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Wills, Trusts, and Estates for  
Legal Assistants

Sixth Edition



Chapter 1

# INTRODUCTION AND OVERVIEW

# Chapter Objectives

- Understand the basic terminology of intestate succession, wills, and trusts
- Explain what law governs estate and gift taxation and what law governs wills, trusts, and intestate succession
- Distinguish between common law and community property law marital property systems
- Identify community property states
- Define real property and personal property

# Basic Terminology: Intestate Succession

- **Intestate succession:** passage of property when the decedent dies without a will.

- **Terms you should know:**

Descent

Ancestor

Distribution

Descendant

Intestate

Collateral Relative

Heir

Consanguineous

Affinity Relationship

Relationship



# Basic Terminology: Wills

- **Will:** A written document or oral declaration directing who will own the decedent's property upon the decedent's death.
- **Terms you should know:**

Domicile	Bequest
Testate Succession	Legacy
Codicil	Beneficiary
Testator; Testatrix	
Devise	

# Basic Terminology: Trusts

- **Trust:** A property conveyance whereby the owner divides title to the property into legal and equitable interests and imposes fiduciary duties on the holder of the legal title to deal with the property for the benefit of the holder of the equitable title.
- **Terms you should know:**

Settlor	Principal
Beneficiary	Income
Trustee	

# Common Law and Community Property Systems

- It is necessary to determine what type of marital property system governs the parties and their property.
- Two types of marital property systems are used in the United States: **common law** and **community property**.

# Common Law System

- Under a **common law system**, each spouse owns his or her entire income as well as any property brought into the marriage or acquired during the marriage by gift.



# Community Property System

- Under a **community property system**, each spouse owns any property brought into the marriage or acquired during the marriage by gift, but only one-half of his or her income; the other half of the income vests in the other spouse as soon as it is earned.

# Community Property States

- Although only nine states use the community property system: Arizona, California, Idaho, Louisiana, New Mexico, Nevada, Texas, and Washington, along with Wisconsin due to its adoption of the Uniform Marital Property Act)
- These **community property states** account for over 25 percent of the population of the United States.
- One state, Alaska, permits married couples to hold their property as community property if they so desire.



# Real versus Personal Property

- **Real Property:** land, trees, crops, etc. growing on land; structures erected on or attached to land.
- **Personal Property:** movable or intangible things capable of ownership that are not real property.

# The Big Picture

