

February 1940

Cases and Text on the Law of Wills

C. C. Williams

West Virginia University College of Law

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Recommended Citation

C. C. Williams, *Cases and Text on the Law of Wills*, 46 W. Va. L. Rev. (1940).

Available at: <https://researchrepository.wvu.edu/wvlr/vol46/iss2/12>

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BOOK REVIEWS

CASES AND TEXT ON THE LAW OF WILLS. By W. Barton Leach. Published by the Editor, Harvard Law School, Cambridge, Massachusetts, 1939. Pp. v, 221.

This little book is intended as an abridged treatment of the law of wills and administration, for use in a required second-year course combining that subject with Future Interests.¹ Like other case-books now being published by the faculty of Harvard Law School,² it is a by-product of curriculum study and revision recently undertaken there.³ In his prefatory remarks, the editor has explained its nature:⁴

“There is much material in the traditional course in Wills which is comparatively simple and unstimulating and which could be adequately treated by exposition, oral or written. If such exposition is contained in a case-book, valuable class-room hours can be saved.”

Hence, the present volume serves a most practical purpose of combining in primer-like fashion leading cases and elementary text discussion, — along with stimulating problems⁵ surveying the more difficult phases of testamentary succession. Modestly attempting merely broad generalizations in the field of administration, its scope has been kept down to very reasonable limits.

In general character, the case-book offers concise statement in a short compass of the leading principles of the law of wills, with adequate opportunity to the student of pursuing his interests by going to original sources for further enlightenment. Though it is a topic that embraces centuries of professional tradition⁶ and considerable of civilian theory,⁷ the scholarly result is good history and good law. One finds not only the old familiar decisions of the past⁸ but also a group of extremely recent cases⁹ selected with ex-

¹ The course entitled Property II is given to second-year students, three hours a week in the first half-year and two hours a week in the second.

² Such as EDWARD H. WARREN'S CASES ON PROPERTY (2d ed. 1938), utilized in the first-year course in Property I.

³ Simpson, *The New Curriculum of Harvard Law School* (1938) 51 HARV. L. REV. 965, 978.

⁴ P. iv.

⁵ Both hypothetical fact-situations and actual cases are considered, — with occasional reference to the original Record in the latter.

⁶ 1 HOLDSWORTH, A HISTORY OF ENGLISH LAW (3d ed. 1922) 625-630.

⁷ *E. g.* pp. 141-142.

⁸ A few instances are *Allen v. Maddock*, 11 Moo. P. C. 427 (1858), p. 55, — *Goods of Truro*, L. R. 1 P. & D. 201 (1866), p. 67, — and *Stubbs v. Sargon*, 3 Myl. & Cr. 507 (1838), p. 69, — on the issue of incorporation by reference.

⁹ The appendix also includes the English “Inheritance (Family Provision)

cellent judgment. Text discussion is lucid and readable, and avoids tiresome analysis of doctrinal detail. Nor has the editor forgotten here that serious subjects do not lose in presentation where there is an occasional humorous touch.¹⁰

An interesting feature is the amount of thoughtful comment on questions of everyday practice in the field of succession. The reasons given¹¹ for precise testamentary distribution are as forcefully persuasive as those of Lord St. Leonards, almost a century ago.¹² Sound observation occurs¹³ as to possible conflicts of interest and loyalty in professional obligation to the client-testator, — ethical considerations which are all too frequently overlooked. During recent decades, many contributions of great value have been made in general theory of decedents' estates law, as well as regarding its more practical aspects: these newer ideas are interspersed among paragraphs of shrewd and judicious advice to the student.¹⁴ There is brief discussion too of creditors' claims,¹⁵ and of federal and state taxes, — questions that weary the cautious personal representative. Admirable exposition of the sort always adds considerably to the utility of any case-book.

Since this is a volume avowedly influenced by curriculum requirements, perhaps it may seem hazardous to venture the customary criticism of reviewers. Even so, many will regret that barely a tenth of the material has been devoted to administration:¹⁶ there are theoretical issues of that subject which might well "enrich and enliven a class-room discussion." Moreover, reference

Act, 1938", 1 & 2 Geo. 6, c. 45, effective July 13, 1939, — which in effect enables a reasonable *legitime* in England.

¹⁰ The style is likewise entertaining. For example, see p. 140, n. 14: "This has been ably suggested . . . albeit the suggestion is couched in the lush idiom of the missionary days of 'realism' and the 'functional approach.' "

¹¹ Pp. 8-9.

¹² A HANDY BOOK ON PROPERTY LAW (5th ed. 1858) *Letter XX*, p. 177: "No hatred is more intense than that which arises in a man's family after his death, where, under his will, the rights of each member of it are not separate and strictly defined. None is more afflicting or degrading to our common nature. We weep over the loss of our relative, and we quarrel over the division of his property. Be careful not to make an unwise or ill-considered disposition, particularly of your residue, upon which the contest generally arises. As you love your family, pity them — throw not the apple of discord amongst them. If you leave to every one *separately* what you desire each to have, and give nothing amongst them all which requires division, and therefore selection and choice, peace and good-will will continue to reign amongst them."

¹³ Pp. 108-109.

¹⁴ By way of illustration, pp. 178-180.

¹⁵ Pp. 181-182.

¹⁶ Only twenty-one pages, out of the total of 221 pages (including the appendix).

to problems such as those presented by joint and mutual wills¹⁷ could have been made, without expanding the book unduly. A seal may not be required in any American state, yet there can still be occasions for its use.¹⁸ No doubt the complete table of contents obviates, in part at least, the need for an index. One ought to add there are virtually no errors of print.

It is important to note, as a striking characteristic of present-day legal education, the increasing demand for case-books with extensive text material,¹⁹ — whether this be in the form of erudite footnote explanation or simply textual exposition, as here. The custom of self-education through the medium of dialectic based on the early type of case-book, — such as Ames, *Cases in Equity Jurisdiction*, — seems to have vanished. Unquestionably, the emphasis now on problems of draftsmanship, particularly in the Property courses, has played some part in the gradual evolution towards text. In any event, *Cases and Text on the Law of Wills* appears illustrative of the trend. Taken as whole, it is a most useful and informing book, worthy of success in its field.

C. C. WILLIAMS, JR.

West Virginia University,
Morgantown, West Virginia.

LAW, THE STATE, AND THE INTERNATIONAL COMMUNITY. By James Brown Scott. New York, N. Y., Columbia University Press. 1939. Pp. Vol. I, xxiv, 613; Vol. II, vi, 401.

In the midst of war, involving more than half of the world's population, and with international law broken on all sides, these two volumes appear as one of the most important contributions to the study of the international community that history records. Remarkable too is the fact that the author at the age of seventy-three

¹⁷ Cf. *Wilson v. Starbuck*, 116 W. Va. 554, 182 S. E. 539, 102 A. L. R. 485 (1935), noted in Comment (1936) 36 COL. L. REV. 1013. In the fluid state of the law on this subject, there is danger that lower courts will crystallize such doctrine into ironclad rules of construction, ignoring evidence as to the true intent of the testator.

¹⁸ Obviously, a seal is not necessary to the validity of a will, yet it is sometimes desirable to have it. The testator by his residuary clause disposes not only of his own property but also of that over which he has a power of appointment. Infrequently, in the instrument creating the power, there is a provision that it is to be exercised by an instrument under seal. Hence this precaution should be noted, — and note 6, p. 42, understood accordingly (or read with this *caveat*).

¹⁹ LLEWELLYN, *CASES AND MATERIALS ON SALES* (1930) was a representative pioneer in the new movement.