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Gerry W. Berry

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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.

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* 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.


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].


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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."

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. 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," 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.

7. Id. at xxxiii–iv.
8. See id. at xxxiv.
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." 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.

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." 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, non-marital relationships, civil unions and domestic partnerships, children born as the result of alternative reproduction techniques, will contests based on the testator’s sexual orientation, and trusts for the benefit of pet animals. 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; in Chapter 3, a variety of statutes relating to the formalities of a will from Canada, Israel, and various territories in Australia are included; and in Chapter 4, an English case is used in the discussion of class gifts.

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, how to allocate benefits and burdens between principal and income during trust administration, and estate, gift, and generation-skipping transfer taxes. 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. 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. Each of the other major casebooks include the term “trusts” in their titles: four in the main title and one in the subtitle. 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.” 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 tenan-
cies with rights of survivorship, contracts with pay on death provisions,
multiple-party bank accounts, and powers of appointment, are included in
Chapter 7, *Creation, Classification, and Utilization of Trusts*. These im-
portant, non-probate techniques merit a chapter of their own. By being in-
cluded in the Trusts chapter, a student may not appreciate the widespread
use of these techniques or may mistakenly think that they are trust-like rela-
tionships.

**VII. TEACHER’S MANUAL**

Accompanying the *Casebook* is a comprehensive teacher’s manual, which will make adoption an easy process for both the new and the expe-
rienced wills, trusts, and estates professor. For each principal case, the au-
thors 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. 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 au-
thors call, *feedback*, but which are, in reality, suggested answers. This ma-
terial provides an excellent starting point for professors to draft their own
examination questions or to reproduce for students to use as practice ques-
tions.

31. *Id.* at 579.
32. *Id.* at 565.
33. *Id.* at 571.
34. *Id.* at 648.
35. *Id.* at 459–60.
37. *Id.* at 170–73.
38. *Id.* at 174–216.
To further assist adopters, the authors include the text of the PowerPoint® slides that they use in their classes. 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.

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." 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.

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.
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 lii (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).