

OUTLINE

PREFACE TO THE SEVENTH EDITION	V
PREFACE TO THE SIXTH EDITION.....	VII
TABLE OF CASES	XXXI
TABLE OF STATUTES	XXXV
TABLE OF AUTHORITIES.....	LXXVII

Chapter 1. General Introduction and

History	1
§ 1.01 General Introduction	1
§ 1.02 History	3
§ 1.03 Development of the Uniform Probate Code and Uniform Trust Code	4
§ 1.04 Promulgation and Maintenance of the UPC and UTC	10
§ 1.05 Influence of the UPC and UTC	15
§ 1.06 Outline and Overview	17
A. Uniform Probate Code	17
B. Uniform Trust Code.....	21

PART ONE. GENERAL PROVISIONS, DEFINITIONS AND PROBATE JURISDICTION OF THE COURT

Chapter 2. General Provisions, Definitions and Probate Jurisdiction of the Court

§ 2.01 Purposes, Rules of Construction, Policies and Definitions	27
A. Purposes and Rules of Construction....	27

	B. Overriding Policies and Provisions.....	28
	1. Fraud	28
	2. Perjury for Falsified Documents.....	29
	3. Proof of Death or Status	30
	4. Cost of Living Adjustment of Certain Dollar Amounts	32
	5. Definitions	33
§ 2.02	Jurisdiction, Venue and Courts	35
	A. Jurisdiction and Multiple Venues	35
	B. The Court and Registrar	36
§ 2.03	Notice and Virtual Representation	37
	A. Notice.....	37
	B. When Parties Bound by Others and Virtual Representation.....	39

PART TWO. INTESTATE SUCCESSION, WILLS AND DONATIVE TRANSFERS

	Chapter 3. Intestate Succession and Related Concepts.....	45
§ 3.01	Intestate Succession	45
	A. Introduction	45
	B. General Pattern	48
	C. Shares of the Surviving Spouse, Descendants and Other Relations	54
	1. Shares of the Surviving Spouse and Descendants	54
	2. Shares of Other Relatives	56
	a. Parents and Parents' Descendants	56
	b. Grandparents and Grandparents' Descendants	58
	3. Escheat	61
	4. Factual Illustrations.....	62

	D. Descendants and Representation	71
§ 3.02	Determination of Status.....	80
	A. Introduction to Status	80
	B. Parent-Child Relationships.....	82
	1. Introduction to the Parent-Child Relationship	82
	2. Adopted Persons	83
	3. Afterborn (Posthumous) Persons	90
	4. Nonmarital Issue	91
	5. Assisted Reproduction	92
	6. De Facto Parentage	103
	7. Parental Exclusion	105
	C. Other Special Relationships.....	106
	1. Half-Blooded Persons	106
	2. Relationships by Affinity.....	107
	3. Individuals Related to the Decedent Through More than One Line	108
	4. Aliens or Noncitizens.....	108
	D. Survivorship and Simultaneous Death	109
§ 3.03	Prior Gifts and Transactions	112
	A. Advancements.....	112
	B. Factual Illustrations.....	118
	C. Debtor Heirs.....	121
§ 3.04	Negative Testacy Provision.....	121

Chapter 4. Elective Share of Surviving Spouse, the Augmented Estate, and Election Procedure.....	125
§ 4.01 Elective Share of Surviving Spouse and the Augmented Estate Concept	125
A. Introduction to Spousal Protections	125
B. Elective Share of the Surviving Spouse.....	130
C. The Augmented Estate Calculation	141
§ 4.02 Exclusions from the Augmented Estate	152
§ 4.03 Funding the Elective Share	156
§ 4.04 The Election Procedure	160
Chapter 5. Family Omissions and Protections	165
§ 5.01 Pretermitted Spouses and Children	165
A. Pretermitted Spouse.....	165
B. Pretermitted Children.....	168
§ 5.02 The Family Protections	173
A. Protective Amounts and Their Beneficiaries.....	175
B. Procedural Provisions.....	177
Chapter 6. Will and Donative Transfers	179
§ 6.01 Wills and Related Doctrines	179
A. Introduction	179
1. The Statute of Wills.....	179
2. UPC Policy and Devices	180
3. Formality Analysis	181
4. Strict Construction	182

	5. The Substantial Compliance and Harmless Error Doctrines	184
	6. Dispensing Power	185
	7. Overall Approach	186
§ 6.02	Execution Requirements	187
	A. Testator's Capacity	187
	B. The Ordinary Witnessed or Notarized Will.....	187
	C. The Holographic Will.....	191
	D. Choice of Law and the Out-of-State or International Will	193
	E. The Self-Proved Will.....	199
§ 6.03	Revocation of Wills	200
	A. General Revocation Principles.....	200
	B. Revocation by Physical Act	202
	C. Revocation by Subsequent Instrument	203
	D. Revocation by Operation of Law	206
	E. The Lost or Destroyed Will	207
§ 6.04	Supersession, Revocation and Revival.....	208
	A. Supersession	208
	B. Revival of Revoked Wills	209
	C. Supersession, Revocation and Revival Compared.....	214
§ 6.05	Nonexecuted Documents and Events Affecting Wills.....	217
	A. Incorporation by Reference	217
	B. Testamentary Additions to Trusts ...	220
	C. Events of Independent Significance	222
	D. References to Separate Writings	223

§ 6.06	Peripheral Issues	225
	A. No Contest or Claim Clauses	225
	B. Succession Contracts	226
	C. Confidential Public Depository	229
	D. Will Custodians.....	230

Chapter 7. Rules of Construction

	Applicable to Wills Only.....	233
§ 7.01	Rules of Construction for Wills	233
	A. Introduction to Construction	233
§ 7.02	Devisee Lapse	235
	A. Introduction	235
	B. Scope and Limitations of the Antilapse Protection	237
	C. Application to Relevant Lapse Problems.....	240
	D. Testator's Expressed Contrary Intention.....	243
	E. Factual Illustrations.....	245
§ 7.03	Ademption and Nonademption by Extinction	254
§ 7.04	Accessions Regarding Devises of Securities.....	262
§ 7.05	Ademption by Satisfaction	267
§ 7.06	Miscellaneous Rules of Construction	274
	A. After-Acquired Property.....	274
	B. Right of Nonexoneration	274

Chapter 8. Rules of Construction

	Applicable to Wills and to Other Governing Instruments.....	277
§ 8.01	Introduction to Rules of Construction for All Governing Instruments	277

§ 8.02 Survivorship Duration
 Determinations 278

§ 8.03 Antilapse of Beneficiary Designations
 in Nominative Instruments 280

§ 8.04 Relational Terminology for Dispositive
 Purposes 282

 A. Beneficiary Status 282

 B. Multiple Generation Class Gifts 289

 C. Determination of Representation 290

§ 8.05 Constructional Rules for Future
 Interests 291

 A. Introduction to Future Interests 291

 B. Future Interests in Trust 292

 1. Survivorship 292

 2. Antilapse 295

 C. Worthier Title 296

 D. Definition of “Heirs” 297

§ 8.06 Reformations and Modification of
 Instruments for Mistake or Tax
 Error 298

§ 8.07 Choice of Law 299

**Chapter 9. General Miscellaneous
 Provisions and Topics 301**

§ 9.01 Introduction to Miscellaneous
 Matters 301

§ 9.02 Termination of Marital Status 302

 A. Introduction 302

 B. Definition of a Surviving Spouse 302

 C. Revocation of Interests and Powers
 by Operation of Law 304

§ 9.03 Effect of Homicide 307

§ 9.04	Protection of Payors and Third Parties	312
§ 9.05	Powers of Appointment	314
	A. Introduction and Definitions.....	314
	B. Exercise of Power of Appointment.....	318
	C. Virtual Representation and General Powers of Appointment	321
§ 9.06	Uniform Disclaimer of Property Interests Act (1999/2006)	324
§ 9.07	Uniform Statutory Rule Against Perpetuities.....	333
	A. Introduction	333
	B. Statutory Rule Against Perpetuities	338
	C. Date of Creation of Interest	341
	D. Reformation.....	342
	E. Exclusions from the Rule	345
	F. Date of Application	346
	G. Illustrations Using the USRAP	347
	H. Honorary Trusts	351

PART THREE. PROBATE OF WILLS AND ADMINISTRATION

Chapter 10. Administration and Administration Avoidance Procedures.....	355
§ 10.01 Introduction to the Flexible System of Administration.....	355
A. Introduction to the Process of Administration.....	355
B. Illustrative Techniques	360
1. Estate Valued at Less than \$25,000	360

2. Estate Valued at Less than Family Protections and Expenses	361
a. Intestacy	362
b. Testacy.....	365
3. Estates Valued in Excess of Family Protections and Expenses	366
a. Intestacy	367
b. Testacy.....	370
4. Protective Devices.....	371
a. Demand for Notice	372
b. Formal Proceedings	372
c. Supervised Administration	373
d. Other Protective Devices	374
e. Bond.....	375
f. Improper Distribution	375
g. Fraud and Perjury	376
h. Continuing Jurisdiction over Personal Representatives and Applicants.....	377
5. Will Contests.....	377
§ 10.02 General Provisions on Probate of Wills and Administration	381
A. Devolution of Decedents' Estates and the Necessity of Probate and Administration.....	381
B. Time Limitations on Probate and Administration.....	383
C. Jurisdiction, Venue and Related Matters for Probate and Administration.....	385
1. Jurisdiction over the Subject Matter.....	385

2. Jurisdiction over the Person and Notice.....	386
3. Venue.....	388
4. Independent Proceedings and Joinder.....	389
5. Demand for Notice.....	391
6. Decedent's Causes of Action.....	392
§ 10.03 Procedures for Succession Without Administration.....	393
A. The Passive and Affidavit Procedures for Small Estates.....	393
B. The Summary Procedure for Small Estates.....	395
C. Universal Succession.....	397
1. Purpose and Effect of Universal Succession.....	397
2. Contents of Application for Universal Succession.....	400
3. Registrar's Responsibilities and Findings in Universal Succession.....	401
4. Powers and Liabilities of Universal Successors.....	403
5. Creditors' Rights Under Universal Succession.....	404
6. Responsibility Among Universal Successors.....	407
Chapter 11. Appointment and Testacy Proceedings.....	409
§ 11.01 Informal and Formal Appointment Proceedings.....	409
A. Introduction.....	409

B. Informal Appointment.....	410
1. Initiation and Scope.....	410
2. Contents of Application	411
3. Registrar’s Responsibilities and Findings.....	414
C. Formal Appointment	417
§ 11.02 Informal Probate and Formal Testacy Proceedings	419
A. Informal Probate.....	419
1. Initiation and Scope.....	419
2. Contents of Application	420
3. Registrar’s Responsibilities and Findings.....	422
4. Special Notice Requirement.....	426
B. Formal Testacy	426
1. Purpose and Effect.....	426
2. Contents of Petition	428
3. Pre-Hearing Notice	430
4. Court Responsibilities and Content of Order	431
5. The Uncontested Case	433
6. The Contested Case	434
7. Effect of Order.....	436
8. Formal Testacy and the Missing Person	438
§ 11.03 Supervised Administration	440
Chapter 12. The Personal Representative....	447
§ 12.01 Introduction to the Personal Representative	447
§ 12.02 Priority and Disqualification for Appointment	448

§ 12.03	Appointment, Bonding and Control	454
	A. Appointment	454
	B. Bonding	455
	C. Control Procedures	459
§ 12.04	Duties, Powers and Liabilities	460
	A. Introduction to Duties, Powers and Liabilities	460
	B. Duties	461
	C. Powers	466
	D. Liabilities and the Exculpatory Provision.....	467
§ 12.05	Liability of Third Persons	469
§ 12.06	Successor and Co-Personal Representatives	471
§ 12.07	Compensation and Expenses of the Personal Representative and Other Agents.....	472
§ 12.08	The Personal Representative's Liability to Third Persons	475
§ 12.09	Termination and Removal	476
§ 12.10	The Special Administrator	479
§ 12.11	Foreign Personal Representative and Ancillary Administration	483
	A. The Multi-State Estate.....	483
	B. The Domiciliary Foreign Personal Representative	485
	C. Jurisdiction over the Foreign Personal Representative	488
	D. Coordination of Domiciliary and Ancillary Proceedings.....	489
Chapter 13. Creditors' Claims		493
§ 13.01	Introduction to Creditors' Claims.....	493

§ 13.02	Notice and Nonclaim Limitations.....	494
§ 13.03	Presentation, Allowance and Rejection of Claims.....	499
§ 13.04	Payment of Claims	501
§ 13.05	Secured Claims and Encumbered Assets	504

Chapter 14. Distribution and Closing

	Provisions.....	507
§ 14.01	General Distribution Rules.....	507
§ 14.02	Distribution in Kind	513
§ 14.03	Apportionment of Estate Taxes	517
§ 14.04	Closing Estates	520
	A. Informal Closing Procedure	520
	B. Distributee Liability	522
	C. Formal Closing Proceedings.....	524
	D. Discharge of Security for Fiduciary Performance	528
	E. Subsequent Administration	528
§ 14.05	Settlement Agreements.....	529

PART FOUR. THE PROTECTION OF PERSONS UNDER LEGAL DISABILITY AND THEIR PROPERTY

Chapter 15. Guardianship, Protective

	Proceedings, and Powers of Attorney	535
§ 15.01	Introduction to Guardianship, Protective Proceedings, and Powers of Attorney.....	535
§ 15.02	General Provisions Relating to Guardianships and Conservatorships....	537
§ 15.03	Organization, Interrelationships and Definitions.....	539

§ 15.04	Jurisdiction and Venue for Guardianship and Protective Proceedings	542
	A. Jurisdiction in Proceedings Involving Minors.....	542
	B. Jurisdiction in Matters Relating to Incapacitated Adults	543
	C. Venue.....	548
§ 15.05	Miscellaneous Avoidance Devices.....	549
§ 15.06	Durable Powers of Attorney.....	551
	A. Execution and Termination	552
	B. Powers Granted	554
	C. Judicial Review of the Agent's Actions.....	556
	D. Acceptance of Power by Third Parties	557
§ 15.07	The Guardian of a Minor.....	558
§ 15.08	The Guardian of an Incapacitated Person.....	562
§ 15.09	Protective Proceedings and the Conservator.....	571
	A. Generally.....	571
	B. Selection and Bonding of the Conservator.....	578
	C. Powers of the Court	580
	D. Powers, Duties and Liabilities of the Conservator.....	582
	E. The Conservator's Title	589
	F. Liability of Third Persons	590
	G. Creditors' Claims	591
	H. The Conservator's Liability to Third Persons	592

	I. Duration, Termination and Removal of the Conservator	593
§ 15.10	The Foreign Conservator	594
§ 15.11	Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act and Intrastate Guardianships	596
	A. Definitions	598
	B. Communication and Cooperation Among the States.....	599
	C. Transfer of Guardianships and Conservatorships Among the States.....	601
	D. Registration and Recognition of Orders from Other States	604

**PART FIVE. NONPROBATE
TRANSFERS**

Chapter 16.	Nonprobate Transfers.....	609
§ 16.01	Nontestamentary Contractual Arrangements	609
	A. Nonprobate Transfers Generally	609
	B. Nonprobate Transferees' Liability for Claims Against the Estate	612
§ 16.02	Multiple-Person Accounts	614
	A. Introduction to Multiple-Person Accounts	614
	B. Definitions and General Provisions for Multiple-Person Accounts	616
	C. Multiple-Party Account Forms for Financial Institutions.....	620
	D. Ownership During Lifetime of Multiple-Party Accounts	620

	E. Rights at Death for Multiple- Party Accounts	621
	F. Rights of Creditors in Multiple-Party Accounts	624
	G. Protection for Financial Institution Using Multiple-Party Accounts	625
§ 16.03	Uniform TOD Security Registration Act.....	628
	A. Introduction to Securities Registered in Beneficiary Form	628
	B. Definitions for Securities Registered in Beneficiary Form	628
	C. Ownership During Lifetime of the Owner of Securities Registered in Beneficiary Form	630
	D. Ownership on the Death of the Owner of Securities Registered in Beneficiary Form	633
	E. Protection for Registering Entities Using Security Registration in Beneficiary Form	634
§ 16.04	Uniform Real Property Transfer on Death Act	635
	A. Introduction to Transfer on Death Deeds	635
	B. Definitions Under the Real Property TOD Act.....	635
	C. Effect of TOD Deed During the Lifetime of the Transferor	637
	D. Effect of TOD Deed When the Transferor Dies	639

**PART SIX. TRUSTS: THE UNIFORM
TRUST CODE AND TRUST PROVISIONS
OF THE UNIFORM PROBATE CODE**

**Chapter 17. General Provisions Relating to
Trusts..... 645**

§ 17.01 UTC Article 1: General Provisions and
Definition 645

 A. Introduction 645

 B. Definitions..... 647

 1. In General 647

 2. Qualified Beneficiary..... 650

 3. Knowledge 654

 C. Default and Mandatory Rules and
 Common Law 656

 D. Governing Law and Principal Place
 of Administration..... 658

 E. Notice..... 661

 F. Non-Judicial Settlements..... 662

 G. Rules of Construction of Trust
 Terms..... 663

§ 17.02 UTC Article 2: Judicial Proceedings..... 664

 A. Personal Jurisdiction and Trust
 Registration..... 664

 B. Subject Matter Jurisdiction 668

 C. Venue..... 669

 D. Forum Non Conveniens for Foreign
 Trusts 670

 E. Foreign Trustees..... 670

§ 17.03 UTC Article 3: Representation 673

 A. Representation Generally 674

 B. Virtual Representation Under the
 UTC 676

Chapter 18. Creation and Modification of Trusts	679
§ 18.01 UTC Article 4: Creation, Validity, Modification, and Termination of Express Trusts	679
A. Creation of a Valid Trust	679
1. Requirements for the Creation of a Valid Trust	679
2. Methods of Creation	681
3. The Requirement of Trust Property	683
4. Requirements Relating to Trust Beneficiaries.....	684
a. The Definite Beneficiary Requirement.....	685
b. Charitable Trusts.....	686
c. Trusts for Animals.....	687
d. Trusts of Limited Duration for Noncharitable Purposes	689
e. The Benefit of the Beneficiary Rule.....	690
B. Modification, Termination, Reformation, Consolidation and Division of Trusts	691
1. Modification or Termination by Beneficiaries.....	692
a. Joint Action by the Beneficiaries and the Settlor	692
b. Action by the Beneficiaries Only	695

2. Modification or Termination by Court Order	697
a. Modification or Termination Due to Unanticipated Circumstances	698
b. Modification or Termination of Uneconomic Trusts	699
c. Reformation to Correct Mistakes	701
d. Modification to Achieve Tax Objectives	702
e. Modification or Termination of Charitable Trusts.....	704
3. Modification or Termination by the Trustee.....	706
a. Modification or Termination of Uneconomic Trusts	707
b. Consolidation or Division of Trusts.....	707
§ 18.02 UTC Article 5: Creditors' Claims: Spendthrift and Discretionary Trusts	709
A. Claims by Creditors of a Beneficiary	710
1. General Rule	711
2. Spendthrift Trusts	712
3. Discretionary Trusts.....	716
4. Overdue Distributions	719
B. Claims by Creditors of the Settlor	720
1. Rights of Creditors if Trust Is Revocable and Settlor Is Still Alive.....	721

2. Rights of Creditors if Trust Is Irrevocable and Settlor Is Still Alive.....	722
3. Rights of Creditors if Trust Was Revocable and Settlor Has Died ...	723
4. Rights of Creditors if the Trust Was Irrevocable and the Settlor Has Died	724
5. Property over Which an Individual Has a Power of Withdrawal	724
C. Claims by Creditors of the Trustee ...	727
§ 18.03 UTC Article 6: Revocable Trusts	728
A. Capacity to Create a Revocable Trust	731
B. Revocation or Amendment of a Revocable Trust	734
C. Settlor's Powers While Trust Is Revocable.....	740
D. Actions Contesting the Validity of a Revocable Trust	742
Chapter 19. Trust Administration	745
§ 19.01 UTC Article 7: Office of Trustee	745
A. Acceptance of Office of Trustee and Bond.....	745
B. Cotrustees	749
C. Vacancy in Trusteeship and Appointment of Successor	752
D. Trustee Resignation	754
E. Removal of Trustee	755
F. Delivery of Property by Former Trustee	759
G. Compensation of Trustee	760

	H. Reimbursement of Expenses.....	762
§ 19.02	UTC Article 8: Duties and Powers of Trustees.....	763
	A. Duty to Administer the Trust	763
	B. Duty of Loyalty	764
	C. Duty of Impartiality	770
	D. Duty of Prudent Administration	770
	E. Costs of Administration	771
	F. Trustee’s Skills	772
	G. Delegation by Trustee	772
	H. Powers to Direct.....	773
	I. Control and Protection of Trust Property.....	774
	J. Recordkeeping and Identification of Trust Property	774
	K. Enforcement and Defense of Claims.....	775
	L. Collecting Trust Property.....	775
	M. Duty to Inform and Report.....	775
	N. Discretionary Powers; Tax Savings	778
	O. Powers of Trustee	781
	P. Distribution upon Termination	783
§ 19.03	UTC Article 9: Uniform Prudent Investor Act.....	784
	A. Prudent Investor Rule.....	785
	B. Diversification.....	787
	C. Duties at Inception of Trusteeship	788
	D. Reviewing Compliance	788
	E. Language Invoking Standard of Uniform Prudent Investor Act.....	788

§ 19.04	UTC Article 10: Liability of Trustees and Rights of Persons Dealing with Trustees.....	789
	A. Remedies for Breach of Trust	789
	B. Damages.....	791
	C. Attorney’s Fees and Costs	792
	D. Limitation of Action Against Trustee	793
	E. Reliance on Trust Instrument	794
	F. Event Affecting Administration or Distribution.....	795
	G. Exculpation of Trustee	795
	H. Beneficiary’s Consent, Release, or Ratification.....	797
	I. Rights and Protections of Third Parties Who Deal with Trustees.....	797
	1. Limitation on Personal Liability of Trustee.....	797
	2. Interest as General Partner.....	799
	3. Protection of Third Party Who Deals with Trustee	800
	4. Certification of Trust	801
§ 19.05	UTC Article 11: Miscellaneous Provisions.....	802
INDEX.....		805