

Questions & Answers

# **Wills, Trusts, and Estates**

CAROLINA ACADEMIC PRESS  
Questions & Answers Series

- Questions & Answers: Administrative Law,  
Fourth Edition**  
Linda D. Jellum, Karen A. Jordan
- Questions & Answers: Antitrust**  
Shubha Ghosh
- Questions & Answers: Bankruptcy, Second Edition**  
Mary Jo Wiggins
- Questions & Answers: Business Associations,  
Second Edition**  
Douglas M. Branson
- Questions & Answers: Civil Procedure,  
Fifth Edition**  
William V. Dorsaneo, III, Elizabeth Thornburg,  
Brooke D. Coleman
- Questions & Answers: Constitutional Law,  
Fourth Edition**  
Paul E. McGreal, Charles W. Rhodes
- Questions & Answers: Contracts,  
Third Edition**  
Scott J. Burnham
- Questions & Answers: Copyright Law,  
Second Edition**  
Dave Fagundes, Robert C. Lind
- Questions & Answers: Criminal Law, Fifth Edition**  
Paul Marcus
- Questions & Answers: Criminal Procedure—  
Police Investigation, Fourth Edition**  
Wayne A. Logan
- Questions & Answers: Criminal Procedure —  
Prosecution and Adjudication, Fourth Edition**  
Wayne A. Logan
- Questions & Answers: Employment  
Discrimination**  
Marcia L. McCormick
- Questions & Answers: Environmental Law**  
Dru Stevenson
- Questions & Answers: Evidence, Fifth Edition**  
Paul C. Giannelli
- Questions & Answers: Family Law, Fourth Edition**  
Mark Strasser
- Questions & Answers: Federal Estate & Gift  
Taxation, Third Edition**  
James M. Delaney, Elaine Hightower Gagliardi
- Questions & Answers: Federal Income Tax,  
Second Edition**  
James M. Delaney
- Questions & Answers: Intellectual Property,  
Third Edition**  
Gary Myers, Lee Ann Wheelis Lockridge
- Questions & Answers: International Law**  
Rebecca Bratspies
- Questions & Answers: Patent Law**  
Cynthia M. Ho
- Questions & Answers: Payment Systems,  
Second Edition**  
Timothy R. Zinnecker
- Questions & Answers: Professional Responsibility,  
Fifth Edition**  
Patrick Emery Longan
- Questions & Answers: Property,  
Third Edition**  
John Copeland Nagle, Donald J. Kochan
- Questions & Answers: Remedies,  
Second Edition**  
Rachel M. Janutis, Thomas Orin Main
- Questions & Answers: Secured Transactions,  
Fourth Edition**  
Bruce A. Markell, Timothy R. Zinnecker
- Questions & Answers: The First Amendment,  
Fourth Edition**  
Russell L. Weaver, William D. Araiza
- Questions & Answers: Torts,  
Fifth Edition**  
Anita Bernstein
- Questions & Answers: Trademark and  
Unfair Competition**  
Vince F. Chiappetta
- Questions & Answers: Wills, Trusts, and Estates,  
Fourth Edition**  
Thomas M. Featherston, Jr., Victoria J. Haneman

Questions & Answers

# Wills, Trusts, and Estates

Multiple-Choice and Short-Answer  
Questions and Answers

FOURTH EDITION

**Thomas M. Featherston, Jr.**

MILLS COX PROFESSOR OF LAW  
BAYLOR UNIVERSITY SCHOOL OF LAW

**Victoria J. Haneman**

FRANK J. KELLEGHER PROFESSOR OF TRUSTS & ESTATES  
CREIGHTON UNIVERSITY SCHOOL OF LAW



CAROLINA ACADEMIC PRESS

Durham, North Carolina

Copyright © 2024  
Carolina Academic Press, LLC  
All Rights Reserved

LIBRARY OF CONGRESS CATALOGING-IN-PUBLICATION DATA

Names: Featherston, Thomas M., author. | Haneman, Victoria J., author.  
Title: Questions & answers. Wills, trusts & estates / Thomas M. Featherston, Jr.,  
Victoria J. Haneman.  
Other titles: Wills, trusts & estates  
Description: Fourth edition. | Durham, North Carolina : Carolina Academic Press, 2023. |  
Series: Questions & answers | Includes bibliographical references and index.  
Identifiers: LCCN 2023033723 | ISBN 9781531024239 (paperback) |  
ISBN 9781531024246 (ebook)  
Subjects: LCSH: Wills--United States--Examinations, questions, etc. | Trusts and trustees--  
United States--Examinations, questions, etc. | Estate planning--United States--  
Examinations, questions, etc.  
Classification: LCC KF753 .F43 2023 | DDC 346.7305/076--dc22  
LC record available at <https://lccn.loc.gov/2023033723>

Carolina Academic Press  
700 Kent Street  
Durham, North Carolina 27701  
(919) 489-7486  
[www.cap-press.com](http://www.cap-press.com)

Printed in the United States of America

# Contents

Preface to the Fourth Edition	vii
About the Authors	xi
<b>Questions</b>	
Topic 1: Intestacy	3
Topic 2: Probate and Nonprobate Assets	15
Topic 3: Testamentary Capacity & Will Contests	23
Topic 4: Will Execution	31
Topic 5: Will Revocation	41
Topic 6: Will Interpretation & Construction	47
Topic 7: Limitations on Testamentary Power	63
Topic 8: Surviving Spouses, Former Spouses & Omitted Children	71
Topic 9: Trusts as Will Substitutes	77
Topic 10: Express Trusts	85
Topic 11: Creditor Rights	97
Topic 12: Powers of Appointment	101
Topic 13: Death & Taxes	107
Topic 14: Jurisdiction, Practice, Procedure	115
Practice Final Exam	123
<b>Answers</b>	
Topic 1: Intestacy	133
Topic 2: Probate & Nonprobate Assets	145
Topic 3: Testamentary Capacity & Will Contests	151
Topic 4: Will Execution	157
Topic 5: Will Revocation	165
Topic 6: Will Interpretation & Construction	171
Topic 7: Limitations on Testamentary Power	183
Topic 8: Surviving Spouses, Former Spouses & Omitted Children	189
Topic 9: Trusts as Will Substitutes	195

Topic 10: Express Trusts	201
Topic 11: Creditor Rights	213
Topic 12: Powers of Appointment	219
Topic 13: Death & Taxes	223
Topic 14: Jurisdiction, Practice, Procedure	229
Practice Final Exam	237
Index	243

# Preface to the Fourth Edition

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 ROGER W. ANDERSEN, *UNDERSTANDING TRUSTS AND ESTATES* (6th ed. 2020), or WILLIAM M. MCGOVERN, SHELDON F. KURTZ & DAVID M. ENGLISH, *PRINCIPLES OF WILLS, TRUSTS & ESTATES* (2d ed. 2012). At times, reference will be made to the “old reliables” like GEORGE T. BOGERT, *TRUSTS* (6th ed. 1987), THOMAS E. ATKINSON, *HANDBOOK OF THE LAW OF WILLS*, § 138 (2d ed. 1953), and JESSE DUKEMINIER & ROBERT H. SITKOFF, *WILLS, TRUSTS AND ESTATES* (9th ed. 2013). 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 fourteen units by subject area (plus a practice 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, issues related to future interests and the administration of trusts are integrated into some questions but not addressed as their own topics.

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. 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.
- 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.

Attention has been paid to using inclusive names and pronouns as a pedagogical choice. The structure of the modern family is shifting and evolving. Estate planning involves clients, and the families of clients, with diverse identities and perspectives. Some clients will choose to arrange their families (and distribute wealth) in ways that are not historically normative. Also, it is not the intent of the authors to raise questions concerning whether a couple (opposite sex or same sex) is



validly married. Terms such as “spouse” and “marriage” are used to refer to individuals who have that status and the relationship resulting from that status, regardless of whether the characters in the question appear to be opposite sex or same sex. This edition assumes the couple in question has the status of being married under applicable law.

Finally, for any questions involving federal transfer taxes, the law is in a state of flux as this edition is published. At the end of 2017, Congress enacted the Tax Cuts and Jobs Act (“TCJA,” effective January 1, 2018). TCJA increased the lifetime exemption amount to \$10 million as adjusted for inflation by the chained CPI for years 2018 to 2025. In 2023, the unified estate and gift tax lifetime exemption is \$12,920,000, and the annual exclusion for gift tax purposes is \$17,000. Absent further action by Congress, this amount halves in 2026 to its former \$5 million inflation adjusted amount. Also, students should assume that State of X has neither a state-level estate nor inheritance tax.

Professor Tom Featherston  
Professor Victoria J. Haneman  
September 2023



# About the Authors

**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 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 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. In 2018, he received the Terry Lee Grantham Award by the Texas Bar Foundation for his service to the practicing bar.

**Victoria J. Haneman** is the Frank J. Kellegher Professor of Trusts and Estates at Creighton University School of Law in Omaha, Nebraska. She is a BARBRI lecturer for wills and trusts and was elected as an Academic Fellow of the American College of Trust and Estate Counsel in 2022. Professor Haneman has authored four books, including the practice guide *Planning for Large Estates* (Matthew Bender, forthcoming 2023 ed.), the casebook *Federal Taxes of Gratuitous Transfers: Law & Planning*, 2d. ed. (Aspen, 2023) with Joseph M. Dodge, Wendy C. Gerzog, Bridget J. Crawford & Jennifer Bird-Pollan, and the casebook *Making Tax Law* (Carolina Academic Press, 2014) with Daniel M. Berman. She has also published more than twenty law review articles and essays in journals that include *Harvard Journal on Legislation*, *North Carolina Law Review*, *Virginia Tax Review*, *Wake Forest Law Review*, *University of Richmond Law Review*, and *Columbia Journal of Gender and the Law*. Professor Haneman is the 2023 chair of the Association of American Law School's Women in Legal Education Section, and the incoming chair of the Trusts and Estates Section.

Professor Haneman is a regularly engaged expert by media including PBS NewsHour, National Public Radio, The New York Times, The Wall Street Journal, Wired, Forbes, and Fox Business. She has a particular interest in tax policy, innovative death technology, and women and the law. She may be found on Twitter, Threads, BlueSky, and Instagram at TaxLawProf.

