Preface

I have had the pleasure of teaching paralegal classes for over a decade. Like many instructors who begin teaching with no formal education on how to teach, I taught the law the way I was taught the law. The results were disastrous! I quickly realized that the way the law is taught in law school is ill suited for the paralegal classroom. I started over, writing new lectures and developing new lesson plans. The objective was to present the material in a way that would be accessible to the paralegal student.

The one major roadblock to reaching my objective was the textbooks themselves. They seemed to be written by lawyers for law students. They did not communicate the information in a way that was readily accessible by most paralegal students.

This textbook is my attempt at providing a new approach to a textbook on wills, trusts, and estates. It is based on the lectures and learning tools that I developed over the years to help my students. I had two main goals for this textbook.

First, it must present the information in a way that is readily accessible to the paralegal student. The key to achieving this goal is to present the material in a manner that the student can easily digest, while also understanding its importance to his or her future career. It must be written in a direct manner that first shows the students why the subject is important and then introduces them to the skill sets they will need when they get into the field.

Second, the student should be presented with hands-on assignments throughout the textbook. The students need to be consistently asked to demonstrate their knowledge of the material covered in a chapter by completing tasks associated with that material.

ORGANIZATION OF TEXT

The text contains 11 chapters that are divided into three parts. It starts with a nonconventional introductory chapter. Like most textbooks, Chapter 1 provides the student with an introduction to some of the key concepts and terms that will be covered throughout the remaining chapters. Unlike most textbooks on the subject, it also gives paralegals an introduction to what their duties would be in a wills, trusts, and estates firm and a warning of the possible ethical issues they may face.

The textbook is designed to take students through the steps needed to develop the required skills, without overwhelming them during the process. Part 1 of the textbook introduces students to the legal concepts associated with the law of wills, trusts, and estates. It does so by using real-world examples and direct, clear language. Part 2 provides students with the skills needed to do some common tasks that they will be asked to perform, including gather information needed for estate planning and the drafting of key documents associated with the creation of an estate plan. Part 3 walks students through the probate and estate administration process. Students are given a step-by-step account of the probate process. Part 3 also provides basic information on tax matters that relate to the probate process.

TEXT DESIGN

Chapters are laid out in a manner that ensures that students will have the opportunity to learn the appropriate legal concepts, the necessary vocabulary, develop their legal reasoning skills, and demonstrate their knowledge of the material. Each chapter contains the following:

- *Case Fact Pattern: Client Interview*. Students are given a simple fact pattern that will be referred to within the chapter.
- *Case in Point.* Students are provided with at least one full-length case opinion that they are asked to brief.

- *Research This: Hands-on Assignment*. Students are given an assignment designed to help develop their research and writing skills.
- *Ethics Alert.* Students are presented with ethic issues related to the topic covered by the chapter.
- *Cyber Trip*. Students are given the opportunity to take at least one Cyber Trip that allows them to explore the Web to learn more about the law relating to the chapter's topics.
- *Real World Discussion Topics*. Students are presented with a fact pattern taken from an actual court case to help them develop their analytical skills.
- *Portfolio Assignment*. Students are given assignments that require them to analyze a fact pattern and draft documents associated with material covered in the chapter.

This textbook provides students the opportunity to learn about the law of wills, trusts, and estates and develop the skill sets they will need to succeed in the legal field. Hopefully, they will agree that the goals of the book have been met.

Acknowledgments

I want to thank Beth Baugh, Developmental Editor at Carlisle Publishing Services; Tammy L. Higham, Developmental Editor; and Natalie Ruffatto, Sponsoring Editor, Business Careers McGraw-Hill/Irwin, for all of their hard work during the development of this textbook. Their support and encouragement was greatly appreciated.

I would like to especially thank my wife, Cathy, for the hours she spent proofreading the numerous drafts of this textbook and the uneasy task of putting up with my many moods during the writing process.

Finally, special thanks needs to be given to the reviewers who provided invaluable feedback during the steps to completion of the final draft:

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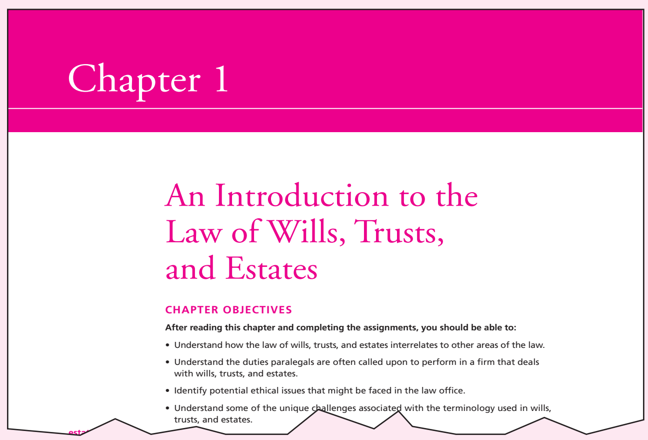
A Guided Tour

Wills, Trusts, and Estates for Paralegals presents students with hands-on assignments to help develop their legal reasoning skills and demonstrate their knowledge of the material without overwhelming the student in the process. The text provides students with the opportunity to learn about the law of wills, trusts, and estates and develop the skill sets they need to succeed in the legal field. The pedagogy of the book applies three goals:

- Learning outcomes (critical thinking, vocabulary building, skill development, issues analysis, writing practices).
- Relevance of topics without sacrificing theory (ethical challenges, current law practices, technology applications).
- Practical application (real-world exercises, portfolio creation, team exercises).

Chapter Objectives introduce the concepts students should understand after reading each chapter as well as provide brief summaries describing the material to be covered.


Chapter 1

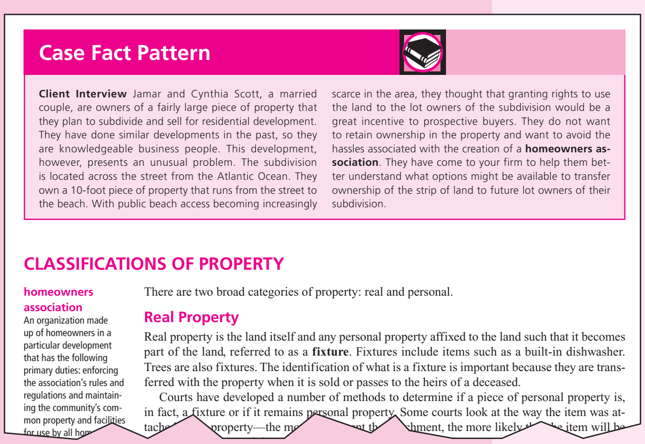
An Introduction to the Law of Wills, Trusts, and Estates

CHAPTER OBJECTIVES

After reading this chapter and completing the assignments, you should be able to:

- Understand how the law of wills, trusts, and estates interrelates to other areas of the law.
- Understand the duties paralegals are often called upon to perform in a firm that deals with wills, trusts, and estates.
- Identify potential ethical issues that might be faced in the law office.
- Understand some of the unique challenges associated with the terminology used in wills, trusts, and estates.

Case Fact Pattern: Client Interview gives students a simple, hypothetical fact pattern that references material covered in the chapter.


Case Fact Pattern

Client Interview Jamar and Cynthia Scott, a married couple, are owners of a fairly large piece of property that they plan to subdivide and sell for residential development. They have done similar developments in the past, so they are knowledgeable business people. This development, however, presents an unusual problem. The subdivision is located across the street from the Atlantic Ocean. They own a 10-foot piece of property that runs from the street to the beach. With public beach access becoming increasingly scarce in the area, they thought that granting rights to use the land to the lot owners of the subdivision would be a great incentive to prospective buyers. They do not want to retain ownership in the property and want to avoid the hassles associated with the creation of a **homeowners association**. They have come to your firm to help them better understand what options might be available to transfer ownership of the strip of land to future lot owners of their subdivision.

CLASSIFICATIONS OF PROPERTY

homeowners association
An organization made up of homeowners in a particular development that has the following primary duties: enforcing the association's rules and regulations and maintaining the community's common property and facilities

There are two broad categories of property: real and personal.

Real Property

Real property is the land itself and any personal property affixed to the land such that it becomes part of the land, referred to as a **fixture**. Fixtures include items such as a built-in dishwasher. Trees are also fixtures. The identification of what is a fixture is important because they are transferred with the property when it is sold or passes to the heirs of a deceased.

Courts have developed a number of methods to determine if a piece of personal property is, in fact, a fixture or if it remains personal property. Some courts look at the way the item was at-

Ethics Alert presents ethical issues related to the chapter topics and offers tips for handling situations on the job.

Ethics Alert

Understanding what is and is not probate property is critical in helping a client with estate planning. Making that determination, however, can be complicated. Paralegals must rely on the expertise and decisions made by their supervising attorney in this important process. When in doubt, paralegals should always consult with their supervising attorney.

transfer on death
A form of ownership in which stocks, bonds, mutual fund shares, security accounts, and other securities pass directly to the named beneficiary upon the owner's death

- ***Transfer on death***. In states that have adopted the Uniform Transfers on Death Security Registration Act (UTODSRA), owners of stocks, bonds, mutual fund shares, security accounts, and other accounts can register the title in transfer on death (TOD) form. The securities pass directly to the named beneficiary when the owner dies and are not part of the deceased's probate estate. The following states have adopted the UTODSRA: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming.

Cyber Trip asks the students to engage in a hands-on activity by exploring the Web to learn more about the law relating to the topics in the chapter.

HOMESTEAD ALLOWANCE

Some states provide for a cash amount for the surviving spouse and dependent children of the deceased. This is called a homestead allowance and is sometimes used by states instead of a homestead exemption. It is exempt from and has priority over all claims against the estate. Figure 3.13 contains the Montana Homestead Allowance Statute.

CYBER TRIP

Visit these sites to learn more about the topics discussed in Chapter 3:

Prof. Kurtz, "Trusts & Estates—Spring 2001," University of Iowa (2001): http://stu.findlaw.com/outlines/submissions/labrea000007.html

Naim D. Bulbulia and Jonathan W. Wolfe, "Dying to Get a Divorce?" (2005): www.abanet.org/genpractice/newsletter/lawtrends/0509/family/dyingtodivorce.html

Amy Morris Hess, "Surviving Spouse's Elective Share: Where We've Been; Where We're Going" (accessed 12/15/05): www.aals.org/profdev/family/hess.html

"Special Property Rules for Married People" (accessed 12/15/05): http://estate.findlaw.com/articles/2155.html

Research This!: Hands-on Assignment engages students to research cases in their jurisdiction that answer a hypothetical scenario, reinforcing the critical skills of independent research and writing.

RESEARCH THIS!

Hands-on Assignment Prepare a degree of kindred chart based on your family. How would your property be distributed if you died without a will under your state's intestate statute?

simultaneous death
When it cannot be established that one person died before another.

and wife were killed in a car accident. The vast majority of states have passed the Uniform Simultaneous Death Act, which was incorporated into the Uniform Probate Code Article II and the Uniform Act on Intestacy, Wills and Donative Transfers in 1991. The original act provided that when passage of property depends upon priority of death, and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person would be disposed of as if he had survived. Most states now provide that the death does not have to be **simultaneous**, allowing that, if an heir fails to survive the decedent who dies intestate by 120 hours, the heir does not take under intestate succession.

CYBER TRIP

Visit these sites to learn more about the topics discussed in Chapter 4:

Nebraska Cooperative Extension NF96-291: http://ianrpubs.unl.edu/homemgt/nf291.htm

CCH Financial Planning Toolkit, "Dying Without a Will": www.finance.cch.com/text/c50s10d190.asp

Gerry W. Beyer (2005). "The Basics of Texas Intestate Succession Law": www.professorbeyer.com/Articles/Intestacy_Texas_Basics.htm

"Pr ty Law" (2006). *Encyclo dia Britannica*. Retrieved January 7, 2006, from Encyclo dia Britan- ium Service: www om/eb/art le-28569

Chapter Summary provides a quick review of the key concepts presented in the chapter.

Summary

There are many tools available that can be used to assist clients in planning their estates. Some, like wills and life insurance, are well known and fairly easy to understand. Others, like the vast array of trusts that can be used in estate planning, are more difficult to understand at first.

Clients use estate planning for many reasons. It can be to provide for their loved ones, provide for a charity they wish to support, provide for the care of their pets, or avoid state and federal estate taxes.

The paralegal must be familiar with the various ways a client's goals can be met and use the appropriate tool to accomplish those goals.

Key Terms

AB trust
Annual exclusion
Appointee
Beneficiary
Bypass trust
Charitable remainder trust
Charitable trust
Credit shelter trust

Key Terms used throughout the chapters are defined in the margin and provided as a list at the end of each chapter. A common set of definitions is used consistently across the McGraw-Hill paralegal titles.

thrift a large amount of cash would probably be a mistake. A **spendthrift trust** protects the trust principal from the creditors of the beneficiary. The beneficiary only has the right to the income paid under the trust and cannot assign her rights to unearned income or the trust principal. See Figure 5.5 for a sample spendthrift clause.

A **sprinkling trust** can be used to give flexibility and discretion to the trustee to meet the needs of each individual beneficiary. Under the sprinkling trust the trustee can distribute the trust income and/or principal to the beneficiaries he deems appropriate. This could be based on any number of factors, such as the need of a particular beneficiary or to minimize the tax consequences of the distribution. While this trust has some benefits, care should be exercised when deciding to use it because of the tremendous discretion that is granted to the trustee and the possible disharmony that may occur among the beneficiaries because of the way the distributions are made.

A pour-over trust is created by the settlor during her lifetime. The trust receives funding after the death of the settlor. This is accomplished by the inclusion of a clause in her will that leaves the residuary of her estate to the trustee of an already existing living trust.

A pet trust is established by a pet owner who is concerned about the care of his pets after his death. The settlor funds a trust with enough money to care for the pets for the remainder of their lives. After the settlor's death, the trustee pays for the caretaking of the pets. States that allow for the establishment of pet trusts include Arizona, California, Colorado, Hawaii, Missouri, Montana, New Mexico, New York, Nevada, North Carolina, Oregon, Tennessee, Utah, and Wisconsin. Figure 5.6 contains the Montana Trust for Pets Statute.

sprinkling trust
A trust that grants flexibility and discretion to the trustee to meet the needs of each individual beneficiary.

pour-over trust
A clause in a will that leaves the residuary of an estate to the trustee of an existing trust.

pet trust
A trust established to care for a settlor's pet after the settlor's death.

Review Questions ask students to apply critical thinking skills to the concepts learned in each chapter by reviewing the objectives of the chapter.

Review Questions

1. Review the sample will from Figure 7.3 and identify its clauses by name, for example, exordium clause.
2. Where should the original will be stored? Where should it not be stored?
3. List the names of the more common clauses contained in wills. Describe their purposes.
4. Describe how a will should be executed.
5. What is a letter of instruction? What is its purpose?
6. What are the problems related to the use of standard form (sample) clauses in a will? What should the paralegal do to avoid these potential problems?
7. What factors should be considered by a testator when selecting the personal representative for his/her will?
8. What should a paralegal do if a client asks him or her to interpret a clause in a will?
9. What is a separate writing clause? Why should it be included in wills?
10. What is a self-proof clause? Why should it be included in wills in those states that allow its usage?

Real World Discussion Topics present students with a fact pattern taken from an actual court case and ask students to use analytical skills in discussing the topics covered.

8. What is the difference between legal title and equitable title?
9. What is the meaning of the phrase *trust purpose*? Why is it important when drafting a trust?
10. Discuss the differences between private trusts and charitable trusts.

Real World Discussion Topic

Will C. Taliaferro created a personal revocable inter vivos trust. He was also the income beneficiary of this trust during his lifetime. After his death, the successor trustee was to distribute the accrued income and corpus among the beneficiaries. Taliaferro never transferred any property to the trust.

Was this a valid trust? Why? Why not? Is additional information needed to determine the validity of the trust? See *Taliaferro v. Taliaferro*, 260 Kan. 573, 921 P.2d 803 (1996).

emergency telephone number. After an initial administration of treatment by the responding emergency crew, she was transported to the hospital. The hospital performed emergency surgery and respiratory ventilation. The sister allegedly presented a living will signed by Haymes to hospital personnel and demanded that Haymes be removed from the ventilator. The hospital personnel refused. Haymes remained on the ventilator for six more days and did recover except that she was totally blind as a result of her self-inflicted wounds.

Should the hospital have respected the living will? Does Haymes have a basis to sue the hospital for its refusal to remove her from the respirator? Would it matter if the living will did not comply with statutory requirements? See *Haymes v. Brookdale Hosp. Medical Center*, 287 A.D.2d 486, 731 N.Y.S.2d 215 (N.Y.A.D. 2 Dept., 2001).

Portfolio Assignments

1. Review the facts of the Client Interview. Did Joe do anything wrong in trying to ensure that Florence's desires were followed? Did the hospital do anything wrong? What basis could Joe have to sue the hospital? Research the laws of your state to determine what Joe needs to do next. For an interesting case on this point, see *Allore v. Flower Hosp.*, 121 Ohio App.3d 229, 699 N.E.2d 560 (Ohio App. 6 Dist. 1997)
2. Locate a living will that can be used in your state. Complete the instrument using facts from your own life or for the life of a hypothetical person.

Portfolio Assignment exercises give students the opportunity to analyze a fact pattern and draft documents associated with material covered in the chapter.

Case in Point presents real cases, connecting students to real-world examples and documents that further develop the information presented in the chapter. **Case Brief Assignments** can also be found throughout the chapters, asking students to read and brief assigned cases.

CASE IN POINT

DETERMINING TESTATOR'S INTENT WHEN WILL CONTAINS TWO IRRECONCILABLE CLAUSES.

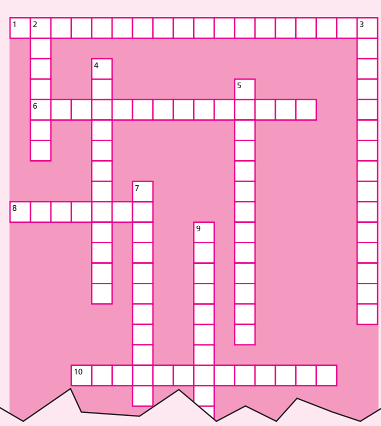
In the District Court of Appeal of the State of Florida
Fourth District
Jureski
v.
Scaduto
Filed August 25, 2004

STONE, J.

Larry Jureski, as personal representative, filed a petition to construe a will. A residuary beneficiary opposed the petition, contending that the will contained two irreconcilable clauses. The trial court, in construing the self-drafted will of the testator, agreed with the residuary beneficiary and concluded that the two dispository paragraphs in the will conflicted. As the conflict could not be otherwise resolved, the trial court, applying settled law, determined that the latter provision must prevail over the former, as the last statement of the testator's intent. We

Callahan were entitled to all the property, both real and personal, pursuant to clause 11 of the will. Alternatively, Jureski suggested that both he and Callahan were at least entitled to all the testator's real property. Elizabeth Scaduto, residuary beneficiary, argued that clauses 11 and 12 directly conflicted, making it impossible to determine the testator's testamentary intent. Further, Scaduto asserted that, by accepting Jureski's contention that he and Callahan should receive all the property in the estate, real and personal, the court would essentially void the operation of the residuary clause and fail to carry out the testator's testamentary intent.

Vocabulary Builders

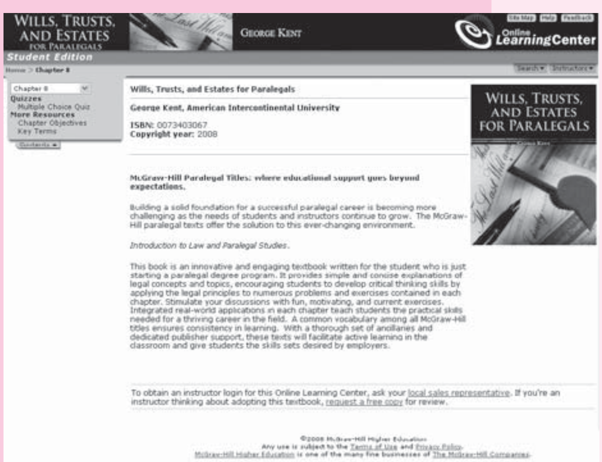


Crossword puzzles at the end of each chapter utilize the key terms and definitions so students can become more familiar with legal vocabulary by using it.

Supplements

Instructor's Resource CD-ROM

An **Instructor's Resource CD-ROM (IRCD)** will be available for instructors. This CD provides a number of instructional tools, including PowerPoint presentations for each chapter in the text, an instructor's manual, and an electronic test bank. The instructor's manual assists with the creation and implementation of the course by supplying lecture notes, answers to all exercises, page references, additional discussion questions and class activities, a key to using the PowerPoint presentations, detailed lesson plans, instructor support features, and grading rubrics for assignments. A unique feature, an instructor matrix, also is included that links learning objectives with activities, grading rubrics, and classroom equipment needs. The activities consist of individual and group exercises, research projects, and scenarios with forms to fill out. The electronic test bank will offer a variety of multiple choice, fill-in-the-blank, true/false, and essay questions, with varying levels of difficulty, and page references.

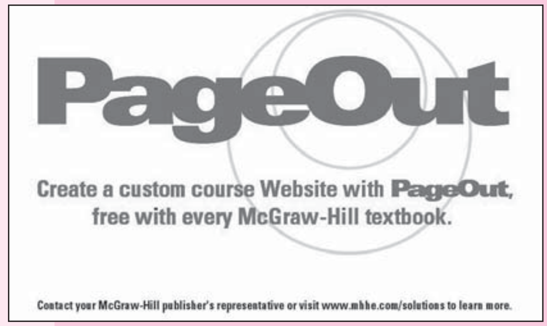


Online Learning Center

The **Online Learning Center (OLC)** is a Web site that follows the text chapter-by-chapter. OLC content is ancillary and supplementary and is germane to the textbook—as students read the book, they can go online to review material or link to relevant Web sites. Students and instructors can access the Web sites for each of the McGraw-Hill paralegal texts from the main page of the Paralegal Super Site. Each OLC has a similar organization. An Information Center features an overview of the text, background on the author, and the Preface and Table of Contents from the book. Instructors can access the instructor's manual and PowerPoint presentations from the IRCD. Students see the Key Terms list from the text as flashcards, as well as additional quizzes and exercises.

The OLC can be delivered in multiple ways—professors and students can access the site directly through the textbook Web site, through PageOut, or within a course management system (i.e., WebCT, Blackboard, TopClass, or eCollege.)

PageOut: McGraw-Hill's Course Management System
PageOut is McGraw-Hill's unique point-and-click course Web site tool, enabling you to create a full-featured, professional-quality course Web site without knowing HTML coding. With PageOut, you can post your syllabus online, assign McGraw-Hill Online Learning Center or eBook content, add links to important off-site resources, and maintain student results in the online grade book. You can send class announcements, copy your course site to share with colleagues, and upload original files. PageOut is free for every McGraw-Hill/Irwin user and, if you're short on time, we even have a team ready to help you create your site! To learn more, please visit www.pageout.net.



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