorhis' Estate*, 27 N.Y.S.2d 818 (1941), 422
- In re Watson's Estate*, 195 Cal. App. 2d 740 (Ct. App. 1961), 122
- In re Will of Sackler*, 548 N.Y.S.2d 866 (1989), 443
- In re Wright's Estate*, 7 Cal. 2d 348 (1936), 113
- Ingalls v. Ingalls*, 54 So. 2d 296 (Ala. 1951), 483
- Jenkins v. United States*, 428 F.2d 538 (5th Cir. 1970), 653
- Juran v. Epstein*, 23 Cal.App.4th 882 (1994), 271
- Kalloger v. Normart*, No. F040048, 2002 WL 31402079 (Cal. Ct. App. Oct. 25, 2002), 441
- Kolb v. City of Storm Lake*, 736 N.W.2d 546 (Iowa 2007), 647
- Kroll v. Nehmer*, 705 A.2d 716 (Md. 1997), 238
- Kucher v. Kucher*, 192 Cal. App. 4th 90 (2011), 418
- Kunce v. Robinson*, 469 So. 2d 874 (Fla. Dist. Ct. App. 1985), 421
- L.B. Research & Education Foundation v. UCLA Foundation*, 130 Cal. App. 4th 171 (Ct. App. 2005), 631
- Larson v. Cty. of Monterey*, No. H039029, 2015 WL 7185021 (Cal. Ct. App. Nov. 16, 2015), 516
- Latham v. Father Divine*, 81 N.Y.S.2d 681 (1948), 160
- Leach v. Hyatt*, 423 S.E.2d 165 (Va. 1992), 667
- Lintz v. Lintz*, 222 Cal. App. 4th 1346 (2014), 116
- Lucas v. Hamm*, 56 Cal.2d 583 (1961), 15, 21
- Lundgren v. Hoglelund*, 711 P.2d 809 (Mont. 1985), 498
- Mahoney v. Grainger*, 186 N.E. 86 (Mass. 1933), 273
- Marriage of Lindsey*, 101 Wash. 2d 299 (1984), 60
- Marsman v. Nasca*, 573 N.E.2d 1025 (Mass. App. Ct. 1991), 463
- Marvin v. Marvin*, 557 P.2d 106 (Cal. 1976), 58
- Masry v. Masry*, 166 Cal. App. 4th 738 (2008), 455
- Matter of Estate of Bolinger*, 943 P.2d 981 (Mont. 1997), 408

- Matter of Goldstick*, 581 N.Y.S.2d 165 (1992), 578
- McGinley v. Bank of Am., N.A.*, 109 P.3d 1146 (Kan. 2005), 575
- Mears v. Mears*, 180 Cal. App. 2d 484 (Ct. App. 1960), 32
- Mieras v. DeBona*, 550 N.W.2d 202 (Mich. 1996), 21
- Miller v. Miller*, No. H026719, 2004 WL 2601792 (Cal. Ct. App. Nov. 16, 2004), 458
- Moeller v. Superior Court*, 16 Cal. 4th 1124 (1997), 577
- Moxley v. Title Ins. & Trust Co.*, 165 P.2d 15 (Cal. 1946), 516
- Murray v. Zajic*, No. B203119, 2008 WL 4767354 (Cal. Ct. App. Nov. 3, 2008), 581
- Myers v. Kansas Dep't of Soc. & Rehab. Servs.*, 866 P.2d 1052 (Kan. 1994), 480
- Nelson v. California Trust Co.*, 202 P.2d 1021 (Cal. 1949), 504
- O'Neal v. Wilkes*, 263 Ga. 850 (1994), 75
- Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), 55
- Old Colony Trust Co. v. Rodd*, 254 N.E.2d 886 (Mass. 1970), 473
- Olver v. Fowler*, 168 P.3d 348 (Wash. 2007), 27
- Paley v. Bank of America*, 159 Cal. App. 2d 500 (Ct. App. 1958), 338
- Patton v. Sherwood*, 152 Cal. App. 4th 339 (Ct. App. 2007), 625
- Peffley-Warner v. Bowen*, 113 Wash. 2d 243 (1989), 60
- Perry v. Schwarzenegger*, 704 F. Supp. 2d 921 (N.D. Cal. 2010), 55
- Pickelner v. Adler*, 229 S.W.3d 516 (Tex. App. 2007), 433
- Prueter v. Bork*, 435 N.E.2d 109 (Ill. Ct. App. 1981), 548
- Rice v. Clark*, 47 P.3d 300 (Cal. 2002), 145
- Riegler v. Riegler*, 553 S.W.2d 37 (Ark. Ct. App. 1977), 558
- Rugo v. Rugo*, 91 N.E.2d 826 (Mass. 1950), 408
- Rush Univ. Med. Ctr. v. Sessions*, 980 N.E.2d 45 (Ill. 2012), 499
- San Francisco Foundation v. Superior Court*, 37 Cal. 3d 285 (1984), 645
- Schreiner v. Scoville*, 410 N.W.2d 679 (Iowa 1987), 21
- Sheils v. Wright*, 357 P.3d 294 (Kan. Ct. App. 2015), 378
- Shenandoah Valley Nat'l Bank of Winchester v. Taylor*, 63 S.E.2d 786 (Va. 1951), 607
- Shinn v. Phillips*, 220 N.E.2d 674 (Ohio Ct. App. 1964), 237
- Simon v. Grayson*, 102 P.2d 1081 (Cal. 1940), 258
- St. Matthews Bank v. De Charette*, 83 S.W.2d 471 (Ky. 1935), 667
- State Central Collection Unit v. Brent*, 525 A.2d 241 (Md. 1987), 498
- State v. Hawes*, 564 N.Y.S.2d 637 (1991), 506
- Steinberger v. Steinberger*, 140 P.2d 31 (Cal. 1943), 429
- Strauss v. Horton*, 207 P.3d 48 (Cal. 2009), 55
- Strojek ex rel. Mills v. Hardin Cty. Bd. of Supervisors*, 602 N.W.2d 566 (Iowa Ct. App. 1999), 476
- Tennant v. John Tennant Memorial Home*, 167 Cal. 570 (1914), 375
- Thompson v. Royall*, 163 Va. 492 (1934), 215

- Trimble v. Gordon*, 430 U.S. 762 (1976), 64
- Tseng v. Tseng*, 352 P.3d 74 (Or. Ct. App. 2015), 606
- Tutorow v. Gerber*, No. B155752, 2002 WL 984777 (Cal. Ct. App. 2002), 419
- Uber v. Hoffmann*, No. D037208, 2002 WL 199735 (Cal. Ct. App. Feb. 8, 2002), 409
- Unum Life Insurance Company of America v. Craig*, 200 Ariz. 327 (2001), 38
- Wikman's Estate*, 148 Cal. 642 (1906), 228
- Wilhoit v. Peoples Life Ins. Co.*, 218 F.2d 887 (7th Cir. 1955), 355
- Wilkins v. Lasater*, 733 P.2d 221 (Wash. Ct. App. 1987), 534
- Wilson v. Fritschy*, 132 N.M. 785 (2002), 156
- Wojtkowiak v. Wojtkowiak*, 85 N.Y.S.2d 198 (1947), 409
- Wood v. Am. Sec. & Trust Co.*, 253 F. Supp. 592 (D.D.C. 1966), 670
- Woodward v. Commissioner of Social Security*, 760 N.E.2d 257 (Mass. 2002), 87
- Young v. Redmon's Trustee*, 300 Ky. 418 (1945), 425

Table of Statutory Material

California Probate Code

Probate Code § 24, 629	Probate Code § 612, 652
Probate Code § 25, 259	Probate Code § 630, 668, 675
Probate Code § 62, 410, 413	Probate Code § 631, 675–76
Probate Code § 66, 337	Probate Code § 632, 676, 680
Probate Code § 74, 183	Probate Code § 640, 677, 680
Probate Code § 101, 339	Probate Code § 641, 677, 680
Probate Code § 103, 41	Probate Code § 672, 688
Probate Code § 105, 282–83, 322–23	Probate Code § 673, 686
Probate Code § 106, 282–83	Probate Code § 674, 686
Probate Code § 150, 270–71	Probate Code § 681, 665
Probate Code § 201.5, 337–39	Probate Code § 682, 666
Probate Code § 220, 40	Probate Code § 852, 115
Probate Code § 223, 40–41	Probate Code § 1870, 113
Probate Code § 228, 281	Probate Code § 1872, 112–13
Probate Code § 229, 281	Probate Code § 4125, 413
Probate Code § 240, 47, 100, 105	Probate Code § 4401, 391
Probate Code § 245, 47–48	Probate Code § 4512, 412
Probate Code § 246, 48	Probate Code § 5000, 364, 375
Probate Code § 247, 48	Probate Code § 5010, 384
Probate Code § 249.5, 91–92	Probate Code § 5016, 364, 375
Probate Code § 250, 99, 100, 155	Probate Code § 5042, 231
Probate Code § 251, 99	Probate Code § 5203, 370–71
Probate Code § 252, 99	Probate Code § 5301, 371
Probate Code § 254, 99	Probate Code § 5600, 230, 381–82
Probate Code § 257, 72	Probate Code § 5608, 382
Probate Code § 259, 152, 154–55	Probate Code § 5614, 382
Probate Code § 265, 103	Probate Code § 5620, 382
Probate Code § 275, 102	Probate Code § 5622, 382
Probate Code § 278, 103	Probate Code § 5624, 382
Probate Code § 279, 103	Probate Code § 5626, 382
Probate Code § 282, 102–04	Probate Code § 5628, 382, 384
Probate Code § 283, 102	Probate Code § 5630, 382
Probate Code § 350 (repealed), 228	Probate Code § 5650, 382
	Probate Code § 5652, 382

Probate Code § 5660, 382–83	Probate Code § 11604, 66
Probate Code § 5664, 384	Probate Code § 11700, 347
Probate Code § 5666, 384	Probate Code § 15002, 604–05
Probate Code § 5670, 384	Probate Code § 15200, 410, 415
Probate Code § 5690, 384	Probate Code §§ 15201–05, 410, 414
Probate Code § 5696, 384	Probate Code § 15206, 412, 415
Probate Code § 6100, 108	Probate Code § 15211, 428, 617
Probate Code § 6100.5, 108, 115	Probate Code § 15212, 428
Probate Code § 6110, 168–69, 171, 174–75, 179–82, 289–90	Probate Code § 15300–01, 496, 497
Probate Code § 6110 (1984), 167	Probate Code § 15302, 480–81
Probate Code § 6111, 191, 196, 205, 209, 289	Probate Code § 15303, 482, 497
Probate Code § 6111.5, 191, 205	Probate Code § 15305, 496, 497
Probate Code § 6112, 187	Probate Code § 15305.5, 496, 497
Probate Code § 6120, 219, 221, 222	Probate Code § 15306, 496, 497
Probate Code § 6122, 229–30, 232	Probate Code § 15306.5, 497
Probate Code § 6122.1, 231–32	Probate Code § 15401, 455–57, 459
Probate Code § 6123, 234, 237	Probate Code § 15405, 512
Probate Code § 6124, 227–28	Probate Code § 15680, 532
Probate Code § 6130, 260	Probate Code § 15800, 598–605
Probate Code § 6131, 265	Probate Code § 15801, 599
Probate Code § 6132, 262–64	Probate Code § 15802, 599
Probate Code § 6162, 211	Probate Code § 16000, 555, 556
Probate Code § 6240, 161, 176, 181–82, 221, 227	Probate Code § 16002, 555
Probate Code § 6300, 443–44	Probate Code § 16003, 549, 555, 556
Probate Code § 6400, 26, 33, 36	Probate Code § 16004, 555
Probate Code § 6401, 27, 33, 36	Probate Code § 16006, 555
Probate Code § 6402, 27–28, 33, 36, 52, 72	Probate Code § 16009, 580
Probate Code § 6402.5, 34–37	Probate Code § 16014, 574
Probate Code § 6403, 40	Probate Code § 16040, 563
Probate Code § 6406, 49, 86	Probate Code § 16060, 555, 582
Probate Code § 6407, 86	Probate Code § 16061.5, 587
Probate Code § 6409, 95	Probate Code § 16062, 594
Probate Code § 6413, 49	Probate Code § 16064, 594, 601
Probate Code § 6450, 64, 70	Probate Code § 16068, 587
Probate Code § 6451, 49, 70–72, 74	Probate Code § 16069, 587, 594, 600–01
Probate Code § 6452, 66–67, 69	Probate Code § 16200, 529
Probate Code § 6453, 65	Probate Code § 16336, 562
Probate Code § 6454, 81–85	Probate Code § 16336.4, 562
Probate Code § 6560, 341–43	Probate Code § 16336.5, 562
Probate Code § 6561, 341–43	Probate Code § 16336.6, 562
Probate Code § 8252, 123, 125, 128, 131	Probate Code § 16336.7, 562
	Probate Code § 16420, 600
	Probate Code § 16460, 599
	Probate Code § 16462, 600
	Probate Code § 17200, 626, 628

- Probate Code § 17210, 628
 Probate Code § 18100, 530
 Probate Code § 18100.5, 390
 Probate Code § 21101, 301
 Probate Code § 21102, 291
 Probate Code § 21104, 301
 Probate Code § 21109, 40, 304–05
 Probate Code § 21110, 100, 302,
 304–05, 309, 314
 Probate Code § 21111, 300
 Probate Code § 21117, 295
 Probate Code § 21120, 289
 Probate Code § 21131, 330
 Probate Code § 21132, 327
 Probate Code § 21133, 323
 Probate Code § 21134, 323–24
 Probate Code § 21135, 95, 328–29
 Probate Code § 21139, 324
 Probate Code § 21205, 616
 Probate Code § 21310, 134
 Probate Code § 21311, 134
 Probate Code § 21350, 146
 Probate Code § 21362, 147
 Probate Code § 21366, 146–47
 Probate Code § 21380, 59, 143,
 145–46
 Probate Code § 21382, 143–44
 Probate Code § 21384, 144
 Probate Code § 21386, 144
 Probate Code § 21390, 144
 Probate Code § 21400, 332
 Probate Code § 21402, 332
 Probate Code § 21601, 344
 Probate Code § 21610, 344, 346, 350
 Probate Code § 21611, 344, 346
 Probate Code § 21612, 345
 Probate Code § 21620, 347–48,
 350–51
 Probate Code § 21621, 347–48, 351
 Probate Code § 21622, 348, 350–51
 Probate Code § 21623, 352
 Probate Code § 21700, 271–72
- California Civil Code**
 Civil Code § 682.1, 374
 Civil Code § 683, 366–67, 370
- Civil Code § 683.2, 367, 369
 Civil Code § 715.2 (former §§ 715.1
 and 716), 16
 Civil Code § 1287, 254–56
 Civil Code § 1292, 256
 Civil Code § 1313 (repealed), 254–55
 Civil Code § 1321, 255
 Civil Code § 1559, 18
 Civil Code § 1624, 418
 Civil Code § 1708, 159
 Civil Code § 2261, 569, 571–72
 Civil Code §§ 2290.1–2290.12, 569
 Civil Code § 3523, 159
- Cal. Const. art. I, § 7.5 (amended
 2008), 55**
- California Evidence Code**
 Evid. Code § 115, 226
 Evid. Code § 550, 226
 Evid. Code § 600, 226
- California Family Code**
 Family Code § 125, 337
 Family Code § 297, 54
 Family Code § 297.5, 54, 232
 Family Code § 300, 54
 Family Code § 308, 55
 Family Code § 760, 31
 Family Code § 761, 456, 457, 459
 Family Code § 770, 31
 Family Code § 682.5, 32
 Family Code § 2251, 56
 Family Code § 6211, 59
 Family Code § 7540, 63–64
 Family Code § 7541, 63
 Family Code § 7611, 65, 86
 Family Code § 7612, 65
 Family Code § 8604, 82
 Family Code § 8617, 70
- California Government Code**
 Gov.Code, § 12598, 626
- California Health & Safety Code**
 Cal. Health & Safety Code § 8737, 428

- California Uniform Commercial Code**
California CC §§ 8401–07, 411–12
- Uniform Probate Code of 1969**, 167
- Uniform Probate Code**
UPC § 1-201, 39
UPC § 2-101, 74
UPC § 2-104, 39
UPC § 2-302, 349
UPC § 2-502, 177
UPC § 2-503, 168, 202–03
UPC § 2-507, 223
UPC § 2-513, 262
UPC § 2-603, 308, 685–86
UPC § 2-606, 299, 317
UPC § 2-701, 39, 270
UPC § 2-702, 39
UPC § 2-907, 428, 616
UPC § 6-201, 363–4
UPC § 7-303, 586
- Uniform Trust Code**
UTC §§ 303–304, 512
UTC § 405, 631
UTC § 409, 428, 616
UTC § 410, 522, 645
UTC § 411, 515
UTC § 412, 521–22
UTC § 413, 638, 643–45
UTC § 414, 515
UTC § 416, 525
UTC § 501, 481, 493
UTC § 502, 492–93
UTC § 503, 494, 496
UTC § 504, 495
UTC § 602, 454–55
UTC § 603, 605
UTC § 708, 532
UTC § 802, 545, 546–47
UTC § 804, 563
UTC § 810, 580
UTC § 813, 587
UTC § 815, 529
UTC § 1012, 530
- Uniform Prudent Investor Act**
UPIA § 1, 572
UPIA § 2, 565
UPIA § 3, 566
UPIA § 7, 566–67
UPIA § 9, 566, 574
- Uniform Trust Act**
UTA § 503, 491
- Uniform Trustees’ Powers Act**
UTPA § 3, 529
UTPA § 7, 530
- Arizona Statutes**
A.R.S. § 14-2503, 202–03
- Kansas Statutes**
K.S.A. 59-1206, 376
K.S.A. 59-3501, 377, 380
K.S.A. 59-3503, 377, 379–80
K.S.A. 59-3504, 377, 379–80
K.S.A. 59-3507, 377
- Maine Statutes**
18 M.R.S.A. § 1008, 684
- Maryland Statutes**
Estates and Trusts Article, § 4-102, 238
Estates and Trusts Article, § 4-105, 239
- Massachusetts Statutes**
G.L. c. 119, § 1, 89
G.L. c. 119A, § 1, 89
G.L. c. 190, § 7, 90
G.L. c. 191, § 9, 448–51
G.L. c. 203, § 3B, 446–51
G.L. c. 209C, § 1, 89
- Mississippi Statutes**
Miss.Code Ann. § 91-9-503, 490
- Montana Statutes**
Section 1-4-105, 362

- Section 28-3-205, 362
 Section 70-1-307, 360–61
 Section 70-1-314, 361
 Section 72-1-110, 362–63
 Section 72-6-111, 362–63
 Section 72-6-211, 361–62
 Section 72-6-213, 361–62
- New York Statutes**
 EPTL § 10-5.3, 671
 EPTL § 11-2.3, 560–61
 EPTL § 11-2.4, 559–62
- South Dakota Statutes**
 SDCL 29A-2-507, 236
 SDCL 29A-2-509, 236
- Tennessee Statutes**
 Tenn.Code Ann. § 32-1-105, 267
- Texas Statutes**
 Bus. & Com. Code Ann. § 24.002,
 102
 Bus. & Com. Code Ann. § 24.005,
 101–02
 Bus. & Com. Code Ann. § 24.007,
 102
 Probate Code § 37, 101–02
 Probate Code § 37A, 102
- Virginia Statutes**
 Code § 55-19.3, 584
- Washington Statutes**
 RCW 11.96A.020, 519
 RCW 11.106.020, 590
 RCW 11.106.040, 590
- English Statute of Distribution of**
 1670, 25
- English Statute of Frauds, 161**
- English Wills Act of 1837, 161, 164,
 216**
- Uniform Disposition of Community
 Property Rights at Death Act § 3,
 339**
- Uniform Health Care Decision Act,
 392**
- Uniform Parentage Act, 65**
- Uniform Real Property Transfer on
 Death Act, 381**
- Uniform Simultaneous Death Act § 5
 (1940), 39**
- Uniform Statutory Rule Against Per-
 petuities, 616**
- Uniform Supervision of Trustees For
 Charitable Purposes Act, 626, 629–
 30**
- Uniform Testamentary Addition to
 Trusts Act, 443**
- Federal Statutes**
 42 U.S.C. § 402, 88
 42 U.S.C. § 1396, 520–21
- Internal Revenue Code**
 Section 2041, 654–56
 Section 2518, 104

Preface

The study of Wills, Trusts, and Estates is a methodical, mostly logical, and dare we say “fun” journey. The issue in the course can be reduced to a simple question: “who gets your property when you die?” The answer, like the answer to most questions in law school, is “it depends.” What it depends on, and what it *should* depend on, will take a whole semester to analyze. You will learn the foundational rules to make sure that your client’s property goes where, and to whom, he or she wants. Sadly, many of the cases one finds in Wills, Trust and Estates casebooks provide illustrations on how *not* to do things. Learn from the mistakes of others.

The Wills, Trusts & Estates course is an introductory course. If you think you might be interested in practicing in this area of law, there are a number of additional courses that you should take (if your law school offers them). At a minimum, most scholars and practitioners would recommend the Estate & Gift Tax course and the Estate Planning course (so too Probate Administration, but that course is not offered at many law schools these days). In addition, it is probably a good idea to also take Family Law, Community Property (if you plan on practicing in a community property state), and Business Associations (to facilitate the estate planning needs of clients who own small businesses and plan to pass them on to family members). This course is not intended to qualify you to practice in this area of law; it is merely the introductory course. You would be well-advised to take at least some of these additional courses if you are thinking about practicing in this area of law.

There are a number of good Wills, Trusts & Estates casebooks in the market already; why one more? Virtually all the other casebooks are written for a national audience. Accordingly, the books assume a non-community property approach and use the Uniform Probate Code to teach the material. The problem is that California is a community property state, and the law of wills and intestacy are intensely state-specific areas of law. While one can use any probate code to teach the issues and basic approach to this area of law, inasmuch as most students who attend a California law school plan on practicing in the state, we thought it would be helpful to have a casebook that focuses on the California Probate Code and the California approach to the issues.¹

There is no escaping the fact that this course deals primarily with property issues relating to death. The authors apologize, in advance, if any of the material in the book appears insensitive with respect to the issues surrounding death. While one of

1. For a variety of reasons, however, we decided to adopt more of a generic approach to trusts portion of the casebook.

our goals was to make the course an enjoyable experience, we realize that sooner or later the emotional, practical, and legal issues surrounding death touch all of us. Life, unfortunately, is not put on “pause” while in law school, and some of the topics discussed in this course may “hit close to home.” Please know that your professor grieves with you and never wishes to be hurtful when discussing the scenarios, issues and doctrines faced in a Wills, Trusts and Estates course.

We want to thank our research assistants over the years for their invaluable help in the research and writing of the casebook: Lauren Cleland, Katelin Eastman, Katherine, Kilmer, Danielle Lewis, Chelsea McGrath, Edrina Nazaradeh, Kelley Owen, Monica Paladini, Sara Puls, and Emily Speier. In addition, we want to express our gratitude to the wonderful people at Carolina Academic Press whose support, assistance and patience made this book possible. In particular, we’d like to acknowledge Ryland Bowman, Elisabeth (“Biz”) Ebben, Beth Hall, and Grace Pledger for their help in the editing and production process; and a special “shout-out” to Roberta O’Meara of Carolina Academic Press, our long-time friend whose confidence in us paved the way for this project.

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