
Table of Contents

Acknowledgments.....	v
Introduction	vii
Table of Cases	xlvii
Table of Statutes.....	lv
Table of Regulations	lxvii
Table of Rules.....	lxix
CHAPTER 1. DONATIVE FREEDOM AND GIFTS	1
A. Donative Freedom	1
<i>Hodel v. Irving</i>	6
<i>In re Succession of Collett</i>	11
<i>In re Hutchin's Est.</i>	13
<i>In re: Will of Altstedter</i>	15
<i>In re Succession of Glynn</i>	16
B. Gifts	21
1. Gifts Testamentary and Gifts <i>Inter Vivos</i>	26
2. Conditional Gifts.....	32
<i>Irons v. Smallpiece</i>	33
<i>Samuel v. Northern Trust Co.</i>	34
<i>Hatcher v. Buford</i>	35
<i>Huskins v. Huskins</i>	37
<i>Woo v. Smart</i>	38
<i>Massey v. Hrostek</i>	39
<i>Gartin v. Taylor</i>	40
Problems.....	43
C. Limitations on Donative Freedom.....	45
Problems.....	51
D. Changing Definitions of Family	53
E. Conclusion.....	60

CHAPTER 2. ADMINISTRATION, PROBATE, AND FAMILY PROTECTIONS.....	63
A. Administration	65
Problem	72
B. Homestead	74
1. Homestead Protection Tied to Particular Real Estate with Limitations on Descent and Devise.....	78
MINN. STAT. 524.2–402	80
2. Limited Value Homestead Protections Tied to Particular Real Estate.....	80
W.VA. § 38–9–1.....	84
W.VA. § 38–9–4	84
W.VA. § 38–9–5	84
3. A Cash Amount or Homestead Allowance	85
UPC § 2–402. Homestead Allowance	87
Alt. § 2–402A. Constitutional Homestead.....	87
IOWA CODE 561.11. Occupancy by Surviving Spouse	88
IOWA CODE 561.12. Life Possession In Lieu of Dower	88
IOWA CODE 561.14. Devise	88
<i>Winegardner v. Hughes</i>	89
<i>Frischia v. Friscia</i>	90
<i>Matter of Lindskog</i>	91
<i>Chang v. Lederman</i>	92
<i>King v. Ellison</i>	95
Problems.....	97
C. Family Allowance and Exempt Property	98
UPC § 2–404. Family Allowance	99
ORE. REV. STAT. § 114.085. Setting Apart Whole Estate for Support; Termination of Administration.....	100
UPC § 2–403. Exempt Property.....	101
UPC § 2–405. Source, Determination, and Documentation	102
Problems.....	103
D. Community Property.....	105
Problem	110
E. Changing Definitions of Family	110
1. Spouses and Quasi-Spouses.....	110

2. Children and Quasi-Children	116
<i>Michael H. v. Gerald D.</i>	117
UPC § 2–114. Parent and Child Relationship [2006].....	124
UPC § 2–114. Parent Barred from Inheriting in Certain Circumstances	125
UPC § 2–115. Definitions.....	126
UPC § 2–116. Effect of Parent-Child Relationship	127
UPC § 2–117. No Distinction Based on Marital Status	127
UPC § 2–120. Child Conceived by Assisted Reproduction Other Than Child Born to Gestational Carrier	127
UPC § 2–121. Child Born to Gestational Carrier	130
<i>Bean v. Ford</i>	136
<i>In re Martin B.</i>	136
<i>Astrue v. Capato</i>	138
<i>Matter of Brewington’s Est.</i>	139
<i>In re Est. of Bennett</i>	141
Problems.....	142
F. Adoption, Adult Adoption, Equitable Adoption, and Fostering.....	144
UPC § 2–118. Adoptee and Adoptee’s Adoptive Parent or Parents	145
UPC § 2–119. Adoptee and Adoptee’s Genetic Parents	145
Section 2–122. Equitable Adoption	146
<i>Est. of Chambers</i>	148
<i>Est. of Thompson</i>	149
<i>Est. of Lucas</i>	150
<i>Est. of Seader</i>	153
<i>In re P.B. for Adoption of L.C.</i>	161
Problem	166
G. Conclusion.....	167
CHAPTER 3. INTESTACY	169
A. Identifying the Net Probate Estate—the Three Buckets of Property.....	172
Problems.....	179
B. Spousal Share.....	180
UPC § 2–101. Intestate Estate	183
UPC § 2–102. Share of Spouse	183
Problems.....	186
Miss. CODE § 91–1–7. Descent of Property as Between Husband and Wife	187

CAL. PROB. CODE § 6401. Surviving Spouse or Domestic Partner Intestate Share of Decedent's Estate.....	188
Problems.....	189
C. Shares of Children and Other Descendants	196
UPC § 2-103. Share of Heirs other than Surviving Spouse.....	198
1. Classic Per Stirpes (CPS).....	198
2. Per Capita by Generation (PCBG).....	202
UPC § 2-106	204
3. Per Capita with Representation (Modern per Stirpes) (PCR or MPS)	204
Problems.....	206
<i>Wingate v. Est. of Ryan</i>	207
<i>Est. of Obata</i>	208
<i>Woodward v. Comm'r of Social Security</i>	212
D. Shares of Ancestors and Collateral Relatives	213
UPC § 2-103. Share of Heirs other than Surviving Spouse.....	214
UPC § 2-105. No Taker.....	215
<i>Makila Land Co., LLC v. Heirs or Assigns of Apa'a</i>	217
Problems.....	219
<i>Est. of Sheppard v. Junes</i>	223
Problem	226
E. Escheat	228
F. Advancements	229
UPC § 2-109. Advancements.....	229
Problems.....	231
G. Conclusion	232
CHAPTER 4. A BRIEF INTRODUCTION TO THE TOOLS OF ESTATE PLANNING	235
A. Wills	239
1. Forms and Formalities	239
UPC § 2-501. Who May Make Will.....	239
UPC § 2-502. Execution; Witnessed or Notarized Wills; Holographic Wills...	240
UPC § 2-503. Harmless Error.....	244
<i>Bitetzakis v. Bitetzakis</i>	247
<i>Irving v. Divito</i>	248
<i>In re Est. of Baker</i>	250

	<i>McKay v. Kimble</i>	252
	<i>In re Est. of Wiltfong</i>	253
	Problems.....	259
2.	Holographic Wills.....	260
3.	Proving a Will.....	264
	<i>In re Est. of Peters</i>	268
	<i>In re Burke's Est.</i>	269
	<i>Chester v. Smith</i>	272
	<i>In re Est. of Pittson</i>	273
	<i>In re Est. of Miller</i>	274
	<i>In re Daly's Will</i>	275
	<i>Flagle v. Martinelli</i>	276
	Problems.....	279
4.	Interested Witnesses and Purging Statutes.....	280
	<i>Smith v. DeParry</i>	284
	Problems.....	288
5.	Integration.....	289
	<i>Keener v. Archibald</i>	292
	<i>Est. of Beale</i>	293
	<i>DeGraaf v. Owen</i>	295
	<i>Walsh v. St. Joseph's Home for the Aged</i>	296
	<i>Est. of Horton</i>	297
	<i>Swain v. Lee</i>	298
	Problems.....	301
6.	Incorporation by Reference, Separate Writing, and (F)acts of Independent Significance.....	303
	UPC § 2-510. Incorporation by Reference.....	304
	UPC § 2-513. Separate Writing Identifying Devise of Certain Types of Tangible Personal Property.....	304
	UPC § 2-512. Events of Independent Significance.....	305
	UPC § 2-511. Testamentary Additions to Trusts.....	308
	FLA. STAT. ANN. § 736.0403(2)(b).....	309
	<i>Clark v. Greenhalge</i>	310
	<i>Est. of Richardson</i>	314
	<i>In re Tipler</i>	316
	Problems.....	318

7.	Publication, Republication, and Codicils	319
	<i>In re Est. of Hendler</i>	322
	<i>In re Est. of Wells</i>	323
8.	Pros and Cons of Wills	327
B.	Trusts	329
1.	Origins of the Trust	329
	Problems	336
2.	Creation of Trusts—Forms and Formalities	337
	N.Y. EST. POWERS & TRUST LAW § 7-1.17. Execution, Amendment and Revocation of Lifetime Trusts	341
3.	Trust Elements	342
	UTC § 402. Requirements for Creation	342
a.	The Trust Res.	344
	<i>Clymer v. Mayo</i>	350
	UNIFORM TESTAMENTARY ADDITIONS TO TRUSTS ACT, § 1	357
b.	The Trustee and Fiduciary Obligations	361
	<i>Marsman v. Nasca</i>	363
	RESTATEMENT (3d) OF TRUSTS § 50	371
	Problems	372
	96-07: Conflict of Interest; Lawyer as Trustee; Wills; Estates 03/1996	374
c.	Ascertainable Beneficiaries	377
	RESTATEMENT (3d) OF TRUSTS § 44	377
	RESTATEMENT (3d) OF TRUSTS § 45	378
	UTC § 409. Noncharitable Trust without Ascertainable Beneficiary	380
	UTC § 408. Trust for Care of Animal	383
	Problems	387
d.	Intent	387
	<i>Colton v. Colton</i>	388
	<i>Clark v. Campbell</i>	388
	<i>Moss v. Axford</i>	389
	<i>Spicer v. Wright</i>	389
	<i>Goodman v. Goodman</i>	390
	<i>In re Est. of Bolinger</i>	391
	<i>Dunnewind v. Cook</i>	391
	<i>Foster v. Foster</i>	392

4.	Revocability—the Present Transfer Test	394
	<i>Farkas v. Williams</i>	395
	UTC § 601. Capacity of Settlor of Revocable Trust	400
	UTC § 602. Revocation or Amendment of Revocable Trust	400
	UTC § 603. Settlor’s Powers; Powers of Withdrawal	401
	Problem	402
5.	Managing the Property: To Trust or Not to Trust?	403
	<i>Heaps v. Heaps</i>	403
6.	Pros and Cons of Trusts	409
7.	Resulting and Constructive Trusts	411
C.	Powers of Appointment	412
1.	The Donor	420
	<i>Loring v. Marshall</i>	421
2.	The Donee	428
	<i>Holzbach v. United Virginia Bank</i>	429
	<i>In re Tognotti’s Est.</i>	433
	<i>Irwin Union Bank & Trust Co. v. Long</i>	436
	RESTATEMENT (3d) PROPERTY, § 22.3. Creditors of the Donee—General Power Created by Someone Other Than the Donee	437
	Problems	439
3.	Self-Settled Powers	440
4.	Creation of a Power of Appointment	441
5.	Exercise of a Power of Appointment	442
	UPC § 2–608. Exercise of Power of Appointment	445
	<i>Est. of Hamilton</i>	446
	<i>Hargrove v. Rich</i>	447
	<i>Illinois State Trust Co. v. S. Illinois Nat’l Bank</i>	449
	<i>In re Robert L. McDowell Revocable Trust</i>	451
6.	Objects of the Power and Takers in Default	454
	<i>Will of Block</i>	456
	Problems	458
7.	Contracts and Releases of Powers	458
	Problem	459
8.	Pros and Cons of Powers	460
D.	Joint Tenancies	461
	<i>Ostyn v. Olympic</i>	467

1. Multi-Party Accounts	469
<i>Wakim v. Pavlik</i>	471
<i>Lebitz-Freeman v. Lebitz</i>	473
<i>Bernard v. U.S. Department of Interior</i>	476
2. Pros and Cons of Joint Tenancies	478
Problems.....	480
E. Payable on Death, Transferable on Death Designations	481
UPC § 6–101. Nonprobate Transfers on Death.....	485
<i>Sundgaard v. Lundgren</i>	488
UPC § 6–203. Types of Account; Existing Accounts.....	492
UPC § 6–204. Forms.....	492
UPC § 6–211. Ownership during Lifetime	494
UPC § 6–212. Rights at Death	494
UPC § 6–213. Alteration of Rights.....	495
UPC § 6–214. Accounts and Transfers Nontestamentary	496
UPC § 6–216. Community Property and Tenancy By The Entireties.....	496
UPC § 6–221. Authority of Financial Institution	496
UPC § 6–302. Registration in Beneficiary Form; Sole or Joint Tenancy Ownership.....	497
UPC § 6–306. Effect of Registration in Beneficiary Form	497
UPC § 6–307. Ownership on Death of Owner	497
UPC § 6–309. Nontestamentary Transfer on Death	498
1. Pros and Cons of PODs and TODs	500
Problems.....	501
F. Retirement Accounts.....	501
<i>Egelhoff v. Egelhoff</i>	503
G. Life Insurance.....	509
H. Family Limited Partnerships and Miscellaneous Other Will Substitutes	514
I. Conclusion.....	517
CHAPTER 5. WRENCHES AND OTHER GLITCHES: LAPSE, ADEMPTION, ABATEMENT, DISCLAIMER	519
A. Lapse	519
UPC § 2–603. Antilapse; Deceased Devisee; Class Gifts.....	524
UPC § 2–604. Failure of Testamentary Provision	526

MD. CODE, ESTATES AND TRUSTS, § 4–401. Death of Legatee	526
MD. CODE, ESTATES AND TRUSTS, § 4–403. Lapse or Failure of Legacy	527
D.C. CODE § 18–308. Death of Devisee or Legatee; Lapsed or Void Devises or Bequests	527
UPC § 2–603(b)(3)	533
<i>In re Est. of Murphy</i>	534
<i>Lorenzo v. Medina</i>	542
<i>Larson v. The Sec. Nat. Bank of Sioux City</i>	543
<i>Keck v. Walker</i>	545
<i>In re Est. of Harper</i>	546
<i>In re Est. of Snapp</i>	547
Problems	552
B. Ademption	553
UPC § 2–606. Nonademption of Specific Devises; Unpaid Proceeds of Sale, Condemnation, or Insurance; Sale by Conservator or Agent	555
UPC § 2–609. Ademption by Satisfaction	557
UPC § 2–605. Increase in Securities; Accessions	558
<i>Est. of Donovan</i>	562
<i>Spiegel v. KLRU Endowment Fund</i>	563
<i>In re Est. of Greenamyre</i>	564
Problems	568
C. Abatement	569
UPC § 3–902. Distribution; Order in Which Assets Appropriated; Abatement	571
<i>Hayes v. Est. of Hayes</i>	573
<i>Norton-Children’s Hospitals, Inc. v. First Kentucky Trust Co.</i>	575
<i>In re Est. of Goldman</i>	576
Problems	579
D. Exoneration	580
UPC § 2–607. Nonexoneration	580
<i>In re Est. of Mathews</i>	581
<i>Bond v. Est. of Pylant</i>	582
<i>Gibbon v. Est. of Gibbon</i>	583
Problem	584
E. Apportionment	585
<i>Est. of Kuralt</i>	586
Problems	595

F. Disclaimer	595
Uniform Disclaimer of Property Interests Act	598
§ 2–1103. Scope	598
§ 2–1105. Power to Disclaim; General Requirements; When Irrevocable	598
§ 2–1106. Disclaimer of Interest in Property	599
§ 2–1107. Disclaimer of Rights of Survivorship in Jointly Held Property.....	600
§ 2–1109. Disclaimer of Power of Appointment or Other Power Not Held in Fiduciary Capacity.....	601
§ 2–1110. Disclaimer By Appointee, Object, or Taker In Default of Exercise of Power of Appointment.....	601
§ 2–1113. When Disclaimer Barred or Limited.....	601
<i>Est. of Baird</i>	603
<i>Will of Hall</i>	605
Problems.....	612
G. Simultaneous Death	612
USDA § 2. Requirement of Survival by 120 Hours Under Probate Code	613
<i>Est. of Lensch</i>	614
<i>In re Est. of Miller</i>	615
<i>Janus v. Tarasewicz</i>	617
Problems.....	621
H. Conclusion	622
CHAPTER 6. PROTECTING THE CLIENT: PLANNING FOR INCAPACITY AND DEATH	625
A. The Golden Years: A Comfortable Retirement, Asset Protection, and a Good Succession Plan	628
1. Retirement Planning.....	629
2. Asset Protection and Planning for Disability.....	633
a. Putting the Tools to Work	634
Problems.....	640
b. The Durable Power of Attorney	641
Statutory Form Power of Attorney: Important Information	643
<i>In re Est. of Curtis</i>	650
<i>Burchfield v. McMillian-Ferguson</i>	651
c. Self-Settled Trusts and Powers—the Revocable Living Trust.....	653
Problem	656

d. Asset Protection—Irrevocable Trusts	657
i. Medicaid Trusts	658
ii. Supplemental Needs Trusts for the Disabled.....	661
iii. Domestic Asset Protection Trusts (DAPTs)	664
B. Health Care Planning, Advance Directives, and Living Wills	666
§ 2. Advance Health-Care Directives	669
<i>Cruzan v. Director, Missouri Dept. of Health</i>	671
<i>Bouvia v. Superior Court</i>	673
<i>Scheible v. Joseph L. Morse Geriatric Center, Inc.</i>	674
<i>Est. of Maxey v. Darden</i>	676
C. Funeral Directives and Disposition of the Body at Death	680
1. Funeral Instructions.....	681
Problems.....	686
2. Organ Donation.....	688
D. Conclusion.....	689
CHAPTER 7. PROTECTING THE LIVING.....	691
A. Spousal Protections: The Elective Share.....	696
1. History of the Elective Share: Dower and Curtesy	697
Problems.....	702
2. The Modern Elective Share.....	703
a. The Net Probate Estate.....	705
755 ILCS § 5/2–8. Renunciation of Will by Spouse.....	706
MISS. CODE § 91–5–25. Right of Spouse to Renounce Will; Form of Renunciation; Right to Intestate Share.....	706
b. The Augmented Estate	709
FLA. STAT. § 732.2035—Property Entering into Elective Estate.....	710
FLA. STAT. § 732.2065—Amount of the Elective Share.....	712
Problems.....	713
FLA. STAT. § 732.2075—Sources from Which Elective Share Payable; Abatement	716
c. The UPC’s Graduated Super Augmented Estate.....	722
UPC Part 2—Introduction	723
UPC § 2–202. Elective Share	723
UPC § 2–203. Composition of the Augmented Estate; Marital-Property Portion.....	725

ALABAMA CODE § 43-8-70.....	727
Problems.....	728
UPC § 2-209. Sources from Which Elective Share Payable	730
<i>In re Est. of Cross</i>	740
<i>Est. of Heil v. Heil</i>	742
<i>Lovett v. Lovett</i>	744
<i>In re Wurcel</i>	746
Problem	750
3. Community Property.....	750
4. Trusts and Powers Protecting the Surviving Spouse.....	753
a. Elective Share Trusts	757
b. Credit Shelter and Marital Deduction Trusts (the So-Called AB Trust Regime)	758
i. The Credit Shelter Trust.....	760
ii. The Marital Deduction Trust	761
Problems.....	766
5. Pre-Nuptial Agreements Waiving Spousal Protections	766
UNIFORM PREMARITAL AGREEMENT ACT (1983).....	768
UPC § 2-213. Waiver of Right to Elect and of Other Rights.....	770
B. Protections for Children.....	773
1. Guardianships and Custodianships	775
2. Trusts and Powers for Minors.....	780
a. Basic Mandatory or Discretionary Trust	781
b. Support Trusts.....	782
<i>Austin v. U.S. Bank of Washington</i>	785
<i>Finch v. Wachovia Bank & Trust Co.</i>	788
Problems.....	791
3. Spendthrift Trusts.....	792
<i>In re Est. of Vought</i>	795
<i>Sligh v. First Nat'l Bank of Holmes County</i>	797
<i>Klabacka v. Nelson</i>	798
Problems.....	801
C. Pretermission	802
UPC § 2-301. Entitlement of Spouse; Premarital Will.....	803
UPC § 2-302. Omitted Children	804
CAL. PROB. CODE § 21622.....	806

<i>In re Est. of Tollefsen</i>	807
<i>In re Est. of Will</i>	809
<i>Bailey v. Warren</i>	811
Problem	814
D. Conclusion	815
CHAPTER 8. PLANNING FOR FUTURE GENERATIONS	817
A. Estates and Future Interests	819
1. The Fee Simple Estate	823
Problems	827
<i>Evans v. Abney</i>	830
<i>Cathedral of the Incarnation in the Diocese of Long Island, Inc. v. Garden City Co.</i>	836
Problems	841
2. Life Estates, Terms of Years, and Remainders	842
Problems	852
<i>Cain v. Finnie</i>	853
<i>Dunkel v. Hilyard</i>	855
<i>Cooley v. Williams</i>	856
<i>Guilliams v. Koonsman</i>	857
Problems	861
3. Contingent and Vested Remainders: Confusion Compounded	862
<i>Webb v. Underhill</i>	865
<i>Est. of Krooss</i>	868
Problems	871
4. Survivorship	872
<i>Est. of Houston</i>	874
UPC § 2-707. Survivorship with Respect to Future Interests under Terms of Trust; Substitute Takers	887
Problems	892
5. Class Gifts	892
a. Identifying the Class Members	894
b. Determining When the Class Opens and When It Closes	896
<i>Central Trust Co. of Northern Ohio, N.A. v. Smith</i>	901
c. Can We Close the Class Early?	906
<i>In re Earle's Est.</i>	907

Problems.....	911
6. Coda.....	912
B. The Rule Against Perpetuities.....	913
1. The Common Law Rule Against Perpetuities.....	919
<i>Est. of Stolba</i>	927
<i>Walker v. Bogle</i>	935
<i>Dickerson v. Union Nat'l Bank of Little Rock</i>	936
<i>Nelson v. Kring</i>	936
<i>Kennewick Public Hospital Dist. v. Hawe</i>	937
<i>Security Trust Co. v. Cooling</i>	938
<i>Meduna v. Holder</i>	938
<i>Hagemann v. National Bank & Trust Co.</i>	939
<i>Rogers v. Rooth</i>	940
Problem.....	940
C. Modern Modifications to the Rule Against Perpetuities.....	945
1. <i>Cy Pres</i>	946
USRAP § 3. Reformation.....	946
2. Wait and See.....	947
3. The Uniform Statutory Rule Against Perpetuities (USRAP).....	948
Section 1. Statutory Rule Against Perpetuities.....	949
4. Extended or Abolished Perpetuities Periods for Trusts.....	950
5. RAP as Applied to Powers.....	951
Problems.....	952
D. Dynasty Trusts.....	953
E. Conclusion.....	957
CHAPTER 9. PLANNING FOR TAX MINIMIZATION: THE TAX CONSEQUENCES OF DONATIVE TRANSFERS.....	959
A. History of the Government's Share.....	962
B. The Transfer Tax System.....	967
1. When Is a Gift Not a Gift?.....	968
<i>Smith v. Shaughnessy, Collector of Internal Revenue</i>	969
<i>Stewart v. State of California</i>	972
<i>Holtz's Est. v. Comm'r</i>	974
2. Jointly Owned Property and Intra-Spousal Gifts.....	978

3.	Free Use of Property and Below Market Interest Loans	979
4.	Exercise, Release, or Lapse of a General Power of Appointment	980
5.	Disclaimers of Interests in Property	982
C.	The Estate Tax	984
1.	Property Owned at Death	987
2.	Near Death Transfers.....	987
3.	Transfers with Retained Enjoyment	988
4.	Transfers Taking Effect at Death and Revocable Transfers.....	989
5.	Other Inclusions for Certain Types of Assets.....	990
D.	Tax-Free Transmission of Wealth: The Utilization of Deductions, Exclusions, and Credits	994
1.	Amounts <i>Excluded</i> from Gift Taxation.....	994
a.	Qualified Transfers	994
b.	Annual Exclusion Gifts	995
	<i>Crummey v. C.I.R.</i>	997
	<i>Est. of Cristofani v. Comm’r</i>	1002
2.	Deductions Common to Estate and Gift Tax	1003
a.	Charitable Deductions and Charitable Trusts	1004
	<i>Shendandoah Valley National Bank v. Taylor</i>	1006
	<i>Marsh v. Frost Nat’l Bank</i>	1008
	<i>Griffin v. U.S.</i>	1009
	<i>Est. of Kidd</i>	1011
	RESTATEMENT (3d) OF TRUSTS § 28. Charitable Purposes	1013
	UTC § 405. Charitable Purposes; Enforcement	1013
	<i>Est. of Breeden</i>	1013
	Problem	1015
	UTC § 413. Cy Pres.....	1017
	<i>Evans v. Abney</i>	1017
	<i>Est. of Buck</i>	1018
	The Barnes Foundation.....	1019
	The Bishop Estate.....	1019
b.	Marital Deduction	1021
3.	Additional <i>Deductions</i> Against the Estate Tax	1026
4.	Unified <i>Credit</i> Against Estate and Gift Taxes	1027
5.	Generation Skipping Transfer Taxes	1028
6.	Valuation Basics	1030

E. Effective Estate Planning	1033
1. Tax Benefits of Making Lifetime Gifts.....	1033
2. Choosing Property to Give Away—Basis and Recognition of Gain	1035
F. Conclusion	1036
CHAPTER 10. REVOCATION, MODIFICATION, AND TERMINATION OF TESTAMENTARY DOCUMENTS	1039
A. Slayer Statutes	1040
UPC § 2–803. Effect of Homicide on Intestate Succession, Wills, Trusts, Joint Assets, Life Insurance, and Beneficiary Designations	1041
<i>In re Est. of Schunk</i>	1044
<i>Bell v. Casper</i>	1045
<i>Newton v. Newton</i>	1046
<i>In re Est. of Kissinger</i>	1046
<i>Ford v. Ford</i>	1047
<i>Castro v. Ballesteros-Suarez</i>	1048
Problems.....	1051
B. Elder Abuse	1052
RCW 11.84.020: Slayer or abuser not to benefit from death	1054
RCW 11.84.030: Slayer or abuser deemed to predecease decedent.....	1054
<i>In re Est. of Haviland</i>	1054
<i>Carrasco v. State</i>	1056
<i>In re Est. of Evans</i>	1057
Problem	1059
C. Revocation upon Divorce	1059
UPC § 2–802. Effect of Divorce, Annulment, and Decree of Separation	1059
UPC § 2–804. Revocation of Probate and Nonprobate Transfers by Divorce; No Revocation by Other Changes of Circumstances	1060
<i>Clymer v. Mayo</i>	1063
<i>Egelhoff v. Egelhoff</i>	1064
755 ILCS 5 Sec. 4–7. Revocation—Revival.....	1065
760 ILCS 35 Sec. 1. Trusts and Dissolution of Marriages Act.....	1066
755 ILCS 45 Sec. 2–6. Effect of Disability—Divorce [On Powers of Attorney].....	1066
<i>Williams v. Gatling</i>	1067
Problem	1068
Problems.....	1071

D. Revocation by the Testator	1073
UPC § 2-507. Revocation by Writing or by Act.....	1073
<i>Peterson v. Harrell</i>	1077
<i>Dowdy v. Smith</i>	1081
<i>In re Est. of Martinez</i>	1082
<i>Southtrust Bank of Alabama v. Winter</i>	1084
Problems.....	1088
N.Y. SURR. CT. PROC. ACT § 1407. Proof of Lost or Destroyed Will	1090
Problems.....	1094
E. Revival and DRR	1095
K.R.S. 394.100.....	1096
N.Y. E.P.T.L. § 3-4.6. Revocation or Alteration of Later Will Not to Revive Prior Will or Any Provisions Thereof	1096
FLA. STAT. § 732.509. Revocation of Codicil.....	1097
UPC § 2-509. Revival of Revoked Will	1097
CAL. PROB. CODE § 6123.....	1098
<i>Kroll v. Nehmer</i>	1099
<i>In re Est. of Murphy</i>	1105
Problem	1111
F. Modification of Testamentary Documents for Mistake	1112
UPC § 2-805. Reformation to Correct Mistakes	1113
UPC § 2-806. Modification to Achieve Transferor’s Tax Objectives.....	1113
UTC § 412. Modification or Termination Because of Unanticipated Circumstances or Inability to Administer Trust Effectively	1114
UTC § 414. Modification or Termination of Uneconomic Trusts	1114
UTC § 415. Reformation to Correct Mistakes.....	1115
UTC § 416. Modification to Achieve Settlor’s Tax Objectives.....	1115
G. Modification or Termination by the Settlor	1115
H. Modification or Termination of Trusts by the Beneficiaries	1117
UTC § 410. Modification or Termination of Trust; Proceedings for Approval or Disapproval	1118
UTC § 411. Modification or Termination of Noncharitable Irrevocable Trust by Consent	1119
<i>In re Est. of Brown</i>	1121
<i>American Nat’l Bank of Cheyenne v. Miller</i>	1122
<i>Claffey v. National City Bank</i>	1123
<i>Shepard v. Barrell</i>	1124

I. Conclusion	1126
CHAPTER 11. LITIGATING TESTAMENTARY DOCUMENTS	1129
A. Mental Capacity	1131
CAL. PROB. CODE § 6100.5.....	1132
<i>Barnes v. Marshall</i>	1137
<i>In re Strittmater</i>	1139
<i>Breeden v. Stone</i>	1140
<i>Paine v. Sullivan</i>	1141
<i>Parish v. Parish</i>	1144
<i>Matter of Turner</i>	1146
Problem	1151
B. Undue Influence	1153
<i>Latham v. Father Divine</i>	1156
<i>Will of Moses</i>	1157
<i>Bell v. Hutchins</i>	1160
<i>Hoffman v. Kohns</i>	1163
Problem	1169
C. Mistake	1169
UPC § 2–805. Reformation to Correct Mistakes	1171
RESTATEMENT (3d) PROPERTY § 12.1. Reforming Donative Documents to Correct Mistakes.....	1171
N.J. ST. 3B:3–33.1. Testator’s Intention; Settlor’s Intention; Rules of Construction Applicable to Wills, Trusts and Other Governing Instruments	1172
<i>Brinker v. Wobaco Trust Ltd.</i>	1173
<i>Mahoney v. Grainger</i>	1174
<i>In re Est. of Flores</i>	1175
<i>In re Est. of Patrick</i>	1176
<i>Matter of Est. of Smelser</i>	1178
Problem	1180
D. Ambiguities (Latent and Patent) and Admission of Extrinsic Evidence	1181
<i>In re Est. of Camas</i>	1184
<i>In re Est. of Flood</i>	1186
<i>In re Est. of Sherry</i>	1187
<i>Est. of Gill ex rel. Grant v. Clemson University Foundation</i>	1190
<i>Est. of Mousel</i>	1193

Problems.....	1196
E. Fraud and Misrepresentation	1197
<i>McDaniel v. McDaniel</i>	1200
<i>In re Coviello</i>	1202
<i>In re Est. of Richmond</i>	1203
Mysterious Case of Huguette Clark.....	1205
F. Tortious Interference with Expectancy.....	1207
<i>Peralta v. Peralta</i>	1210
<i>Economopoulos v. Kolaitis</i>	1214
<i>Allen v. Hall</i>	1216
G. In Terrorem Clauses	1221
UPC § 2–517. Penalty Clause for Contest	1223
N.Y. E.P.T.L. § 3–3.5. Conditions Qualifying Dispositions; Conditions Against Contest; Limitations Thereon	1224
<i>Hallman v. Bosswick</i>	1226
<i>Haynes v. First Nat’l State Bank of New Jersey</i>	1227
<i>Savage v. Oliszcak</i>	1229
<i>Schwartz v. Schwartz</i>	1230
H. Conclusion.....	1233
 CHAPTER 12. PROFESSIONAL RESPONSIBILITY	 1235
A. Conflicts of Interest.....	1241
MRPC 1.7. Conflict of Interest: Current Clients	1242
MRPC 1.8. Conflict of Interest: Current Clients: Specific Rules.....	1243
<i>Bishop v. Maurer</i>	1245
<i>In re Est. of Klarner</i>	1247
<i>Baker Botts, LLP v. Cailloux</i>	1248
Problems.....	1252
1. The Special Case of Divorce.....	1252
<i>Oregon Ethics Opinion</i>	1253
<i>Smith v. Hastie</i>	1254
<i>Tensfeldt v. Haberman</i>	1256
2. The Lawyer as Planner and Fiduciary.....	1259
<i>In re Est. of Lowenstein</i>	1261
<i>In re Matter of Ryan</i>	1262
<i>Est. of Devroy</i>	1264

Massachusetts Bar Association Ethics Opinion.....	1267
3. The Attorney Witness Rule.....	1269
MRPC 3.7. Lawyer as Witness	1269
<i>Est. of Waters</i>	1270
<i>Pew Trust (No. 2)</i>	1273
<i>Eccles v. Nelson</i>	1274
B. Disclosure of Confidential Information	1277
MRPC 1.6. Confidentiality of Information	1277
Washington Ethics Opinion.....	1282
Maine Ethics Opinion.....	1283
South Dakota Ethics Opinion.....	1286
California Bar Formal Opinion.....	1287
C. Malpractice and Duty to Beneficiaries	1290
<i>Babcock v. Malone</i>	1292
<i>Jenkins v. Wheeler</i>	1293
<i>Jones v. Wilt</i>	1295
D. Gifts to Lawyers	1297
MRPC 1.8	1298
<i>Sandford v. Metcalfe</i>	1301
<i>Est. of Robde</i>	1302
<i>In re Est. of Southwick</i>	1303
CAL. PROB. CODE § 21380.....	1306
V.T.C.A. ESTATES CODE § 254.003. Devises to Certain Attorneys and Other Persons	1307
E. Sample Engagement Letter	1308
F. Conclusion	1316
APPENDIX. ANSWERS AND EXPLANATIONS	1319
INDEX	1379