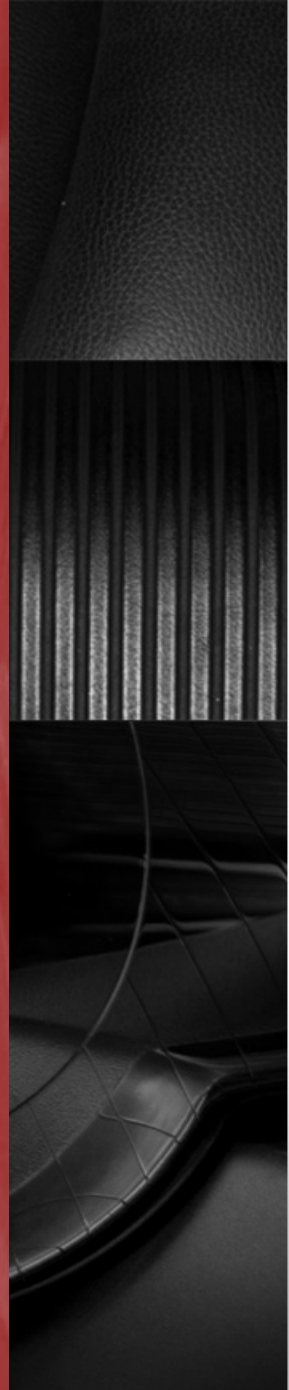


# Chapter 9

Wills Trusts and Probate





# Wills (199-213)

- What governments enact laws that have to do with wills?
  - What types of wills can exist? Explain each type of will.
  - What is the point of a will legally? Why does it matter if a person identifies directions in regards to property after they die?
- What are the four main sections of a will and what are the general purposes of these sections?
- What is contained in the body of a will?
  - In the body of the will what is the difference between specific property and real property legally and in terms of terminology?
  - What specific clauses exist within the body of a will and what is contained in each of these clauses?
  - What determines the different aspects contained in each will? Is every will the same?
- Once a will is created are they permanent? Explain. Is an entirely new Will required to change an existing will?
- Read application 9.1 – Explain the importance of updating a will based on this example? What types of events in someone’s life may trigger a need to update a will?
- What laws take effect when a person dies without a will? Identify the laws of New Jersey in regards to intestate succession.
- Vocabulary



# Wills

- Wills are instructional documents identifying the distribution of property upon death.
  - Holographic Will – will **Handwritten** by the decedent and not witnessed by anyone – not recognized in some states (recognized in NJ)
  - Nuncupative Will – oral will made on a death bed – not recognized by some states (not recognized in NJ)
  - Formal Will – Prepared by an attorney – signed / notarized etc.
- Four Main Sections of A Will
  - Opening clause
    - Funeral Arraignments; revokes previous wills; instructions for debts; etc.
  - Body
    - Gifts of property (bequest); gifts of real property (devise); gift of money (general [taken from the estate] and demonstrative legacy [funds specified by testator]); residuary; disinheritances
  - Fiduciary Clause
    - Fiduciary – Appointed by the testator to fulfill the will and assist with the administration of the estate (executors / guardians / trustees)
  - Closing clauses
    - Signals the end of the will - testimonium clause
    - Shows witnesses understand that they are signing a will attestation clause.
- Changing a will
  - A new will is not always required
    - Codicil – separate document amending the will
- There is not will
  - Intestate succession – wishes of the decedent have no input.

# Intestate Succession in New Jersey

If you die with:	This is what happens:
Children and no spouse	Children Inherit Everything
Spouse but not descendants or parents	Spouse inherits everything
Spouse and descendants and the spouse has no other descendants	Spouse inherits everything
Spouse and descendants from you and that spouse The Spouse also has descendants from another relationship	Spouse inherits the first 25% of property no less than 50k no more than 200k plus ½ of the balance  YOUR descendants inherit everything else
Spouse and descendants from You and someone other than that spouse	Spouse inherits the first 25% of property no less than 50k no more than 200k plus ½ of the balance  Your descendants inherit everything else
Spouse and parents	Spouse inherits the first 25% of property no less than 50k no more than 200k plus 3/4 of the balance  Your parents inherit everything else
Parents but no spouse or descendants	Parents inherit everything
Siblings but no spouse, descendants or parents	Siblings inherit everything
No Spouse, No Parents, No Descendants, No Siblings, <b>No Family What-so-ever</b> , No Will	State Gets Everything (escheat's to state)



# Trusts and Probate (214-215)

- What is a trust and a trustee?
- Determine the difference between legal title and equitable title. Who holds each of these titles in a trust and what does this holding entitle the holder to?
- What are the two different categories of trusts mentioned in our text? What qualities make each of these types of trusts unique?
  - Explain why a living trust and a testamentary trust would be express trusts and not implied trusts?
- What is Probate?
  - During a Probate what is the job of the executor or administrator?
  - What types of trusts and programs do not fall under the supervision of courts in terms of probate?
- Read Application 9.3 – The influence of law on wills and inheritance can be complex. Read this example and map out the actions taken by all parties in a series of steps. Identify the end result of the issue and discuss the resolution. Based on the wishes of the decedent do you think the court made the proper decision? Why or why not?
- Vocabulary




# Trusts

- A trust is a document which makes provisions for the distribution or disposition of property either during life or after death
  - The Title (ownership) of a property is divided in a trust
    - Legal Title – Given to the trustee – direct ownership of the property but can not get personal gain
    - Equitable title – Given to the beneficiary - the right to receive personal gain from a trust.
- There are many types of trusts but they generally fall into 2 categories
  - Express Trusts – Written or Oral Agreements containing a settlor, trustee, property and beneficiary
    - Living Trusts - Trust that is active when the settlor is alive
      - Not under the supervision of probate courts
    - Testamentary trusts – Trusts created by wills and effective upon the death of the settlor
      - Legal and equitable title are separate and must designate beneficiary
  - Implied Trusts – involuntary trusts imposed by the court often as a result of acquiring property by improper means
    - Constructive Trusts – the property holder continues to hold the title in trust to the person who should have had said property. The person who was wronged receives the benefits of the property.



# Probate

- Probate – Judicial procedure by which a will is proved valid or invalid and governs the distribution of property to heirs and paying taxes and debts
  - Court appoints an executor or administrator to be responsible for the probate process
    - Identifies Assets, taxes, debts, property
    - Pays debts and taxes
    - Distributes property in accordance with a will or in accordance with intestate succession
- Some property is NOT subject to Probate
  - Living Trusts - pass to other beneficiaries upon death
  - Life insurance – Passes to named beneficiaries upon death
  - Retirement Accounts – Passes to named beneficiaries upon death
    - All still subject to estate and inheritance taxes



# Case Law (216-220)

- Ensure you read the “a point to remember” section on page 215 prior to continuing
- Read Hicks v Casablanca Records and Frosch v Grosset & Dunlap Inc.
  - Answer all Case Analysis questions for both cases
  - In Hicks v Casablanca:
    - What did the court determine in regards to the plainff’s claims to the rights of the title or image of Agatha Christie?
      - Despite the opinion of the above question why didn’t the court side with the plaintiffs? Explain and also explain the importance of the first amendment in this case.
  - In Frosch v Grosset and Dunlap, Inc:
    - Why in this situation was the decision so simple in comparison to the Casablanca case?





# Case Law 220-227

- Read Groucho Marx Productions v Day and Night Company and State ex rel ... v Cromwell
  - Answer all Case Analysis questions for both cases
  - Complete Question 2 and 3 under Application and Analysis problems on page 228



# Application and Analysis

- Read the Case *Finley v Astrue* available here:  
<http://caselaw.findlaw.com/ar-supreme-court/1211129.html>
  - Complete Application and Analysis Question 1
- Complete Assignments and Projects Question 2 in a bulleted list



# Skills Assessment

- Complete the Skills Assessment Section on page 229, you may simply notate in your textbook on page 206-212