

# New York Wills--Testamentary Trusts--Law and Forms (Book Review)

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NEW YORK WILLS—TESTAMENTARY TRUSTS—LAW AND FORMS. By Elmer Lee Fingar and David R. Bookstaver. New York: Clark Boardman Company, 1949. Pp. xviii, 456. \$20.00.

As announced in the preface, this book is primarily designed to aid the practitioner in the preparation of wills. However, in view of “. . . the close relationship between the legal consequences of the execution of a will and other matters related to the estate of a testator, such as estate and gift taxes, . . .” the authors widened the scope of this book to include materials and forms in these related fields. With the exception of Chapter XII, wherein the subject of estate taxation is discussed, the book is devoted exclusively to a consideration of the New York Law of Wills.

The authors follow a uniform pattern throughout the book. In each chapter an explanation of the many problems confronting a lawyer in the actual preparation of a will is followed by a series of forms. The explanation of the law throughout the entire volume is consistently lucid and scholarly. The forms embraced in each chapter are well prepared and reflect a broad and comprehensive understanding of the intricacies of the Law of Wills and Estates and a knowledge of the ways in which difficult and complicated testamentary plans may be carried out in accordance with the statutes and the judicial opinions applicable thereto. In addition, there are many helpful practical suggestions. This book will amply satisfy the requirements of general practitioners and also, to some extent, the demands of those lawyers whose professional activities are confined within the limits of this field.

There are, however, certain matters contained in this book to which attention should be called.

Section 41 is entitled “Beneficiaries—Gifts to Persons Occupying Confidential Relationship to Testator.” In this section the authors advise those occupying a confidential relationship, such as lawyers, ministers and guardians, against drafting wills in which they are named as beneficiaries. *Matter of Weed*<sup>1</sup> is cited in support thereof. The advice, of course, is sound but it is difficult to understand why *Matter of Will of Smith*<sup>2</sup> and *Matter of Putnam*<sup>3</sup> were not cited and why the authors did not point out how the ruling in these cases may be properly avoided.

In Section 107 it is stated that Section 29 of the Decedent Estate Law is inapplicable to class gifts. *Matter of Wait*<sup>4</sup> is cited in support of this statement. There is a dictum in this case to the effect that Section 29 does not apply to class gifts, but the conclusion of the court appears to be based exclusively upon the intention of the testator. The law in the State of New York on this subject is not yet settled and the forthright statement of the law made by the authors appears to be questionable.

Section 236 is entitled “Revocation by Physical Means.” Under this section one would naturally expect to find a discussion of the various physical

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<sup>1</sup> 143 App. Div. 822, 824, 127 N. Y. Supp. 966, 968 (3d Dep't 1911), *aff'd*, 204 N. Y. 611, 97 N. E. 1118 (1912).

<sup>2</sup> 95 N. Y. 516 (1884).

<sup>3</sup> 257 N. Y. 140, 177 N. E. 399 (1931).

<sup>4</sup> 42 N. Y. S. 2d 735 (Surr. Ct. 1943).

acts enumerated in Section 34 of the Decedent Estate Law which are required for the revocation of a will in the absence of an attested paper writing purporting to effect such result. Instead the authors discuss the effect of erasures, interlineations and additions. Obviously this material is not related to the title and was mistakenly included thereunder.

Section 238A is entitled "Disposition of Revoked Testamentary Instruments." There are two statements contained in this section which are apparently inconsistent with each other. One statement is to the effect that the destruction of an old will after the execution of a new one may be inadvisable at times, and the other is to the effect that the retention of prior instruments does not serve any useful purpose. The former statement is tenable, but the latter is not. Any lawyer could readily suggest circumstances warranting the retention of an old will upon the execution of a new one. Whether this should be done in a given case depends upon the particular facts and circumstances. Certainly no general rule can be laid down.

Finally, it should be noted that the book does not contain a table of the cases cited in the text and in the footnotes. Presumably the answer to this objection is that the book does not purport to be an exhaustive treatise on the Law of Wills but rather a book of forms with a commentary on the law regarding the use of such forms. Conceding the adequacy of the answer, still the inclusion of a general index would increase the usefulness of the book.

The aforesaid observations do not in any measurable degree affect the general excellence of this work. It is a good, sound, scholarly, informative handbook for practitioners in this field.

GEORGE F. KEENAN.\*



THE CONSTITUTIONAL WORLD OF MR. JUSTICE FRANKFURTER; SOME REPRESENTATIVE OPINIONS. Selected and edited by Samuel J. Konefsky. New York: The Macmillan Company, 1949. Pp. xviii, 325. \$4.50.

This work is a compilation of 43 of the most significant and representative opinions of Mr. Justice Frankfurter, each preceded by a foreword written by the author.

The author in his introduction gives ample justification for the publication at this time of the opinions of one who has been on the bench relatively so short a time. "There are . . . cogent reasons why Mr. Justice Frankfurter's opinions should be published. The first is that he is without doubt the most controversial figure on the Court today, the object of warm praise and bitter—in some instances, even vituperative—denunciation. . . . Many thoughtful observers find it difficult to reconcile much of Justice Frankfurter's judicial activity with the very ideas and values he himself professed<sup>1</sup> . . . (and) which led a liberal President to choose him as Cardozo's successor."

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<sup>1</sup> P. xvi.