Florida Wills, Trusts, and Estates
Florida Wills, Trusts, and Estates

Cases and Materials

Third Edition

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Preface

Overview

Wills, trusts, and estates is a dynamic and exciting area of the law. Since our first edition, there have been critical changes in this ever-developing area. Florida statutes have been enacted, and cases have been decided, affecting the rights parties may have in the context of estates, trusts, or other methods for transmitting wealth. This book reflects these changes to offer students current information, together with the challenge of considering questions not yet answered by statutes or case law.

In revising this book for the third edition, we were careful to retain the features from the earlier editions that made it a success. Thus, we maintained the breadth and depth of its coverage. The book covers trusts as extensively as it does wills. That coverage recognizes modern trends in family wealth planning. The book also goes beyond wills and trusts and includes several related topics, such as durable powers of attorney, designations of health care surrogates, and principal and income allocations. It also discusses estate planning and the probate process. These topics are a useful bridge to such advanced courses as Elder Law, Estate Planning, and Probate Practice.

The third edition maintains the book's unique focus on Florida law. Despite widespread adoptions of uniform acts and codes, the rules governing wills and trusts continue to be state-law driven. We believe that there is much to be gained by studying the laws of one jurisdiction as a whole. Florida is particularly well-suited for studying this area of the law. Florida has a well-developed probate code and an extensive trust code. Moreover, case decisions in Florida address wills and trusts issues in fascinating factual situations that students find engaging. Although Florida law is the focus, this book includes discussions of the common law from other states (including excerpts from the Restatements) and of uniform codes (including the Uniform Probate Code (UPC) and the Uniform Trust Code (UTC)), particularly when they differ significantly from Florida law. Although case or statutory law differs from state to state, the concepts and issues students will encounter and ponder are the same. Knowledge of the rules governing Florida wills and trusts is thus important for attorneys practicing in Florida.
or elsewhere. We have designed this book to encourage students to think about the
cases from the standpoint of both planners and litigators. Accordingly, we include
numerous questions and problems that require students to think about ways to draft
or plan around issues to avoid litigation while accomplishing clients’ goals.

In this third edition, not only have we included new cases and statutes, but we
have also added numerous new problems, notes, and questions. Several of these high-
light best practices for drafting estate planning documents. These problems, notes,
and questions are also designed to stimulate discussion of statutory interpretation
and policy. This third edition expands the coverage of wealth management, asset
protection planning, estate counseling, and changing family dynamics. This edition
continues our endeavor to introduce students to the depth and breadth of wills, trusts,
and estates practice.

This book can be used in separate Wills and Trusts courses or in a course that
combines both topics. Although it covers wills before trusts, these topics can be ad-
dressed in a different order.

Chapter 1 introduces some of the terminology encountered in intestacy, wills, trusts,
and certain related areas. Chapter 1 also addresses property interests that are not subject
to probate. Finally, Chapter 1 introduces the difference between the probate estate and
the gross estate. Chapter 2 covers the rules for intestate succession. The intestacy rules
apply to probate property that is not effectively disposed of by the decedent’s will.

Chapters 3 through 11 cover property passing by will. Topics include the require-
ments for a valid will and for amending and revoking a will. These chapters also ad-
dress rules designed to implement a testator’s presumed intent, such as the rules for
pretermitted children or spouses, rules of construction of will provisions, and rules
dealing with situations where beneficiaries predeceased the testator. They also cover
various types of misconduct, such as undue influence and fraud.

Chapters 12 through 16 consider topics that apply to both testate and intestate es-
tates. These include homestead, family allowance, elective share, simultaneous death,
disclaimer, and issues concerning nonresidents.

Chapters 17 through 25 focus on express trusts as a particular tool used to man-
age property for the benefit of one or more individuals, charities, or other beneficiaries.
Topics include the necessary substantive elements and formalities to establish a trust,
spousal elective share trusts, creditor access to trusts, charitable trusts, trusts for an-
imals, modification and termination of trusts, and issues that affect both wills and
trusts, such as mistake, undue influence, killers, and divorce.

Chapter 26 introduces powers of appointment, which are another flexible estate
planning tool. Chapter 27 covers future interests and the Rule Against Perpetuities.
Chapter 28 addresses the very important topic of trustees’ powers, duties, and lia-
bilities. Chapter 29 considers constructive and resulting trusts and distinguishes them
from express trusts.

The concluding chapters cover an array of related topics. Chapter 30 covers the
allocation of trust and estate property between principal and income. Chapter 31 in-
cludes materials on such documents as designations of health care surrogates, living
wills, and durable powers of attorney. Chapter 32 provides an introduction to the
tax aspects of estate planning. Finally, Chapter 33 provides an overview of the probate
process, by which assets are transferred from the decedent to beneficiaries.

The Appendices consist of forms and annotations made available by Northern
Trust Corporation.

Editorial Comments
Some editorial notes are in order. We follow casebook conventions and liberally
omit footnotes from cases and excerpted materials without disclosure. Footnotes that
are included from cases and materials include Editors’ Notes indicating their number
from the original source. In addition, Editors’ Notes may also indicate changes in
the laws. When we omit citations from cases, we demonstrate those omissions by
way of ellipses. Asterisks (** *), and sometime ellipses, indicate substantive omissions,
but concurring and dissenting opinions may have been omitted without a specific
notation that such an omission was made. This book assumes that the students will
also study the Florida statutes assigned in each chapter. The Florida statutes are avail-
able on the official website of the Florida Legislature, referred to as Online Sunshine,
at http://www.leg.state.fl.us/welcome/index.cfm. All statutes were current as of the
date this book went to press.

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We continue to be grateful for the support we received on the first edition of the book from Professors Lisa Smith-Butler and Angela Gilmore. We also continue to appreciate the excellent research assistance we received on the first edition from Lourdes Abalia, Kathryn Ebel, Aubrey Giraldez, Vanessa Peñaranda, Elisabeth Reid, and Michelle Shabo. For the second edition, we continue to appreciate the research assistance we received from Katie Kochina, Nicole Maron, Isabel Marrero, Janelle Polzer, Giulia Proietti, Christie Wohlbrandt, and the unfailing support and sense of humor of Joseph Baldeomar. For this edition, we acknowledge with gratitude the dedication and excellent research assistance we received from Erin Farrington Finlen.

We are grateful to professors who have adopted our book and have generously shared their insights with us. We are particularly grateful to Gordon T. Butler, Professor of Law at St. Thomas University School of Law, Miami, Florida. Professor Butler’s continued contributions have been invaluable and have enhanced the book.

We also appreciate, and have benefited from, the lively discussions we have had with our wills and trusts students over our decades of teaching. Lastly, we would like to thank our families for their encouragement, and patience, while we were working on the first, second, and third editions of the book.

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