FEMINIST JUDGMENTS: REWRITTEN TRUSTS
AND ESTATES OPINIONS

For women and other marginalized groups, the reality is that the laws regulating estates and trusts may not be treating them fairly. By using popular feminist legal theories as well as their own definitions of feminism, the authors of this volume present rewritten opinions from well-known estates and trust cases. Covering eleven important cases, this collection reflects the diversity in society and explores the need for greater diversity in the law. By re-examining these cases, the contributors are able to demonstrate how women’s property rights, as well as the rights of other marginalized groups, have been limited by the law.

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Feminist Judgments: Rewritten Trusts and Estates Opinions

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For my sisters, Emma S., Evon, Gloria, Ora Bell, and Emma L. –BCL
In memory of my mother, Charlotte Spivack, and my father, Bernard Spivack
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Could a feminist perspective change trusts and estates law? To begin to answer this question, we brought together a group of scholars and lawyers to rewrite, using feminist perspectives, significant cases from a variety of courts around the country that address the many topics that might be covered in a trusts and estates class or addressed by estate planners or probate litigators. Some of the cases in this volume implicate gender on their face – questions about sex-based restrictions in charitable trusts and reproductive technology’s impact on inheritance rights – and some implicate gender in less obvious ways, such as how to value a surviving spouse’s rights with respect to a decedent’s estate or the parameters of adoption or retirement planning. Many people understand that feminist reasoning has tremendous potential to affect, for example, the law of employment discrimination, sexual harassment, and reproductive rights. People may be less aware that feminist analysis can likewise transform inheritance law. By highlighting the influence of perspective, background, and stereotyping on the reading and interpretation of both statutes and common law, Feminist Judgments: Rewritten Trusts and Estates Opinions shows what a difference feminist analysis can make.

This volume, like all the books in Cambridge University Press’s Feminist Judgments Series, demonstrates that judges with feminist viewpoints could have changed the law, even based only on the precedent and law in effect at the time of the original decision. Or, even if the desired result could not be achieved under the current law, this volume shows how a powerful dissent can serve to draw attention to the fact that inheritance law operates in many cases to disadvantage women, racial minorities, LGBT+ individuals, and other historically oppressed groups. Together, the opinions and commentaries in this volume illustrate the importance of diversity of perspectives on the bench so that judges do not approach their work with a uniform worldview.
influenced by the same set of preconceptions and privileges. For judges, lawyers, students, and members of the general public, reading these critical opinions helps to expose the ways in which judges – and, in turn, the development of the law – are subtly influenced by preconceptions, existing power hierarchies, prevailing social norms, and “conventional” wisdom. This book shows that inheritance law is not neutral but rather shaped by the beliefs and policies of the society that produces it and the judges who apply it. At the same time, the contributors to this book hold out hope that the law of trusts and estates can be transformed to be an instrument of greater justice and equality for all people.
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