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Gerry W. Berry

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REVIEW OF RAYMOND C. O'BRIEN & MICHAEL T. FLANNERY, DECEDENTS' ESTATES: CASES AND MATERIALS (2006)

Gerry W. Beyer*

I. INTRODUCTION

The wills, trusts, and estates casebook market has long been dominated by excellent, time-tested works,¹ several of which are in seventh editions.² It took considerable gumption for Professors Raymond C. O'Brien³ and Michael T. Flannery⁴ to enter into this mature market⁵ with the 2006 publication by Carolina Academic Press of their law school course book entitled *Decedents' Estates: Cases and Materials* (hereinafter the *Casebook*).⁶ Unexpectedly, the *Casebook* provides a viable option to these well-established works by providing a fresh approach while maintaining the necessary coverage of traditional topics.

II. FORMAT

Like most law school texts, the *Casebook* is an edited compilation of cases, statutes, and articles connected by explanatory text.

* Governor Preston E. Smith Regents Professor of Law, Texas Tech University School of Law; B.A., Eastern Michigan University; J.D., Ohio State University; LL.M. & J.S.D., University of Illinois.

1. ROGER W. ANDERSEN & IRA MARK BLOOM, FUNDAMENTALS OF TRUSTS AND ESTATES (2d ed. 2002) [hereinafter ANDERSEN]; ELIAS CLARK, LOUIS LUSKY, ARTHUR W. MURPHY, MARK L. ASCHER & GRAYSON M.P. MCCOUCH, CASES AND MATERIALS ON GRATUITOUS TRANSFERS: WILLS, INTTESTATE SUCCESSION, TRUSTS, GIFTS, FUTURE INTERESTS AND ESTATE AND GIFT TAXATION (4th ed. 1999) [hereinafter CLARK]; JESSE DUKEMINIER, STANLEY M. JOHANSON, JAMES LINDGREN & ROBERT H. SITKOFF, WILLS, TRUSTS, AND ESTATES (7th ed. 2005) [hereinafter DUKEMINIER]; EUGENE F. SCOLES, EDWARD C. HALBACH, JR., PATRICIA GILCHRIST ROBERTS & MARTIN D. BEGLEITER, PROBLEMS AND MATERIALS ON DECEDENTS' ESTATES AND TRUSTS (7th ed. 2006) [hereinafter SCOLES].

2. DUKEMINIER, *supra* note 1; SCOLES, *supra* note 1.

3. Professor of Law, The Catholic University of America & Georgetown University Law Center.

4. Associate Professor of Law, University of Arkansas at Little Rock.

5. For another recent entrant into this market, see VALERIE J. VOLLMAR, AMY MORRIS HESS & ROBERT WHITMAN, AN INTRODUCTION TO TRUSTS AND ESTATES (2003) [hereinafter VOLLMAR].

6. RAYMOND C. O'BRIEN & MICHAEL T. FLANNERY, DECEDENTS' ESTATES: CASES AND MATERIALS (2006) [hereinafter CASEBOOK].

A. Cases

The cases are carefully selected to provide the student with both a solid historical basis, as well as the ability to see the application of both traditional and modern concepts. The authors assert, and I agree, that the cases were “painstakingly chosen . . . with fact patterns that invite interest, creativity, and debate.”⁷

B. Text

The text is well-written and more extensive than that typically found in a casebook. The writing is clear, concise, and demonstrates the authors’ comprehensive grasp of both basic and complex concepts and the interplay between them. The authors believe that in a book that needs to cover such a wide range of material, it is better practice to explain, elaborate, and highlight cases and statutes to provide the student with greater guidance, rather than pose only unanswered questions.⁸ As discussed in the next section, the wisdom of this decision is debatable.

C. Problems

Taking a significant departure from many of its competitors, the *Casebook* is lacking in problems for students to use to apply their newly acquired knowledge. It is not that the authors do not appreciate the importance of problems. Instead, they made a conscious decision to leave out problems, asserting that “professors can create their own problems from current sources,”⁹ and students can consult study aids, which are problem-based. Although I appreciate the authors’ position, I believe the following:

Working through problems is one of the best ways to understand intestacy, will, and trusts concepts. For example, it is one thing to learn about per stirpes, per capita, per capita by representation, and per capita at each generation in the abstract[,] but the differences really strike home only when you see the tremendous impact they can make on an heir’s inheritance[,] depending on the view local law adopts.¹⁰

7. *Id.* at xxxiii–iv.

8. *See id.* at xxxiv.

9. RAYMOND C. O’BRIEN & MICHAEL T. FLANNERY, DECEDENTS’ ESTATES: CASES AND MATERIALS—TEACHER’S MANUAL xvii (2006) [hereinafter *TEACHERS’ MANUAL*].

10. GERRY W. BEYER, WILLS, TRUSTS, AND ESTATES—EXAMPLES & EXPLANATIONS xxxiii (4th ed. 2007).

D. Special Features

Each chapter begins with what the authors call a “tool bar,” which is actually an abbreviated table of contents for the chapter. The authors hope that this technique “will allow for a brief introductory summary before entering the thicket of material.”¹¹

The *Casebook* is also liberally sprinkled with Internet addresses so that students may easily locate statistics, forms, and obtain further information, and these cites are conveniently gathered in a *Table of Web-Based Resources*.¹²

III. ORGANIZATION

The *Casebook* is organized along traditional lines and in basically the same sequence as other casebooks—an introduction, intestate succession, wills, trusts, and other estate matters. The *Casebook* consists of eight chapters as follows:

1. An Introduction
2. Intestate Succession
3. The Last Will and Testament
4. The Meaning of Words
5. Restraints on Transfer of Wealth
6. Utilizing Future Interests
7. Creation, Classification, and Utilization of Trusts
8. Planning for Incapacity

IV. SCOPE

The *Casebook* has comprehensive coverage of the subject matter. I commend the authors for providing a well-balanced presentation of both ancient, but still relevant, concepts, as well as cutting-edge developments. As stated by the authors, they have “made a purposeful effort to concentrate on the modern adaptations of inter vivos planning, but [have ignored] neither our indebtedness to what has gone before, nor the things that have remained the same.”¹³ The authors wisely decided not to focus on the Uniform Probate Code (U.P.C.), which has been enacted in only about one-third of the states, but instead discuss statutes from a variety of jurisdictions in addition to U.P.C. provisions.

11. CASEBOOK, *supra* note 6, at xxxiii.

12. *Id.* at xxix–xii.

13. *Id.* at xxxiii.

A. Cutting-Edge Topics Covered

To keep the *Casebook* relevant to today's social milieu, the authors include coverage of many cutting-edge topics, such as estate planning malpractice,¹⁴ non-marital relationships,¹⁵ civil unions and domestic partnerships,¹⁶ children born as the result of alternative reproduction techniques,¹⁷ will contests based on the testator's sexual orientation,¹⁸ and trusts for the benefit of pet animals.¹⁹ I was pleased to see coverage of these topics being of reasonable length so that inclusion of this material does not overshadow the more traditional issues, which students are apt to see more frequently in practice.

B. Touch of International Flavor

In several places throughout the book, the *Casebook* offers a peek into how decedents' estates are handled under the law of other nations. For example, in Chapter 2, provisions of the United Kingdom's inheritance laws are set forth;²⁰ in Chapter 3, a variety of statutes relating to the formalities of a will from Canada, Israel, and various territories in Australia are included;²¹ and in Chapter 4, an English case is used in the discussion of class gifts.²²

C. Potential Deficiencies

Although I found the coverage of the book to be sufficient in most cases, I was disappointed that a few topics were given cursory treatment, such as estate administration,²³ how to allocate benefits and burdens between principal and income during trust administration,²⁴ and estate, gift, and generation-skipping transfer taxes.²⁵ Of course, some sacrifices need to be made

14. *See id.* at 27 (including *Barcelo v. Elliott*, 923 S.W.2d 575 (Tex. 1996)).

15. *See id.* at 66 (including *Bryne v. Laura*, 60 Cal. Rptr. 2d 908 (Cal. Ct. App. 1997)).

16. *See id.* at 78.

17. *See CASEBOOK, supra* note 6, at 111 (including *In re Marriage of Buzzanca*, 72 Cal. Rptr. 2d 280 (Cal. Ct. App. 1998)).

18. *See id.* at 270 (including *In re Will of Kaufmann*, 247 N.Y.S.2d 664 (App. Div. 1964)).

19. *See id.* at 477 (including *In re Searight's Estate*, 95 N.E.2d 779 (Ohio Ct. App. 1950)).

20. *Id.* at 46-48.

21. *Id.* at 186-88.

22. *Id.* at 343-46 (*In re Moss*, (1899) 2 Ch. 314 (A.C.)).

23. *CASEBOOK, supra* note 6, at 420-24 (four pages of coverage).

24. *Id.* at 587.

25. *Id.* (sporadic coverage of estate-tax issues; gift- and generation-skipping transfer taxes not listed in Index). The authors note that they attempted to "incorporate into the text

for the reasons discussed in the next section. In addition, many schools have separate courses in estate administration and wealth transfer taxation in which these topics are apt to receive comprehensive treatment.

V. LENGTH

The *Casebook* is among the shortest of the textbooks used in wills, estates, and trusts classes.²⁶ This is, however, not a shortcoming of the book in the modern environment in which wills, trusts, and estates are taught. Unfortunately, in my opinion, the number of credits law school curriculums allow for the basic wills and trusts course has been, on average, decreasing over time. When I began teaching over a quarter of a century ago, I had the “luxury” of six credit hours in which to teach this material. Now, many schools shorten coverage of this subject matter to a four, three, or even a two credit course. Accordingly, even the *Casebook* will be hard to cover in its entirety, especially if the professor teaches the course from a state specific, rather than generic, perspective.

VI. QUIRKS

Probably the most curious quirk about the *Casebook* is the misleading title, which omits any mention of trusts. Despite giving trusts no title billing, the authors devote approximately one-third of the *Casebook* to trusts.²⁷ Each of the other major casebooks include the term “trusts” in their titles: four in the main title²⁸ and one in the subtitle.²⁹ The authors explain why they chose to use the term *decedents' estates* in their title by stating that “each person seeking to transfer wealth will become a decedent.”³⁰ Nonetheless, the inclusion of trusts in the title would have provided professors and students alike with greater insight into the book’s true contents.

The order of coverage in Chapter 3, *The Last Will and Testament*, is somewhat illogical in that the coverage of the formalities required for a valid will comes before a discussion of capacity. The issue of compliance with the proper formalities is irrelevant if capacity is lacking. And, in the discus-

the thorny issue of estate and gift taxation” and purposefully “omitted a separate chapter on taxation.” *Id.* at xxxiv.

26. CASEBOOK, *supra* note 6 (786 pages in length). Only ANDERSEN, *supra* note 1, is shorter, with approximately 625 pages. The other works hover around the 1000 page mark, with VOLLMAR, *supra* note 5, topping out at over 1200 pages.

27. Chapter 7, entitled *Creation, Classification, and Utilization of Trusts*, is 265 pages in length, which is 33.7% of the book (265/786).

28. ANDERSEN, *supra* note 1; DUKEMINIER, *supra* note 1; SCOLES, *supra* note 1; VOLLMAR, *supra* note 5.

29. CLARK, *supra* note 1.

30. CASEBOOK, *supra* note 6, at xxxiii.

sion of capacity, focus is placed on testamentary capacity, with very little discussion of the legal capacity to make a will.

Coverage of important, non-probate mechanisms, such as joint tenancies with rights of survivorship,³¹ contracts with pay on death provisions,³² multiple-party bank accounts,³³ and powers of appointment,³⁴ are included in Chapter 7, *Creation, Classification, and Utilization of Trusts*.³⁵ These important, non-probate techniques merit a chapter of their own. By being included in the Trusts chapter, a student may not appreciate the widespread use of these techniques or may mistakenly think that they are trust-like relationships.

VII. TEACHER'S MANUAL

Accompanying the *Casebook* is a comprehensive teacher's manual,³⁶ which will make adoption an easy process for both the new and the experienced wills, trusts, and estates professor. For each principal case, the authors include a mini case brief, complete with sections discussing the facts, issues, and holdings of the case. These briefs are followed by "teaching strategies," which are most useful because they explain the authors' purpose of including the case and the key lessons to be garnered. Teaching strategies are also provided for various topics covered in the *Casebook* by text, notes, or statutes.

To assist adopters in integrating the *Casebook* into their courses, the authors provide suggested course syllabi.³⁷ Syllabi are provided for courses consisting of four, three, or two credits; no syllabi are provided for five or six credit courses. The lack of suggested syllabi for longer courses is not a significant shortfall because, as discussed in the *Length* section above, few schools allot more than four credits for the introductory course in wills, trusts, and estates.

Another feature that potential adopters should find very attractive is the extensive bank of twenty-seven examination questions with, what the authors call, *feedback*, but which are, in reality, suggested answers.³⁸ This material provides an excellent starting point for professors to draft their own examination questions or to reproduce for students to use as practice questions.

31. *Id.* at 579.

32. *Id.* at 565.

33. *Id.* at 571.

34. *Id.* at 648.

35. *Id.* at 459-60.

36. TEACHER'S MANUAL, *supra* note 9.

37. *Id.* at 170-73.

38. *Id.* at 174-216.

To further assist adopters, the authors include the text of the PowerPoint^{®39} slides that they use in their classes.⁴⁰ There are fifty-five slides in all, and if you are not too fond of typing the text yourself, the authors provide an Internet address from which you may download the slides as a .ppt file.⁴¹

VIII. CONCLUSION

By adding a completely new casebook into the wills, estates, and trusts field that both covers the standard material while integrating modern concepts, the authors provide a viable option to existing course books. The authors stress their primary goal, that is, to provide a “good teaching vehicle.”⁴² I think they have aptly accomplished their goal. As a testament to my high opinion of this book, I included a correlation table for the *Casebook* in the fourth edition of my *Wills, Trusts, and Estates—Examples & Explanations* book, only the second time I have included such a table for a first edition textbook.⁴³

I predict success for the *Casebook* and believe that it will bring its authors and their schools favorable recognition. Although long-time adopters of other time- and classroom-tested books may be reluctant to switch because of familiarity with their chosen material, *Decedents' Estates* by Professors O'Brien and Flannery deserves serious consideration by both beginning and experienced trusts and estates professors.

39. PowerPoint[®] is a registered trademark of Microsoft[®] Corporation.

40. TEACHER'S MANUAL, *supra* note 9, at 217–33.

41. Michael Flannery, University of Arkansas at Little Rock William H. Bowen School of Law, available at http://www.law.ualr.edu/faculty/flannery/de_pub/ (last visited Dec. 10, 2006).

42. CASEBOOK, *supra* note 6, at xxxiii; see also TEACHER'S MANUAL, *supra* note 9, at xvii (“the casebook is written to be instructional”).

43. BEYER, *supra* note 10, at liii (correlation table for the *Casebook*). Compare GERRY W. BEYER, WILLS, TRUSTS, AND ESTATES—EXAMPLES & EXPLANATIONS IV (3d ed. 2005) (correlation table for VOLLMAR, *supra* note 5, as the only first edition book for which a correlation table was included).

