

1-1966

## Issue Editor's Preface

Richard S. Berger

Follow this and additional works at: [https://repository.uchastings.edu/hastings\\_law\\_journal](https://repository.uchastings.edu/hastings_law_journal)



Part of the [Law Commons](#)

---

### Recommended Citation

Richard S. Berger, *Issue Editor's Preface*, 18 HASTINGS L.J. 245 (1966).

Available at: [https://repository.uchastings.edu/hastings\\_law\\_journal/vol18/iss2/1](https://repository.uchastings.edu/hastings_law_journal/vol18/iss2/1)

This Comment is brought to you for free and open access by the Law Journals at UC Hastings Scholarship Repository. It has been accepted for inclusion in Hastings Law Journal by an authorized editor of UC Hastings Scholarship Repository.

## Issue Editor's Preface

For law to fulfill the needs of society it must respond to the ever-changing social structure it seeks to limit and control. Nowhere is this principle more applicable than when dealing with trusts and wills. Both of these areas of law have come to us from English common law, but not in their original form. They have been encumbered by intricacies, traps and delays resulting from statutory innovations and judicial interpretations and misinterpretations which have become imbedded through *stare decisis*. This confusing melange would seem to be the primary cause of the excessive amount of litigation in the fields of trusts and wills. Hopefully, the following articles, whether they merely summarize existing law or criticize and suggest reform, will clarify the present status of the law and promote thought on how the law, as a living system, can best develop.

The Rule Against Perpetuities has confounded not only law students but also courts and attorneys. This is especially true in California, where recent additions to the Civil Code have apparently expanded the usual rule. Professor Lewis M. Simes has traced the California rule from 1951 to its present form. His analysis and conclusion, that a portion of the new statute may be unconstitutional, demands investigation.

Professor Paul G. Haskell, in a most scholarly discussion, argues for a liberalization of the rules allowing deviation from distributive terms of trusts. His critical analysis paves the way for possible removal of an undesirable element in the law of trusts.

The problems raised when a domiciliary of a non-community property state removes himself and his property to a community property jurisdiction have received varied treatment by the courts. Professor Norvie L. Lay combines a comprehensive analysis of the California quasi-community property legislation with a comparison of the less adequate methods used by the seven other community property states to handle these problems.

Mr. Kurt H. Pyle attacks the decisions interpreting the California pretermitted heir statute, paying particular attention to the recent cases of *Estate of Lipovsky* and *Estate of Torregano*.

Mr. David L. Samuels points out problems most often encountered by an attorney dealing with trusts and wills. Although the article is designed as a review of practical problems rather than a discussion of cures, the practitioner would be well advised to heed the proffered advice.

Professor Richard R. B. Powell departs somewhat from the topic of this issue. He briefly comments on the situation in Alaska after the disastrous earthquake of 1964 and describes his efforts in drafting remedial legislation.

Turning to the student articles, Mr. Pomerenk's comment on California adoption points out the disproportionate treatment given certain adoptees by the Revenue and Taxation Code and suggests statutory reform to make the adoption provisions in all of the California codes parallel. Mr. Wyler's comment examines the history and ramifications of apportionment of trust proceeds, paying special attention to apportionment of proceeds from depletable natural resource trust corpora. Mr. Daigle's note examines the right of a guardian to dispose of the property of his ward. Mr. Sekiya discusses the numerous problems raised by contracts to make wills. Mr. Simons' treatment of *Estate of Vai* discusses some of the tax consequences of wills and settlement agreements. Miss Franzen traces the English mortmain statutes into the present California statutes restricting bequests to charities, pointing out problems in the law. Mr. Smith analyzes the California cases dealing with ademption.

In the Book Review section, Mr. Joseph R. Julin discusses the second edition of Professor Lewis M. Simes' *Handbook of the Law of Future Interests*. Mr. Charles W. Tuckman comments on Mr. Richard B. Covey's *The Marital Deduction and the Use of Formula Provisions*.

I would like to thank those members of the faculty and administration of Hastings College of the Law who have so generously devoted their time to make this issue possible. Special thanks are due my four associates: Mr. John R. Ball, Mr. Lucius P. Bernard, Mr. Thomas A. Brady and Mr. Ronald E. Mallen.

RICHARD S. BERGER  
*Issue Editor*