

TABLE OF CONTENTS

ABOUT THE AUTHORS	III
GLOSSARY	XI
Chapter 1. Introduction to Property Transfers at Death [¶ 1]....	1
A. Emphasis [¶ 2]	1
B. The Future of Estate Planning [¶ 8]	2
C. Terminology [¶ 13].....	4
D. Sources of the Law of Wills and Trusts.....	7
E. Taxation, Improvidence, and Inheritance.....	9
F. Competing Interests [¶ 33].....	10
G. Probate and Nonprobate Transfers	12
H. Probate Administration.....	15
I. Sample Question and Suggested Answer [¶ 62].....	18
Chapter 2. Intestacy [¶ 1].....	21
A. Intestate Succession in General [¶ 2].....	21
B. Surviving Spouse [¶ 6].....	22
C. Nonprobate Property Ignored [¶ 14]	24
D. Survivorship [¶ 17]	24
E. Descendants: Representation [¶ 23].....	26
F. Ancestors and Collaterals [¶ 52].....	35
G. Escheat [¶ 62].....	38
H. Intestate Succession Analysis [¶ 63]	38
I. Partial Intestacy [¶ 64].....	39
J. Questions of Definition and Status [¶ 68]	40
K. Limitations on Inheritance	53
L. Sample Question and Suggested Answer [¶ 163]	68
Chapter 3. Will Execution Formalities and Contest [¶ 1].....	71
A. Testamentary Capacity [¶ 2]	71
B. Lack of Mental Capacity	74
C. Testamentary Intent [¶ 21].....	76
D. Undue Influence [¶ 25]	76
E. Fraud [¶ 52].....	84
F. Practicalities	87
G. Tortious Interference with Inheritance [¶ 80]	92
H. Attestation and Execution Formalities [¶ 87]	94
I. Mistake in Execution.....	111
J. Holographic Wills	115
K. Conditional Wills	117
L. Nuncupative (Oral) Wills	118
M. Integration	119

TABLE OF CONTENTS

N. Incorporation by Reference	122
O. The Doctrine of Independent Legal Significance	125
P. Dispositions of Tangible Personal Property	128
Q. Republication by Codicil	129
R. Sample Questions and Suggested Answers [¶ 229]	132
 Chapter 4. Revocation [¶ 1]	 139
A. Revocation by Physical Act [¶ 2]	139
B. Revocation by Subsequent Instrument [¶ 29]	146
C. Revocation by Operation of Law [¶ 40]	151
D. Revival [¶ 49]	153
E. Dependent Relative Revocation [¶ 57]	154
F. Sample Questions and Suggested Answers [¶ 69]	157
 Chapter 5. Will Contracts [¶ 1]	 161
A. Terminology [¶ 2]	161
B. Proving a Will Contract	162
C. Avoiding Will Contracts [¶ 14]	164
D. Remedies [¶ 21]	165
E. Contractual Wills and the Surviving Spouse's Pretermitted Heir or Elective Share	169
F. Sample Question and Suggested Answer [¶ 40]	170
 Chapter 6. Will Substitutes [¶ 1]	 173
A. Introduction	173
B. Validity of Will Substitutes [¶ 10]	174
C. Life Insurance, Annuities, and Retirement Benefits	176
D. Payable/Transfer on Death Arrangements [¶ 27]	180
E. Joint Tenancy	181
F. Deeds [¶ 41]	183
G. Revocable Trusts [¶ 45]	184
H. "Blockbuster" Wills [¶ 71]	191
I. Equitable Election [¶ 75]	192
J. Insurance Trusts	194
K. Pour Over Wills [¶ 89]	196
L. Will Substitute Issues [¶ 100]	198
M. Sample Question and Suggested Answer [¶ 105]	199
 Chapter 7. Interpretation: What the Decedent Intended	
[¶ 1]	201
A. Interpreting Wills and Trusts	201
B. Mistake [¶ 11]	205
C. Lack of Intent to Execute a Will [¶ 19]	207
D. Ambiguities and Inaccuracies [¶ 23]	208
E. Implied Gifts [¶ 62]	222
F. Sample Question and Suggested Answer [¶ 76]	227

TABLE OF CONTENTS

Chapter 8. Construction: Lapse and Class Gifts [¶ 1].....	229
A. The Need for Rules of Construction [¶ 2]	229
B. Lapse [¶ 4]	230
C. Lapse and Class Gifts [¶ 37]	240
D. What Is a Class Gift? [¶ 49]	243
E. Sample Questions and Suggested Answers [¶ 91].....	255
Chapter 9. Construction: Ademption, Abatement, Accessions, and Exoneration [¶ 1].....	257
A. Classification of Dispositions [¶ 2]	257
B. Ademption by Extinction [¶ 6]	259
C. Ademption by Satisfaction [¶ 28].....	265
D. Abatement [¶ 38]	267
E. Accessions [¶ 53]	273
F. Exoneration [¶ 65]	277
G. Sample Questions and Suggested Answers [¶ 73].....	280
Chapter 10. Restrictions on Disinheritance: Pretermission, Elective Shares, and Community Property [¶ 1]	283
A. Status as a Spouse [¶ 2]	283
B. Additional Marital Rights [¶ 3]	284
C. Community Property [¶ 9]	285
D. The Elective Share [¶ 19]	288
E. Pretermitted Heirs [¶ 83]	311
F. Sample Question and Suggested Answer [¶ 101]	318
Chapter 11. Introduction to Trusts [¶ 1].....	321
A. Background	321
B. Distinguishing Trusts [¶ 5]	323
C. Types of Trusts [¶ 12]	325
D. Trust Purposes [¶ 31]	329
E. Sample Question and Suggested Answer [¶ 49].....	334
Chapter 12. Trust Creation [¶ 1]	335
A. Introduction [¶ 2].....	335
B. Intent and Capacity [¶ 3]	336
C. The Trustee [¶ 18]	340
D. Trust Property [¶ 34]	345
E. Necessity of a Trust Beneficiary [¶ 47]	349
F. Notice or Acceptance [¶ 62]	354
G. Oral Trusts [¶ 63]	355
H. Secret and Semi-Secret Trusts [¶ 82].....	359
I. Sample Questions and Suggested Answers [¶ 92].....	362
Chapter 13. Trust Operation [¶ 1]	365
A. Discretionary Trusts [¶ 2]	365
B. Support Trusts [¶ 21]	371

TABLE OF CONTENTS

C.	Creditors' Rights [¶ 25]	372
D.	Qualification and Reimbursement for Public Benefits [¶ 54].....	383
E.	Modification and Termination [¶ 67].....	387
F.	Charitable Trusts [¶ 108].....	404
G.	Sample Questions and Suggested Answers [¶ 125].....	408
Chapter 14. Powers of Appointment [¶ 1].....		413
A.	Reasons for Using Powers of Appointment	413
B.	Terminology [¶ 6].....	414
C.	Sample Provisions [¶ 13].....	416
D.	Additional Nongeneral Power Classifications [¶ 17].....	417
E.	Creditors' Rights [¶ 27]	421
F.	Contracts Regarding Powers.....	423
G.	Fraudulent Exercise [¶ 38].....	424
H.	Effective Exercise of Powers	425
I.	Conflict of Laws [¶ 66]	433
J.	Lapse Issues [¶ 68]	434
K.	Analyzing Powers of Appointment [¶ 73].....	435
L.	Uniform Powers of Appointment Act [¶ 74].....	436
M.	Sample Question and Suggested Answer [¶ 75].....	437
Chapter 15. Future Interests [¶ 1].....		439
A.	Introduction [¶ 2]	439
B.	Classification [¶ 7]	441
C.	Future Interests of the Transferor [¶ 22].....	446
D.	Future Interests of Transferees [¶ 32]	448
E.	Origin and Characteristics [¶ 52]	454
F.	Three Ancient Doctrines [¶ 64].....	457
G.	Construction: Introduction [¶ 77]	460
H.	Construction: Vested or Contingent [¶ 78]	461
I.	Construction: Survivorship [¶ 89]	464
J.	Construction: Death "Without Issue" [¶ 143]	477
K.	Construction: Gifts to Heirs [¶ 156]	481
L.	Construction: Gifts to Descendants, Issue, or Children [¶ 178].....	487
M.	Sample Question and Suggested Answer [¶ 200]	494
Chapter 16. Planning for Incapacity [¶ 1]		495
A.	Introduction [¶ 2]	495
B.	Planning for Property Management [¶ 6]	497
C.	Planning for Health Care [¶ 16]	501
Chapter 17. Rule Against Perpetuities [¶ 1]		505
A.	Introduction [¶ 2]	505
B.	Operation of the Rule [¶ 11].....	507
C.	Rule Is in Disfavor [¶ 17]	509
D.	The Essence of the Rule: Remote Vesting Prohibited [¶ 28].....	512

TABLE OF CONTENTS

E. Effect of Violating the Rule [¶ 70]	526
F. Alternative Contingencies [¶ 79]	528
G. Class Gifts [¶ 83]	529
H. Powers of Appointment and the Rule [¶ 99]	535
I. Saving Clauses [¶ 116]	541
J. Modern Trends and Reforms [¶ 121].....	542
K. Charities [¶ 129]	544
L. Accumulations of Income [¶ 131]	545
 Chapter 18. Fiduciary Administration [¶ 1]	 547
A. Fiduciary Administrations Compared.....	547
B. Duty of Loyalty [¶ 6].....	549
C. Duty of Impartiality [¶ 23].....	555
D. Duty to Collect Property [¶ 30].....	557
E. Duty to Manage Property [¶ 35]	559
F. Delegation of Duties [¶ 48].....	563
G. Duty to Account [¶ 52].....	565
H. Duty to Invest	568
I. Management Powers [¶ 94].....	580
J. Liability to Third Parties [¶ 95].....	581
K. Cotrustee Liability [¶ 102]	584
 TABLE OF CASES	 587
TABLE OF UNIFORM LAWS	593
TABLE OF RESTATEMENTS OF THE LAW	597
INDEX	599