

## TABLE OF CONTENTS

<b>TABLE OF CONTENTS</b> .....	<b>iii</b>
<b>ABOUT THE AUTHORS</b> .....	<b>ix</b>
<b>GLOSSARY</b> .....	<b>xi</b>
<b>CHAPTER 1</b> .....	<b>1</b>
<b>Introduction to Property Transfers at Death</b> .....	<b>1</b>
Emphasis .....	1
The Future of Estate Planning .....	2
Terminology .....	3
Sources of the Law of Wills and Trusts .....	6
Taxation, Improvidence and Inheritance .....	7
Competing Interests .....	7
Probate and Nonprobate Transfers.....	9
<b>CHAPTER 2</b> .....	<b>15</b>
<b>Intestacy</b> .....	<b>15</b>
Intestate Succession in General .....	15
Surviving Spouse .....	16
Descendants: Representation .....	19
Ancestors and Collaterals .....	26
Partial Intestacy.....	29
Questions of Definition and Status .....	30
Limitations on Inheritance.....	38
<b>CHAPTER 3</b> .....	<b>49</b>
<b>Will Execution Formalities and Contest</b> .....	<b>49</b>
Testamentary Capacity .....	49
Lack of Mental Capacity.....	51
Testamentary Intent .....	52
Undue Influence.....	53
Fraud .....	58
Practicalities.....	60
Tortious Interference with Inheritance.....	63
Attestation and Execution Formalities.....	63
Mistake in Execution .....	75
Holographic Wills.....	78
Conditional Wills .....	79

Nuncupative (Oral) Wills.....	80
Integration.....	80
Incorporation by Reference .....	83
The Doctrine of Independent Legal Significance .....	85
Dispositions of Tangible Personal Property .....	87
Republication by Codicil .....	88
<b>CHAPTER 4.....</b>	<b>91</b>
<b>Revocation .....</b>	<b>91</b>
Revocation by Physical Act.....	91
Revocation by Subsequent Instrument.....	96
Revocation by Operation of Law .....	99
Revival.....	101
Dependent Relative Revocation.....	102
<b>CHAPTER 5.....</b>	<b>105</b>
<b>Will Contracts .....</b>	<b>105</b>
Terminology .....	105
Proving a Will Contract .....	106
Avoiding Will Contracts .....	107
Remedies.....	108
<b>CHAPTER 6.....</b>	<b>113</b>
<b>Will Substitutes.....</b>	<b>113</b>
Validity of Will Substitutes .....	114
Life Insurance, Annuities, and Retirement Benefits.....	115
Payable on Death Contracts.....	116
Joint Tenancy.....	117
Deeds .....	118
Revocable Trusts.....	119
“Blockbuster” Wills.....	123
Equitable Election.....	124
Insurance Trusts .....	125
Pour Over Wills .....	127
<b>CHAPTER 7.....</b>	<b>131</b>
<b>Interpretation: What the Decedent Intended.....</b>	<b>131</b>
Interpreting Wills and Trusts .....	131
Mistake .....	134
Lack of Intent to Execute a Will.....	136
Ambiguities and Inaccuracies .....	137
Implied Gifts.....	147

<b>CHAPTER 8</b> .....	<b>153</b>
<b>Construction: Lapse and Class Gifts</b> .....	<b>153</b>
Lapse.....	153
Application to Will Substitutes.....	155
Required Relationship.....	156
Requirement of Survivorship.....	157
Lapse and Class Gifts .....	162
What Is a Class Gift? .....	164
<b>CHAPTER 9</b> .....	<b>175</b>
<b>Construction: Ademption, Abatement, Accessions, and Exoneration</b> .....	<b>175</b>
Classification of Dispositions .....	175
Ademption by Extinction.....	177
Ademption by Satisfaction.....	181
Abatement.....	183
Accessions .....	187
Exoneration.....	191
<b>CHAPTER 10</b> .....	<b>193</b>
<b>Restrictions on Disinheritance: Pretermis- sion, Elective Shares, and Community Property</b> .....	<b>193</b>
Status as a Spouse.....	193
Additional Marital Rights .....	193
Community Property.....	194
The Elective Share .....	197
Pretermitted Heirs.....	213
<b>CHAPTER 11</b> .....	<b>219</b>
<b>Introduction to Trusts</b> .....	<b>219</b>
Distinguishing Trusts.....	220
Types of Trusts .....	221
Trust Purposes .....	224
<b>CHAPTER 12</b> .....	<b>229</b>
<b>Trust Creation</b> .....	<b>229</b>
Intent and Capacity .....	230
The Trustee .....	233
Trust Property .....	237
Necessity of a Trust Beneficiary.....	240
Notice or Acceptance.....	244
Oral Trusts .....	244
Secret and Semi-Secret Trusts .....	247

<b>CHAPTER 13</b> .....	<b>251</b>
<b>Trust Operation</b> .....	<b>251</b>
Discretionary Trusts.....	251
Support Trusts.....	256
Creditors' Rights.....	257
Modification and Termination .....	267
Charitable Trusts.....	276
<b>CHAPTER 14</b> .....	<b>281</b>
<b>Powers of Appointment</b> .....	<b>281</b>
Terminology .....	282
Creditors' Rights.....	287
Contracts Regarding Powers.....	289
Fraudulent Exercise .....	290
Effective Exercise of Powers .....	291
Conflict of Laws .....	296
Lapse Issues .....	297
Analyzing Powers of Appointment.....	298
<b>CHAPTER 15</b> .....	<b>301</b>
<b>Future Interests</b> .....	<b>301</b>
Classification .....	302
Future Interests of the Transferor .....	306
Future Interests of Transferees .....	309
Origin and Characteristics .....	313
Three Ancient Doctrines .....	316
Construction Problems.....	318
<b>CHAPTER 16</b> .....	<b>345</b>
<b>Planning for Incapacity</b> .....	<b>345</b>
Planning for Property Management.....	346
Planning for Health Care .....	349
<b>CHAPTER 17</b> .....	<b>353</b>
<b>Rule Against Perpetuities</b> .....	<b>353</b>
Operation of the Rule.....	354
Rule is in Disfavor .....	356
The Essence of the Rule: Remote Vesting Prohibited .....	358
Effect of Violating the Rule.....	369
Alternative Contingencies.....	370
Class Gifts.....	372
Age Contingencies .....	374
Powers of Appointment and the Rule .....	376

Saving Clauses .....	381
Modern Trends and Reforms .....	383
Charities .....	384
Accumulations of Income .....	385
<b>CHAPTER 18.....</b>	<b>387</b>
<b>Fiduciary Administration.....</b>	<b>387</b>
Duty of Loyalty .....	388
Duty of Impartiality .....	393
Duty to Collect Property .....	395
Duty to Manage Property.....	396
Delegation of Duties .....	399
Duty to Account.....	400
Duty to Invest .....	402
Management Powers.....	411
Liability to Third Parties .....	412
Cotrustees' Liability .....	414
<b>CHAPTER 19 .....</b>	<b>417</b>
<b>Wealth Transfer Taxation.....</b>	<b>417</b>
Inclusion in the Gross Estate .....	417
Deductions from the Gross Estate .....	440
Computation and Payment of Estate Tax.....	449
Gift Taxation.....	452
Generation-Skipping Transfer Tax .....	459
<b>CHAPTER 20.....</b>	<b>469</b>
<b>Income Taxation of Estates, Trusts, Grantors, and Beneficiaries .....</b>	<b>469</b>
Taxable Income.....	470
Distributable Net Income.....	472
Simple Trusts .....	478
Estates and Complex Trusts.....	481
Distributions in Kind .....	486
Income and Deductions in Respect of a Decedent.....	487
Grantor Trust Rules.....	490
<b>CHAPTER 21 .....</b>	<b>495</b>
<b>Ethics and Malpractice Issues.....</b>	<b>495</b>
Conflicts of Interest .....	497
Independent Judgment .....	513
Preservation of Client Confidences .....	519
Adequate Representation .....	529
Fees .....	531

Fiduciary Administration Concerns .....	533
Your Duty to the “System” .....	539
Solicitation and Advertising .....	544
Your Dilemma .....	545
The Malpractice Aspect of All This.....	546
<b>TABLES.....</b>	<b>551</b>
Table of Cases.....	551
Table of Internal Revenue Code Sections and Treasury Regulations .....	559
Table of Model Rules and Uniform Codes .....	563
Table of Restatements of the Law .....	567
<b>INDEX .....</b>	<b>569</b>