51st Annual Philip E. Heckerling Institute on Estate Planning
January 9-13, 2017
Reports No. 4 | (Tuesday 1/10/17)

Heckerling 2017

University of Miami School of Law Center for Continuing Legal Education
Orlando World Center Marriott Resort and Convention Center
Orlando, Florida
http://www.law.miami.edu/heckerling

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Heckerling 2017 – Report No. 4

As we have done in January for the last twenty years, and again with the permission of the University of Miami School of Law Center for Continuing Legal Education, we will be posting daily Reports to this list containing highlights of the proceedings of the 51st Annual Philip E. Heckerling Institute on Estate Planning that is being held on January 9-13, 2017 at the Orlando World Center Marriott Resort and Convention Center in Florida. A complete listing of the proceedings and the Institute's 2017 brochure are available at www.law.miami.edu/heckerling and the listing of the proceedings was also published as part of **Introduction Part 2** that was distributed on 1/4/17.

We also will be posting the full text of each of these Reports on the ABA RPTE Section's Heckerling Reports Website, as we have since the 2000 Institute. Those Reports from 2000 to 2016 can now be found at URL http://www.americanbar.org/groups/real_property_trust_estate/events_cle/heckerling_reports.html. In addition, each Report from 2006 to date can also be accessed at any time from the ABA-PTL Discussion List's Web-based Archive that now only goes as far back as January of 2006 and is located at URL http://mail.americanbar.org/archives/aba-ptl.html.

Editor's Comments:

Today with this Report #4 we complete our coverage of the Tuesday all-day Main sessions. Included in this report are four sessions, one on Retirement Accounts, one on Asset Protection Estate Planning, one on Elder Law Financial Exploitation, and and one on Non-Tax Developments.

Further coverage of the Wednesday Main sessions will begin tomorrow starting with Report #5

Reporter Michelle Mieras, one of our 4 Reporters who is spending part of her time covering all the vendors in the Exhibition Hall, reports as follows about a few vendors that are offering specials during Heckerling:

1. ElderCounsel, a provider of legal technology and education for planners addressing the needs of our aging population, is offering a $500 discount on their initiation fees during Heckerling. Stop by booth 128, or contact Carol Burk, Member Recruitment, at (321)441-4945, or John Shickich, Senior Member Advisor, at john.shickich@eldercounsel.com to take advantage of this offer.

2. 2. Exponent Philanthropy provides a wide variety of resources to individual and family philanthropists. Annual membership is normally $750 per year, but a discounted rate of $700 for the first year is available through the end of February if you mention Heckerling. Stop by booth 126 or visit www.exponentphilanthropy.org to learn more.

3. 3. Visit Gillett Publishing LLC at booth 322 to learn about Gillette Estate Management Suite (GEMS), a popular estate and gift return preparation and trust accounting software. They are offering a 25% discount on new licenses through the end of January. If you can't make it to their booth, inquire about this offer at sales@gillettpublishing.com.

4. 4. InterActive Legal, an estate planning and drafting solutions provider, now has a cloud-based option in addition to its traditional desktop software. Visit booths 436 and 537 to see their updated, user-friendly website and to take advantage of a 10% discount and a complimentary one-year subscription to their EstateView Estate Tax Planning Software. The discount and complimentary subscription offers expire this week at the end of Heckerling.

5. ACTEC Fiduciary Accounting Templates for Quicken is a product of the American College of Trust and Estate Counsel and its Technology Committee. They are available for purchase for only $150 by non-Fellows directly from the College's public website under Publications at http://www.actec.org/publications/quicken-templates. The current version is called "ACTEC 2012 Quicken Fiduciary Accounting Templates." While it was originally designed for use with Quicken 2012, it has also been tested in Quicken 2013 and Quicken DeLuxe 2014, 2015 and 2016. It has also been tested on Quicken Essentials for the Mac. They recommend use of the Quicken DeLuxe version and advise that the recently released 2017 version is currently undergoing testing for compliance. The full text of the current User Manual and Sample Reports and their FAQ are all available for viewing at the same website, and tech support is provided free of charge by e-mail only by Fellow volunteers. ACTEC does not have a booth at Heckling, but queries can be sent to ACTEC c/o templates@actec.org.

Tuesday, January 10th, 10:55 to 11:45
Retirement Accounts in First and Second Marriages: The Fun Begins [ELD][FS]
Presenter: Christopher R. Hoyt
Reporter: Herb Braverman

After summarizing the rules governing required distributions from inherited retirement accounts, this presentation examined the estate planning and income tax challenges of funding a trust with retirement assets, especially a trust for a surviving spouse. It then explored the added challenges of a second marriage and a blended family. Here are some key highlights from this presentation.

Professor Hoyt first presented information concerning various qualified retirement accounts and how they might be impacted by first and second (and subsequent) marriages. He surveyed the various accounts under consideration as follows:

Section 401(a)--employer pension, profit sharing and stock bonus plans
Section 408--IRAs
Section 403(b)--school and charity employers

Section 457(b)--government and tax-exempt employers
Government and Church plans--special rules

In addition to some general remarks about such plans--for example, their deferred income tax qualities (unless Roth in nature), he emphasized his feeling that our government may "kill" the stretch IRA in the months ahead, although like many speakers here at the Institute, he is also loath to predict almost anything in the political/governmental environment in which we presently find ourselves.

As a part of his review of the nature of these qualified plans, he emphasized that some are impacted by federal law and, in particular, ERISA, while others are largely driven by state and local laws and regulations. With respect to lifetime divisions (divorce and separation matters), he pointed out that a qualified domestic relations order (QDRO) would be used in connection with dividing a Section 401 plan between parting spouses--a federal law matter, whereas, an IRA would be split by state domestic relations law procedures.

With respect to lifetime distributions, he pointed out that employer plans are prohibited from lifetime distributions while the account holder is employed. The circumstances for distribution include (1) severance from employment, death or disability, (2) termination of the plan itself, (3) attainment of age 59.5, (4) certain financial hardships or (5) when a qualified reservist is called to active duty. There are different treatments for some of these distributions which must be understood, including the application of the 10% early distribution penalty in some cases. On the other hand, there are no similar issues with early distributions from an IRA; however, those distributions before age 59.5 will pay income tax and incur the penalty. Of course, if the distribution is from a Roth account, it will be completely excluded from further income taxation.

The professor also discussed the 60 rollover exception to avoid the 10% penalty and the income tax on funds being moved from one QRP to another; however, he pointed out that it is generally preferable to use a trustee-to-trustee transfer for such a switching of accounts in order to (1) avoid income tax withholding issues, (2) avoid time delay problems and (3) to avoid the rule allowing only one rollover per year in an IRA account. He discussed certain penalties that might be incurred in some of these cases and the exceptions that might apply to those rules.

He also contrasted treatment of different plans in considering spousal rights on death of the account holder. For example, in connection with plans to which ERISA (federal law) applies, the surviving spouse has the right to 100% of the QRP account, unless she has specifically waived her interest in the appropriate manner; this circumstance will not be changed by a prenuptial agreement or the fact that community property laws might apply to the persons involved with respect to other assets. On the other hand and in contrast, the IRA is governed by its beneficiary designation and not by federal law. The professor noted that issues still exist as to how community property laws may impact IRA rights.

The professor then introduced planning for distributions from retirement accounts and proceeded to cover a number of case studies with varying fact patterns; while these materials are very informative and helpful, they cannot be simply recounted in a summary report of this nature. However, as those of us dealing with such issues understand, the cases involve favorable planning for surviving spouses (including rollovers), stretching the IRA account, age issues, look through options such as conduit trusts, accumulation trusts, splitting accounts for designated beneficiaries and other matters. He also included a list of other helpful resources/sources discussing these topics. One of the best and well known sources is Natalie B. Choate's book entitled *"Life and Death Planning for Retirement Benefits,"* 7th Edition (2011) available from ATaxPlan Publications https://www.ataxplan.com/life-and-death-planning-for-retirement-benefits.

Tuesday, January 10th, 11:45 am to 12:35 pm
Estate Planning Through an Asset Protection Lens — It's Not Just Self-Settled Trusts
Presenter: Gideon Rothschild
Reporter: Bruce Tannahill

With estate taxes impacting fewer clients, estate planners need to consider asset protection as integral to the estate planning process and tailor appropriate strategies to each client's individual situation. Many new developments among the states offer unique strategies in addition to self-settled trusts, including inter vivos QTIP trusts, reciprocal (but not reciprocal) trusts, and third party discretionary trusts. As will be seen, one size does not fit all.

Mr. Rothschild opened his presentation with a story about a young client who came to him for advice about 2009. He was a real estate developer who, before the Great Recession, had personally guaranteed loans on a real estate development. As a result of the economic downturn, the development had failed and he was personally liable for $20 million. His uncle had recently died and left him an outright bequest of $20 million.

His client wanted to know what he could do to benefit from the bequest. He could not receive the bequest and then successfully do anything to protect it from his creditors. A disclaimer would result in the entire $20 million going to the American Cancer Society. Mr. Rothschild said that if his uncle's planning had considered protecting the inheritance from the client's creditors through a trust with appropriate provisions, the client would have been able to declare bankruptcy and still benefit from the inheritance. The client had to part with his entire inheritance.

This story illustrates that years ago, asset protection was a novel concept to most people, including most estate planning attorneys. Today it is recognized as an important part of estate planning – whose ultimate goal is preserving assets for future generations. Estate planners today must consider the possibility that intended beneficiary's inheritance will be exposed to creditors.

Mr. Rothschild observed that the planning will involve a combination of strategies that "depend on the client's age, risk exposure, nature of assets, marital status, state of domicile, etc." A client's state of residence may dictate that the use of self-settled trusts take a back seat to "other strategies, such as spendthrift, discretionary, and support trusts; limited liability companies, powers of appointment, disclaimers, and other tools."

In doing that planning, he noted that it is important to always be mindful of voidable transfer rules (sometimes referred to as fraudulent transfer rules).

The balance of Mr. Rothschild's presentation discussed alternatives to self-settled asset protection trusts.

He began with transfers to spouse, often known as "poor-man's asset protection planning". The obvious problem is the possibility of divorce but a less obvious problem is the potential transfer tax that can result from gifts to a spouse. He recommended re-evaluating outright marital bequests because they subject the transfer to the surviving spouse's current and future creditors. He believes that a martial trust is almost always a better approach.

Naturally, different types of trusts were the predominant focus of the discussion. Trusts can protect assets from a beneficiary's ex-spouse, in-laws and other potential predators to preserve wealth within the intended class of beneficiaries. Spendthrift trusts are predicated on the U.S. public policy, stated in an 1875 Supreme Court decision, that a person is free to make any desired disposition of their property. Using trusts for asset protection is limited because a majority of states do not recognize the use of spendthrift clauses in self-settled trusts.

Reviewing different types of trusts and trust provisions, Mr. Rothschild said:

-- Support trusts are most appropriate if the settlor doesn't want to give the trustee expansive discretion over distributions. They should include an express spendthrift clause.

-- Discretionary trusts do not qualify as property rights so even preferred creditors (e.g., ex-spouses) cannot access a discretionary trust to satisfy claims against a beneficiary. Even a creditor who seizes a beneficiary's interest cannot force a distribution. The trustee's exercise of discretion is subject to judicial review unless state law is changed so a trustee's absolute discretion cannot be interfered with for any reason, which Nevada has done.

-- Split-interest trust (QPRTs, GRATs, CRATs, CRUTs) allow creditors to only reach the settlor's income interest.

-- Spousal lifetime access trusts ("SLATs"), which are discretionary trusts for the settlor's spouse and may allow sprinkle distributions to descendants, "may be the best

strategy ever" because they are protected from the settlor's creditors in all states. They can provide the settlor becomes a discretionary beneficiary if they are not married. The trustee could have the ability to make loans to the settlor. Establishing a SLAT in a Domestic Asset Protection Trust (DAPT) jurisdiction with an institutional trustee is probably more secure than a SLAT established in a non-DAPT jurisdiction with the spouse as a trustee.

-- The trustee should have the ability to "sprinkle" trust income and property among various beneficiaries, not just one beneficiary.

-- At least one independent trustee should be required to consent to distributions.

-- If an asset protection trust names a trust protector, it should be someone other than the settlor.

-- If a beneficiary's spouse is a beneficiary, consider referring to the beneficiary's spouse by a defined term rather than by name. This will automatically exclude a spouse upon divorce and automatically include a new spouse.

-- Consider establishing the trust is a state that allows the perpetual existence of trusts. If the grantor wants an outright distribution to a beneficiary at a certain time, the trustee or someone other than the beneficiary should have the ability to extend the trust term in case a creditor problem exists at the time the outright distribution would be made.

-- The trust should encourage the trustee to acquire assets for the beneficiary's use rather than making distributions so the beneficiary can acquire the assets.

-- A "five and five" power or other withdrawal power could expose the trust property subject to the power to creditors.

Because DAPTs are only recognized in one-third of the states, their effectiveness in a state that does not recognize DAPTs is uncertain.

Other potential asset protection strategies that Mr. Rothschild recommended to planners include the use of tenancy by the entireties in states that recognize it, disclaimers, powers of appointment, statutory protection such as ERISA provisions and homestead exemptions.

Mr. Rothschild concluded by stating that regardless of what someone's asset protection plan involves, "the planning should be placed on today's agenda – not tomorrow's agenda."

It should be noted here that the Leimberg Estate Planning Email Newsletter Service (www.leimbergservices.com), a paid newsletter subscription service, has recently published a few Newsletters that relate directly to asset protection planning, those being Asset Protection Planning Newsletter #s 332 and 336 and with Steve Oshins' analysis of

the Klober case, and #337 with Jocelyn M. Borowsky's and Richard Nenno's perspectives on this same case, plus Estate Planning Email Newsletter #2500 about the REAP, otherwise known as the Reversible Exempt Asset Protection Trust.

Tuesday, January 10th, 3:55 to 4:45 pm
I Have it Because Mom Liked Me the Best: How to Help Protect Vulnerable Seniors from Financial Exploitation [ELD]
Presenter: Stuart C. Bear
Reporter: Herb Braverman

You learn that your client is “slipping”. She is unable to fully care for herself but she is stubborn and wants to keep living independently. You have reason to believe that son is stealing money from mother. As a trusted advisor, what do you do in terms of your legal and ethical responsibilities? This session identified your legal and ethical responsibilities, and provided practical advice and guidance regarding what you can do to protect your client.

Stuart C. Bear presented a general session on Tuesday afternoon on protecting seniors from financial exploitation, a presentation made more important daily because of the demographics of our country. This report is a combination of this session and Special Session 2-D that he held with his colleagues, Francis Rondoni and Professor Mary F. Radford, in the afternoon on January 11th to follow-up on this general session.

In the general session, Mr. Bear began the discussion concerning financial exploitation or abuse of the elderly, frequently by family members or close friends, advisers, etc. His focus in this presentation was the concepts of "diminished capacity" and "undue influence". These are the bases for such exploitation and, as advisers, we must be able to detect either or both when dealing with our more senior clients. Furthermore, the counselor himself/herself must deal with these issues not only to protect the client, but to protect the adviser also.

Financial exploitation includes theft, fraud, extortion, breach of fiduciary duty, misuse of power of attorney, identity appropriation, denial of access to funds and resources and, unfortunately, any number of combinations and permutations of these examples. Bear goes on to discuss the "red flags" of exploitation as noted by the Department of Justice.

Turning to capacity, he notes that capacity standards differ in different contexts; for example, when doing business, executing a will, signing a deed, creating a trust, etc. Further, capacity can change day to day and, in some cases, even hour to hour. Being aware of a client's capacity and reacting to it properly and safely can be a complicated endeavor. He gave a number of case studies and then focused on diminished capacity by providing the the 10 warning signs of Alzheimer's disease as published by The Alzheimer's Association (you can look those up for free) and some "red flags," published by the SEC, to indicate diminished capacity in the investing/financial context.

Mr. Bear then turned his attention to "undue influence" and the difficulty one might have assessing vulnerability and consequences. Unfortunately, we are seeing more and more of this as our population ages and experiences longevity. Planning issues noted by the speaker were financial powers of attorney, including various types, appropriate contents and other terms, termination and the relatively new Uniform Power of Attorney Act (2006) and its provisions. Then, he discussed health care directives, HIPAA issues, organ donation and the continuing battle of forms in these areas.

Preparing for the afternoon session, he introduced the appropriate Model Rules of Professional Conduct (MRPC), including Rule 1.14 devoted to representing a client with diminished capacity, Rule 1.6 re confidentiality, Rule 1.2 re scope of representation, Rule 1.4 re communications, as well as those regarding conflicts of interests. These Rules and other important sources of our ethical and moral obligations to our elderly clients form the basis for the discussion of about a dozen case studies in the afternoon session.

In the afternoon Special Session, (SS-2D), Mr. Bear was joined by his partner, Mr. Fondoni, and by Professor Mary Radford, to discuss a dozen or so case studies with catchy titles, like "Granny Snatching", "Fury Friends", etc... each one designed to highlight and to promote discussion about undue influence issues and diminished capacity complications. Those in attendance took an active part in the several discussions, indicating a very high level of interest in the subject, as well as the wealth of experience many of us have in these matters. Of course, these discussions cannot be fully related here, but a couple of points should be helpful.

Mr. Rondoni has also been a criminal prosecutor in Minnesota and he made it clear that some of what is going on in these areas have increasing criminal consequences, both for the perpetrators and the advisers, as localities encounter more of these cases and become more aware of the insidious nature of "what is going on".

Professor Radford noted the strict obligations of counsel under the applicable Rules of MRPC throughout, while Mr. Bear seemed to place an even greater emphasis on the moral obligations we have to our clients whom we have served over many years and/or who are of advanced age and perhaps exposed to the undue influences around them, including an increased level of paranoia as they discover their own limitations.

Tuesday, January 10th, 4:45 to 5:35 pm
Non-Tax Developments Panel
Presenters: Jeffrey N. Pennell and Kimberly E. Cohen
Reporter: Beth Anderson

Tax-related developments are less significant to many clients these days, while non-tax (typically state law) developments have a universal impact on routine planning and drafting. This session digested issues outside the taxation realm that are of practical significance beyond any particular jurisdiction, with a focus on everyday client concerns.

Due to the nature of this particular presentation, the manner in which is is being reported here varies from the usual format and is more in the nature of bullet points to think about and explore further. Page references are to those in the outline materials.

Probate Code Updates – relaxing signing requirement – Michigan and New Jersey cases – signing will can now be a harmless error.

Will Execution - now moving in the direction of validity of trusts.

Electronic Will Execution - legislation has now been introduced in Florida a a few other states. Nevada already allows.

Hasting case – beneficiary designation should be as easy as UPC harmless error test.

p. 7 – Carlison case - OK provision in a will that says pay all my debts – exoneration – two issues:

1. does a will provision to pay all debts apply to non-probate property?
2. what about long term debt secured by mortgage?

What does pay my debts mean? Carlison – yes to non-probate TOD asset.
Pay attention to your drafting.

p.14 – Cairn case (? sp) piece of real estate is a rust asset by schedule A, no recorded deed of transfer, but per Restatement of Trusts this simple statement was adequate, recording the transfer only gives notice to the world.

Trust Revocation
Historically silent = irrevocable.
UTC silent = revocable.
Drafting – state what it is.
How do you revoke or amend the trust? Can it be revoked by Will?
Hyde Trust - In re Hyde Trust, 858 N.W.2d 333 (S.D. 2014), Will modified trust.
Bernal v. Marin, 196 So. 3d 432 (Fla. Dist. Ct. App. 2016), - "declare this to be my Last Will and Testament, revoking all other wills, trust and codicils previously made by me." Is there is clear and convincing evidence to amend/revoke trust?
Drafting – put it in the trust how you can amend/revoke it.
Courts are looking outside the 4 corners of the Will to find clear and convincing evidence.

p.17 Estate of Shott Trust, 2016 WL 1056969 (Cal. Ct. App.) - trust could be amended by power of appointment to "be exercised only by means of written directions, executed by the Trustor, and delivered to the Trustee, during the lifetime of the Trustor.
How do you deliver a codicil before you die? Execution of codicil is enough?
Best practices may be that trust cannot be amended by Will - only by intervivos document.

p. 18 Taylor Trust Under Agreement of Taylor, 124 A.3d 334 (Pa. Super. Ct. 2015).

Wanted to add power to remove Trustee - current trustee objected to the modification.
Lower court declared modification was invalid b/c invoking wrong statute – following the more specific removal statute, trumped modification statute.
Court of Appeals reversed, statutes were not ambiguous.
PA supreme court has agreed to hear an appeal – "the issue presented by petitioner and rephrased for clarity . . . circumvent the removal of trustee. . .
Pennell thinks it's good lawyering!

p. 19 Trust Under Will of Cassatt, 2016 WL 5122265 (Pa. Super. Ct.).
Pennell thinks wrong outcome b/c when you exercise a power of appointment you are acting as agent of grantor, power of appointment theory of decanting may be muddled.
Drafting point could have been more clear re what provisions were desired in the new trust.

Harrell v. Badger, 171 So. 3d 764 (Fla. Dist. Ct. App. 2015) – decanted to create pooled special needs trust.
The problem was the decanted trust added new remainder beneficiaries.
Trial court, judge found plaintiffs liable for trustee fees, appeals court reversed finding the trustee had gone beyond trustee's powers.
Pennell comment – unless power of appointment provides otherwise, should be able to exclude current beneficiaries, but if done does the beneficiary have a cause of action and if not asserted did he/she make a taxable gift? Unknown b/c no guidance on decanting.

p. 24 Schinazi v. Eden, 2016 WL 5867215 (Ga. Ct. App.), swap power gone wrong, ex-wife trustee objected to exercise of swap power,
Drafting tip – spouse should have been removed as trustee

UTC §603
UTC drafters moving away from thought that trust is not a will substitute – now UTC provides that a trust is a will substitute and while GR is alive (and competent) TE owes duties only the the settlor.

Babbitt v. Superior Court, 246 Cal. App. 4th 1135 (2016).
Steiger v. Steiger, 2016 WL 4156689 (Cal. Ct. App.).
In re Trimble Trust, 826 N.W.2d 474 (Iowa 2013).

Can remainder beneficiaries request an accounting while GR is alive – courts say no.
Refer to Hildadorf p. 63 and to of Dana Fitzsimons materials – administrator ad litem to request an accounting

Issue – while old GR is still TE, who is watching the store? How do we deal? Is the GR competent to oversee what's going on? If no longer competent then remainder beneficiaries may have standing.
Drafting – declare when accounting are required/permissive.

In Terrorem Clauses

Stewart v. Ciccaglione, 2015 WL 1283481 (Super. Ct. Conn. 2015), - mere boiler plate and was disregarded.

Heathman v. Lizer, 2016 WL 3753328
(Cal. Ct. App.), - TE tried to invoke In Terrorem clause b/c beneficiaries were modifying trust to change TE compensation.

Binding Arbitration Provisions 29-30
Nursing Home Agreements – regulations issued unconscionable contracts of adhesion, any facility with this in there will be denied Medicaid benefits/reimbursements.
The Department of Health and Human Services Centers for Medicare & Medicaid Services issued final amendments to its regulations, effective November 28, 2016, dealing with
"Medicare and Medicaid Programs; Reform of Requirements for Long-Term Care Facilities" (the document is at:
www.federalregister.gov/documents/2016/10/04/2016-23503/medicare-and-medicaid-programs-reform

Joint Trust 34-38
These can easily go wrong.

p.39 decisions dealing with surviving spouse's elective share b/c of conduct – abandonment and adultery
Elective share Bays v. Kiphart, 486 S.W.3d 283 (Ky. 2016),
Transferred life insurance policy to trust fbo child – husband challenged b/c of fraud on marital rights, KY supreme court held transfer was valid.
Pennell thinks outcome might have been different if roles reversed.
Barren (CO), elective share is a pecuniary amount – frozen out of post mortem appreciation.
Diamond (? sp) (Conn), elective share is a fraction of the estate, fractional share suffers from depreciation and benefits from appreciation.

p. 43 Ammerman v. Callender, 245 Cal. App. 4th 1058 (2016) - how do you share 67 million in royalty income, when distributions are not being made to everyone.

Bentley v. Bentley, 2016 WL 1613975 (Ala. Ct. App.) – is inherited property marital property in divorce?
FLP interest in gift, and treated this interest as investment for retirement.

Pfannenstiehl v. Pfannenstiehl, 37 N.E.3d 15 (Mass. Ct. App. 2015), - does spouse have right to 3rd party trust – is this marital property.
Mass says yes if interest is more than a mere expectancy. On appeal, split decision, violated and nullified spendthrift b/c of bad acts by TE, H as beneficiary has an enforceable right to distributions, Sup Ct, merely an expectancy so not martial property and not subject to division.
Drafting tips – don't use ascertainable standard, do have large pooled trust instead of

separate shares for each child/descendants.
Don't know where a trust beneficiary will leave or where they will get divorced.
Take home – state law is chaining and under conflict of laws, it's the law of the jurisdiction that governs the divorce not the law under the trust agreement – forum shopping for divorce!

p. 59 Pikula v. Department of Social Services, 138 A.3d 212 (Conn. 2016), SPNT.

Reformation
Estate of Duke v. Jewish National Fund, 352 P.3d 863 (Cal. 2015) - CA doesn't have reformation but still allowed modification by judicial fiat, requires clear and convincing evidence of mistake.

In re Trust Under Will of Flint, 118 A.3d 182 (Del. Ch. Ct. 2015) - 81% investment in single company, TE wanted to diversify and beneficiaries want to amend to allow waiver of diversity, court said no, amendment not allowed. Del court making it clear it respects GR intent.

Secondary Disclaimers
In re Friedman, 7 N.Y.S.3d 845 (Surr. 2015) - asset distributions would have caused NY estate tax, daughter wanted to disclaim her interest and her child's interest. Was the disclaimer in the best interest of the grandchild?
Court said no, not in the best interest of the grandchild b/c more likely to benefit money in the hands of mom vs grandpa b/c once further removed from their benefit.

p. 64 Conflict of Laws
Steiger v. Steiger, 2016 WL 4156689 (Cal. Ct. App.) – governing law provision may or may not apply depending on the issue. Ex. if decant to new jurisdiction may move for administration but maybe not for construction.

Adult adoption – whose law governs? The law of the state of the adoption – full faith and credit.

Defacto Parents and Assisted Reproduction – non-birth parent does not adopt – what kind of parental rights does this person have with respect to the child?
Is there a right to visitation and custody?
How does this impact inheritance – can the child inherit from the defacto parent?

The Reporters

Our **on-site local reporters** who will be present in Orlando in 2017 are **Joanne Hindel Esq.,** a Vice President with Fifth Third Bank in Cleveland, Ohio; **Kimon Karas Esq.,** an attorney with McCarthy, Lebit, Crystal and Liffman Co. LPA in Cleveland, Ohio; **Craig**

Dreyer Esq., an attorney with Clark Skatoff, PA in Palm Beach Gardens, Florida; **Herb Braverman Esq.,** an attorney with Braverman & Associates in Orange Village, Ohio; **Kristin Dittus Esq.** a solo attorney in Denver, Colorado, **Michael Sneeringer Esq.**, an attorney with Akermn, LLP in Naples, Florida, **Michelle R. Mieras,** a Fiduciary Risk Manager with Bank of the West in Denver, Colorado, **Beth Anderson Esq,** an attorney with Wyatt, Trrant & Combs, LLP in Louisville, Kentucky, **Bruce A. Tannahill Esq,** a Director of Estate and Business Planning in the Mass Mutual Financial Group in Phoenix, Arizona, and **Patrick J, Duffey Esq**, an attorney with Holland & Knight in Tampa, Florida.

The **Report Editor** again in 2017 will be **Joseph G. Hodges Jr. Esq.**, a solo practitioner in Denver, Colorado. He is also the Chief Moderator of the ABA-PTL discussion list.