

# TABLE OF CONTENTS

---

PREFACE .....	V
ACKNOWLEDGMENTS .....	VII
TABLE OF CASES .....	XXI
TABLE OF STATUTES .....	XXVII
<b>Chapter 1. Introduction to Trusts and Estates .....</b>	<b>1</b>
A. What This Course Is About .....	1
B. Life After Death.....	3
C. Historical Notes on Control of Assets After Owners Die .....	6
Commentaries on the Laws of England .....	7
D. Constitutional Rights for a Decedent to Choose a Successor or a Successor to Inherit.....	9
Magoun v. Illinois Trust & Savings Bank .....	10
Knowlton v. Moore .....	17
Hodel v. Irving .....	22
E. Priority of Claims to Assets After an Owner’s Death .....	33
1. Secured Creditors .....	33
2. Family .....	33
3. Unsecured Creditors.....	34
4. Governments, via Taxes.....	34
5. Surviving Spouses .....	35
6. Allocations by the Decedent.....	35
7. Default Rules .....	35
F. Policy Regarding the Extent of Decedent Control over Succession .....	35
1. Control of Assets with Potentially High Idiosyncratic Value .....	36
(a) Moveable Personalty .....	36
(b) Homes, Family Farms, Family Businesses.....	37
2. Control of Assets with Typically Low Idiosyncratic Value .....	38
(a) Fairness.....	39
(b) Efficiency .....	44
(c) Promotion of Families .....	46
(d) Democracy .....	47
<b>Chapter 2. Preliminary Issues.....</b>	<b>49</b>
A. Lawyering Problems Arising from Wealth Transfers .....	49
1. Duties to Intended Beneficiaries .....	49
Parks v. Fink.....	49
2. Conflicts of Clients’ Interests.....	67
A. v. B. ....	67

B.	Limitations Imposed on Recipients .....	79
1.	Status .....	79
	(a) Enslaved People and Noncitizens .....	79
	(b) Minors.....	80
2.	Release or Assignment of an Expectancy.....	80
3.	Disclaimer .....	80
	(a) Why Might Someone Disclaim? .....	81
	(b) Effect on Creditors.....	82
	Drye v. United States .....	82
	(c) Effect on Medicaid Eligibility .....	88
4.	Adultery and Desertion, Abuse, Refusal to Support .....	89
	Matter of Estate of Phelps .....	89
5.	Homicide .....	95
	(a) Constructive Trust.....	95
	Preston v. Chabot .....	95
	(b) Statutory Bar .....	105
	(c) Scope of the Bar .....	106
C.	Property Subject to Transfer .....	106
1.	Posthumously Acquired Rights .....	106
	Shaw Family Archives Ltd. v. CMG Worldwide, Inc. ....	107
2.	Persona and Publicity .....	119
3.	Human DNA .....	119
	(a) Enslaved People (Not Anymore, Obviously and Thankfully).....	119
	(b) Minors.....	119
	(c) Unexecuted DNA Instructions (Gametes and Zygotes) .....	120
	Estate of Kievernagel .....	120

### **Chapter 3. The Default Rules That Apply When the Decedent**

	<b>Fails to Determine Who Takes Next.....</b>	<b>129</b>
A.	The Preference for Relatives in Intestate Succession .....	129
1.	Custom .....	129
	Commentaries on the Laws of England .....	129
2.	Biology (Hamilton, Inclusive Fitness).....	130
3.	The Value of Clear Rules .....	131
B.	The Technical Rules of Intestate Succession.....	132
	UPC § 2–101 .....	132
1.	The Surviving Spouse’s Share .....	133
	UPC §§ 2–102 and 2–102A.....	133
2.	The Share Remaining After the Surviving Spouse’s Share.....	136
	UPC §§ 2–103, 2–105, and 2–106 .....	136
	(a) Descendants .....	140
	(i) Per Stirpes.....	141
	(ii) Per Capita with Representation .....	141
	(iii) Per Capita at Each Generation.....	142
	(iv) The Effect of a Disclaimer .....	143
	UPC § 2–1106.....	145

(b)	Ancestors and Collaterals .....	145
(i)	Parentelic System; UPC .....	146
(ii)	Degree of Relationship System .....	146
(c)	Whole and Half Blood .....	147
(d)	Laughing Heirs .....	147
(e)	Stepchildren (and Their Issue) .....	148
3.	Children .....	148
	Hall v. Hall .....	149
(a)	Adoptees .....	159
(i)	Legal Adoptees .....	159
	UPC §§ 2–118 and 2–119 .....	160
	Hall v. Vallandingham .....	161
	In re Estate of Gallegos .....	165
(ii)	Contracts to Adopt and Equitable Adoption .....	169
	O’Neal v. Wilkes .....	170
	DeHart v. DeHart .....	176
(iii)	Strangers to the Adoption .....	189
(b)	Children Born out of Wedlock .....	190
	UPC § 2–117 .....	190
(c)	Children Resulting from Modern Medicine, Including Posthumously Conceived .....	190
	Astrue v. Capato ex rel. B.N.C. ....	190
	UPA § 708 .....	200
4.	Nearly Simultaneous Deaths .....	202
	Matter of Campbell’s Estate .....	202
	Janus v. Tarasewitz .....	207
	UPC § 2–104 .....	215
	UPC § 2–702 .....	216
5.	Negative Wills .....	218
6.	Advancements .....	219
(a)	Hotchpot .....	219
(b)	Identifying an Advancement .....	220
	UPC § 2–109 .....	221
(c)	Advancements Policy .....	222
	<b>Chapter 4. Avoiding the Default Rules with a Will .....</b>	<b>223</b>
A.	Requirements for a Valid Will .....	223
1.	Intent (or Animus Testandi) .....	225
(a)	No Mistake in the Execution .....	227
(b)	No Coercion, No Duress .....	228
(c)	No Undue Influence .....	228
(i)	Shifting the Burden of Proof for a Confidential Relationship .....	231
	Mueller v. Wells .....	231
(ii)	When Drafters or Lawyers Are Beneficiaries .....	239
(iii)	Other Ways to Deal with Undue Influence, in Addition to Denial of Probate .....	241

(d)	No Fraud .....	241
(i)	Fraud in the Execution.....	242
(ii)	Fraud in the Inducement .....	242
	Puckett v. Krida .....	243
	McDaniel v. McDaniel .....	246
(iii)	Other Remedies for Fraud.....	253
	Schilling v. Herrera .....	254
	Wellin v. Wellin.....	261
(e)	Multiple Wills and Codicils .....	278
(f)	No-Contest Clauses .....	279
(g)	Motivational Clauses.....	281
2.	Capacity .....	282
	UPC § 2–501 .....	282
(a)	General Mental Capacity .....	282
	In re Disciplinary Action Against Kuhn .....	283
	Shepherd v. Jones.....	289
	In re Estate of McIntyre.....	292
(b)	Specific Mental Capacity, Insane Delusion .....	298
	Levin v. Levin .....	299
	In re Strittmater’s Estate.....	301
	Dougherty v. Rubenstein.....	303
(c)	Why Require Capacity? .....	317
3.	Formal Wills .....	320
(a)	Functions of Formalities .....	320
(b)	A Writing.....	325
(c)	Expression of the Animus Testandi.....	325
	The Hermeneutics File .....	326
(d)	Signature.....	328
	In re Estate of Chastain .....	328
	Taylor v. Holt .....	337
(e)	Attestation.....	341
	Kirkeby v. Covenant House .....	342
	Stevens v. Casdorff .....	350
	UPC § 2–502.....	354
	(i) Witness Competence.....	356
	(ii) Self-Proved Wills.....	357
(f)	Notarization .....	358
4.	Informal, Holographic Wills .....	358
5.	Nuncupative Wills .....	359
6.	Further Relaxing the Requirements .....	359
(a)	Narrow Exceptions to the Statutory Formalities .....	359
(b)	Broad Exceptions to the Statutory Formalities.....	361
	(i) Substantial Compliance .....	361
	Estate of Burton v. Didricksen.....	361
	(ii) The Australian Dispensing Power and Harmless	
	Error .....	366
	UPC § 2–503.....	366

	In re Estate of Horton.....	367
	(iii) Questioning and Reforming Harmless Error .....	373
B.	Parts of a Will.....	375
	1. Integration of Wills.....	375
	2. Incorporation by Reference .....	375
	UPC § 2-510 .....	376
	UPC § 2-513 .....	377
	3. Acts of Independent Significance .....	378
C.	Revocation of a Will.....	379
	1. Revocation by Operation of Law .....	379
	(a) Divorce.....	379
	(b) Marriage .....	379
	2. Volitional Revocation .....	379
	UPC § 2-507 .....	380
	(a) Revocation by an Instrument.....	381
	(b) Revocation by a Physical Act .....	381
	Milbourne v. Milbourne.....	382
	Thompson v. Royall .....	387
	In re Will of Litwack.....	391
	(c) Partial Revocation by a Physical Act .....	393
	Patrick v. Patrick.....	394
	(d) Revocation of Codicils and Duplicate Wills.....	404
	3. Dependent Relative Revocation.....	404
	In re Estate of Murphy.....	404
	4. Revival.....	418
	UPC § 2-509 .....	419
	5. Republication by Codicil.....	420
D.	Interpretation or Construction of a Will .....	420
	1. Mistakes .....	421
	Knupp v. District of Columbia .....	421
	UPC § 2-805 .....	426
	2. Plain Meaning, Ambiguities, and Extrinsic Evidence .....	427
	In re Estate of Hyman.....	428
	Breckner v. Prestwood .....	433
	3. Types of Devises .....	442
	4. Beneficiary Dies Before Testator.....	443
	(a) Lapse .....	443
	Estate of Rhoades .....	443
	(b) Antilapse (or Lapse) Statutes .....	449
	UPC § 2-603.....	449
	McGowan v. Bogle .....	453
	(c) Class Gifts .....	458
	5. Changes in Property Devised in Will .....	459
	(a) Ademption by Extinction.....	459
	In re Estate of Donovan.....	459
	UPC § 2-606.....	465

(b)	Stock Splits .....	467
	Strunk v. Lawson.....	467
	UPC § 2-605.....	473
(c)	Ademption by Satisfaction .....	474
	UPC § 2-609.....	474
(d)	Exoneration.....	475
(e)	Abatement: Residuary, General, Specific .....	475
6.	Spouses Omitted from Wills Executed Before Marriage .....	476
	UPC § 2-301 .....	476
7.	Children Omitted from Wills .....	477
	Espinosa v. Sparber, Shevin, Shapo, Rosen and Heilbronner .....	478
	In re Gilmore.....	481
	UPC § 2-302 .....	490
E.	Contracts Relating to Wills.....	491
	UPC § 2-514 .....	492
<b>Chapter 5. Avoiding the Default Rules by Means Other than a Will.....</b>		<b>495</b>
A.	Inter Vivos Gifts .....	495
B.	Shared Property .....	496
1.	Concurrent Interests with the Right of Survivorship .....	496
2.	Community Property.....	498
C.	Payment-on-Death Designations .....	499
1.	Life Insurance.....	499
	Cook v. Equitable Life Assur. Soc. of U.S. ....	500
2.	Pay-on-Death Accounts .....	509
	(a) Bank Accounts .....	509
	(b) Individual Retirement Accounts.....	510
3.	Employer Pensions .....	511
	Egelhoff v. Egelhoff ex rel. Breiner .....	512
4.	Transfer-on-Death Deeds.....	525
D.	Trusts .....	525
1.	Testamentary and Inter Vivos, Revocable and Irrevocable.....	525
2.	Historical Basis.....	526
3.	Requirements.....	527
	In re Estate of Maliszewski .....	528
	Estate of Heggstad .....	533
4.	Revocable Trusts .....	537
	Scalfaro v. Rudloff .....	538
5.	Pour-Over Wills, UPC § 2-511 .....	547
6.	Rights in Trust Assets.....	547
	(a) Revocable Trusts.....	547
	(b) Irrevocable Trusts.....	548
	(i) Mandatory Trusts .....	549
	(ii) Discretionary Trusts.....	549
	(iii) Spendthrift Trusts .....	551
	Hurley v. Hurley .....	553

	Scheffel v. Krueger.....	557
7.	Duties of Trustees.....	563
	Marsman v. Nasca .....	564
8.	Termination and Modification of Trusts .....	573
	Clafin v. Clafin .....	574
	(a) Administrative Deviations .....	578
	(b) Distributive Deviations .....	579
	(c) Trust Decanting.....	581
	(d) Removing a Trustee.....	581
	(e) Trustee Compensation .....	582
	(f) Trust Protectors.....	582
9.	Differences Between Trusts and Wills.....	583
	(a) Formalities .....	583
	(b) Interpretation and Reform.....	584
10.	Charitable Trusts .....	584
	A History of American Law .....	584
	UTC § 405 .....	585
	Adye v. Smith.....	586
<b>Chapter 6. Construction of Wills and Trusts .....</b>		<b>595</b>
A.	Gifts to Children of Others .....	595
	UPC § 2-705 .....	595
B.	Powers of Appointment.....	598
	1. Creation of a Power .....	599
	In re Estate of Hope .....	599
	Ferrell-French v. Ferrell .....	603
	Hillman v. Hillman.....	607
	2. Federal Tax Consequences .....	611
	3. Creditors' Rights to Appointive Property.....	613
	Irwin Union Bank & Trust Co. v. Long.....	613
	4. Exercise of a Power.....	619
	Matter of Shenkman .....	620
	5. Failure to Appoint .....	622
	Vetrick v. Keating.....	622
	Loring v. Marshall.....	629
	6. Release of a Power .....	637
C.	Present and Future Interests .....	638
	1. Basic Estates.....	639
	(a) Freeholds and Seisin .....	640
	(i) The Fee Simple .....	640
	(ii) The Fee Tail .....	641
	(iii) The Life Estate.....	642
	(b) Nonfreeholds .....	643
	(c) Defeasibility .....	643
	2. Future Interests .....	644
	(a) Future Interests in Transferors.....	644
	(i) The Reversion (Including the Quantum of Estates) .....	644

	(ii) The Possibility of Reverter .....	645
	(iii) The Right of Entry .....	646
(b)	Future Interests in Transferees .....	647
	(i) The Remainder.....	647
	(A) Vested or Contingent .....	650
	Goodwine State Bank v. Mullins .....	651
	(B) Destructibility of Contingent Remainders .....	661
	Matter of Gilbert .....	662
	(C) Indefeasibly Vested.....	668
	(D) Vested Subject to Open.....	668
	(E) Vested Subject to Complete Divestment .....	669
	(F) Vested with Enjoyment Postponed .....	669
	Clobberie’s Case .....	669
	(ii) The Executory Interest.....	670
	(A) The Springing Executory Interest .....	671
	(B) The Shifting Executory Interest .....	671
	(C) The Executory Interest Following a Fee Simple.....	672
	(iii) Contingent Remainders Versus Executory Interests .....	672
3.	Further Describing Defeasible Interests .....	673
	Webb v. Underhill.....	676
4.	Special Rules.....	681
	(a) Presumptions of Facts Regarding Fertility.....	681
	(b) Merger .....	682
	(c) Survival as an Implied Condition Precedent .....	683
	Usry v. Farr.....	684
	In re Will of Uchtorff .....	686
	UPC § 2–707.....	697
	(d) Class Gifts .....	703
	(i) “Heirs”.....	704
	(A) The Rule in Shelley’s Case .....	705
	(B) The Doctrine of Worthier Title.....	706
	(ii) “Children” .....	706
	(iii) “Issue” or “Descendants” .....	707
	(iv) When the Class Shrinks .....	707
	Trust Agreement of Westervelt v. First Interstate	
	Bank of Northern Indiana .....	707
	(v) When the Class Might Expand (the “Rule of	
	Convenience”).....	715
	(vi) Division of the Class Gift.....	716
	(e) Federal Estate Tax Treatment .....	717
	(f) Valuation of Future Interests .....	717
	<b>Chapter 7. Shackling the Dead Hand .....</b>	<b>719</b>
A.	The Rule Against Perpetuities .....	719
	1. The Common-Law (What-Might-Happen) Rule Against	
	Perpetuities.....	720
	(a) An Interest Is Void if It Might Vest Too Late .....	720



(b)	The Split Contingencies Doctrine .....	724
(c)	The Application of the RAP to Powers of Appointment .....	725
(d)	Malpractice and Saving Clauses.....	728
(e)	Interests in Charities .....	728
(f)	Statutes Imposing Limits Somewhat Similar to the RAP .....	728
	Hochberg v. Proctor .....	729
2.	Reforms of the Rule .....	741
(a)	Specific Exceptions .....	741
(b)	<i>Cy Pres</i> .....	742
(c)	Wait and See for the Common-Law Period.....	742
(d)	Wait and See for 90 Years, USRAP.....	742
(e)	Abolition .....	743
3.	RAP Policy.....	744
(a)	Benefits of the RAP .....	744
(b)	Costs of the RAP .....	746
B.	Protection of Family Members .....	747
1.	Family Access to Beneficial Interests in Trusts .....	747
2.	Surviving Children of the Decedent .....	747
3.	Surviving Spouses .....	748
(a)	Community Property .....	748
(b)	Common-Law Rights of Surviving Spouses .....	749
(c)	The Statutory Elective Share .....	749
	Kirkeby v. Covenant House .....	750
	Johnson v. La Grange State Bank.....	753
	UPC Elective Share of Surviving Spouse, General Comment .....	764
(d)	The Elective Share in Community-Property States .....	782
C.	Religious Restrictions .....	782
	In re Estate of Feinberg .....	782
D.	Sex and Race Restrictions.....	804
	Matter of Estate of Wilson .....	805
	Home for Incurables of Baltimore City v. University of Maryland Medical System Corp.....	817
E.	Destruction of Property.....	830
	Eyerman v. Mercantile Trust Co., N.A. ....	830
	INDEX.....	841