BOOK REVIEW

SOMEDAY ALL THIS WILL BE YOURS:
A HISTORY OF INHERITANCE AND OLD AGE

(Harvard University Press, January 15, 2012, 368 pp.)
By Hendrik Hartog

Reviewed by E. Spencer Bates, Esq.

This book provides a unique insight into what is arguably the basis of modern Elder Law. In Someday All This Will Be Yours, Hendrik Hartog chronicles the history of legal actions to enforce promises of testamentary bequests made in exchange for care provided for an aging parent. Hartog documents the development, in a line of New Jersey cases, wherein children have brought suit against their parents or their parents’ estates for the enforcement of agreements to compensate them for providing care.

Hartog marks the late 19th century as the first instance of such a suit, with cases becoming more frequent into the early 20th century and beyond. In each case, an elder promises a child, or other family relative, property through his or her will in exchange for care services. Upon the death of the elder, the child then discovers that he or she was omitted from the elder’s will, or received less than promised, despite having performed the services.

Hartog marches through the development of the case law in this area with careful analysis. He suggests that in each of these cases the legal tension, from the court’s perspective, is between the desire of the court to recognize the labor of the child versus the right of the elder to freely distribute his or her property through a will. As reported by Hartog, the New Jersey courts have used a variety of methods to acknowledge that the labor of the child merited enforcement of the promise, from contrasting emancipated versus non-emancipated youth to contract theories of quantum meruit. For Hartog, the underlying trend is more important than the individual legal standards and so he narrates such case law from a cultural context. His narrative suggests that these cases document the shifting of elder-care from an entirely family-based system into a fully developed profession that requires payment for services, even when family members are providing the services.

Hartog provides a brief cultural background, which suggests that prior to the 20th century, elder care was simply an internal family function. He contends that as more and more people worked outside of the home society came to expect that children would break from their parental family, create their own new nuclear family, and accordingly have their own jobs and duties away from the extended family. He suggests that as this became the norm, family caregiving became the exception, and so the idea of compensating family for the care they provide gained acceptance. Hartog argues that this line of cases represents the recognition by the courts of changing societal values regarding the

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duty to care for the elderly.

Elder Law professionals will benefit from Hartog’s reminder that the Elder Law profession is not simply a set of legal standards to be enforced, but rather the management of interpersonal relationships. Elder Law, like the cases presented in Hartog’s book, comes into play once those relationships have failed and the individuals seek outside assistance with what has historically been considered to be a family issue.