

California Wills and Trusts

California Wills and Trusts

Cases, Statutes, Problems,
and Materials

SECOND EDITION

Peter T. Wendel

PROFESSOR OF LAW
PEPPERDINE CARUSO SCHOOL OF LAW

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*To the lovely Gerri—asking you to marry me is the best question I ever asked;
To my children (Carolyn, Paul, John, and Kristin) and grandchildren
(Quinn, Ronan, Conrad, Theo, Cora, and Kennedy)—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

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Preface

The study of Wills, Trusts, and Estates is a methodical, mostly logical, and dare one 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 an Estate & Gift Tax course, and an 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 an 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, because 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

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

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 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: Thomas Eagar, Caroline Garcia, Isabel Conrath, and Andrew Snively. 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, David Herzig, Keith Moore, Kerri Hughes, Jessica Curtis, and TJ Smithers for their help in the editing, production, and marketing process; and a special “shout-out” to Roberta O’Meara of Carolina Academic Press, our long-time friend whose encouragement paved the way for this project.

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