



CONTENTS

| | - | lustrations | XXVII |
|-------|------------------|---|--------|
| Prefa | | | xxxiii |
| Ackn | !OW | ledgments | xxxvii |
| Chap | nte [.] | r 1 INTRODUCTION: FREEDOM OF DISPOSITION | 1 |
| - | • | | |
| A. | | ne Power to Transmit Property at Death wrence M. Friedman, Dead Hands: A Social History of Wills, Trusts, | 2 |
| | | and Inheritance Law | 2 |
| | 1. | Freedom of Disposition and the Dead Hand | 3 |
| | | Shapira v. Union National Bank | 5 |
| | 2. | Justifying Freedom of Disposition | 16 |
| | | a. The Donor's Prerogative | 16 |
| | | Adam J. Hirsch & William K.S. Wang, A Qualitative Theory of the Dead Hand Daniel B. Kelly, Restricting Testamentary Freedom: Ex Ante Versus Ex Post | 16 |
| | | Justifications | 18 |
| | | b. Concentrations of Wealth | 19 |
| | | Wojciech Kopczuk, What Do We Know About the Evolution of Top | |
| | | Wealth Shares in the United States? | 21 |
| | | Edward N. Wolff, A Century of Wealth in America | 21 |
| | | c. Human, Cultural, and Social Capital | 23 |
| | | Stephen J. McNamee, The Meritocracy Myth: Who Gets Ahead and Why | 23 |
| | | d. A Question of Tax Policy? | 26 |
| | | From Feudalism to a Constitutional Right | 30 |
| | 4. | Posthumous Rights: The Post-Mortem Right of Publicity | 34 |
| | | Shaw Family Archives Ltd. v. CMG Worldwide, Inc. | 35 |
| B. | Th | ne Mechanics of Succession | 41 |
| | 1. | Probate and Nonprobate Property | 41 |
| | | Probate Terminology | 42 |
| | 3. | What of Digital Assets? | 43 |
| | 4. | Probate Administration | 46 |
| | | a. Opening Probate and Choice of Law | 46 |
| | | b. Common Form and Solemn Form Probate | 48 |
| | | c. Formal and Informal Probate | 48 |
| | | d. Supervised and Unsupervised Administration | 49 |
| | | e. Barring Creditors | 49 |
| | _ | f. Closing the Estate | 50 |
| | 5. | Can Probate Be Avoided? | 51 |







| C. P | rofessional Responsibility | 53 |
|--------|---|-----|
| | Duties to Intended Beneficiaries | 54 |
| | Simpson v. Calivas | 54 |
| 2. | Joint Representation | 59 |
| | A. v. B. | 59 |
| | | |
| Chapte | er 2 INTESTACY: AN ESTATE PLAN BY DEFAULT | 65 |
| A. A | n Estate Plan by Default | 66 |
| 1. | Why Do So Many People Die Intestate? | 66 |
| 2. | The Purpose of Intestacy Statutes | 67 |
| | Heirship and the Expectancy of an Heir Apparent | 68 |
| 4. | Applicable Law and the Uniform Probate Code | 70 |
| | Uniform Probate Code §§ 2-101, 2-102, 2-103, 2-105 | 72 |
| B. T | he Structure of Intestate Succession | 74 |
| 1. | Surviving Spouse | 75 |
| | a. The Spouse's Share | 75 |
| | b. Unmarried Cohabiting Partners | 76 |
| | c. The Problem of Simultaneous Death | 79 |
| 2. | Descendants | 82 |
| | a. Representation | 82 |
| | b. Representation in Wills and Trusts | 86 |
| 3. | Ancestors, Collaterals, and Others | 86 |
| | a. Parents | 86 |
| | b. Other Ancestors and Collaterals | 87 |
| | c. Laughing Heirs | 89 |
| | d. Stepchildren and In-Laws | 89 |
| | e. "Half-Bloods" | 91 |
| | f. Escheat | 91 |
| 4. | Disinheritance by Negative Will | 92 |
| C. T | ransfers to Children | 92 |
| 1. | Adopted Children | 93 |
| | a. Formal Adoption | 93 |
| | Hall v. Vallandingham | 93 |
| | b. Adult Adoption | 96 |
| | c. Adoption and Wills and Trusts | 97 |
| | Minary v. Citizens Fidelity Bank & Trust Co. | 98 |
| | d. Equitable Adoption and De Facto Parentage | 104 |
| | O'Neal v. Wilkes | 104 |
| | Posthumous Children | 109 |
| | Nonmarital Children | 110 |
| 4. | Reproductive Technology and New Forms of Parentage | 111 |
| | a. Posthumously Conceived Children | 112 |
| | Woodward v. Commissioner of Social Security | 112 |
| | b. Posthumously Conceived Children and Wills and Trusts | 119 |
| | c. Surrogacy and Opposite-Sex Couples | 120 |
| | d. Assisted Reproduction and Same-Sex Couples | 121 |
| | e. The 2019 Uniform Probate Code | 122 |
| 5. | Advancements and Hotchpot | 123 |
| | a. Advancements at Common Law | 123 |
| | b. Hotchpot | 123 |





124

c. Advancements in Modern Law



| | Uı | niform Probate Code § 2-109 | 124 |
|--------|------|--|------------|
| 6 | . G | aardianship and Conservatorship of Minors | 125 |
| | a. | Guardian of the Person | 125 |
| | b. | Property Management Options | 126 |
| D. E | Bars | to Succession | 128 |
| 1 | . Th | e Slayer Rule | 128 |
| | | re Estate of Mahoney | 128 |
| | | e Unworthy Heir | 136 |
| 2 | | sclaimer | 137 |
| | | From Common Law to Statutory Law | 137 |
| | | Avoiding Taxes | 138 |
| | | Avoiding Creditors | 138 |
| | d. | Disclaimers to Qualify for Medicaid | 141 |
| Chapte | er 3 | WILLS: FORMALITIES AND FORMS | 143 |
| A. E | Exec | ution of Wills | 144 |
| 1 | . At | tested Wills | 145 |
| | a. | The Core Formalities | 145 |
| | | Uniform Probate Code § 2-502 | 146 |
| | b. | The Functions of Formalities | 146 |
| | | John H. Langbein, Substantial Compliance with the Wills Act | 147 |
| | c. | The Strict Compliance Rule | 149 |
| | | The Meaning of "Presence" | 151 |
| | | "Presence" During the COVID-19 Pandemic | 153 |
| | | The "Signature" Requirement | 155 |
| | | Bitetzakis v. Bitetzakis | 155 |
| | d. | Interested Witnesses and Purging Statutes | 162 |
| | | (1) From Disqualification to Purging | 162 |
| | | (2) The Trend Away from Purging | 163 |
| | e. | Model Execution Ceremony | 163 |
| | c | Safeguarding a Will | 165 |
| | | Ad Hoc Relief from Strict Compliance | 166 |
| | g. | The Substantial Compliance Doctrine | 168 |
| | | The Unfulfilled Promise of Substantial Compliance | 168 |
| | | From Substantial Compliance to Harmless Error: | 172 |
| | L | Australia's National Experiment The Harmless Error Rule | 173 |
| | 11. | Uniform Probate Code § 2-503 | 175 |
| | | In re Estate of Hall | 176 |
| | | In re Probate of Will and Codicil of Macool | 177 183 |
| | i | Electronic or Digital Wills | 190 |
| | 1. | In re Estate of Horton | 191 |
| | j. | Video Recordings? | 200 |
| | ٦. | Matter of Estate of Beck | 200 |
| 2 | N | otarized Wills | 205 |
| 2 | . 14 | Lawrence W. Waggoner, The UPC Authorizes Notarized Wills | 205 |
| 3 | . н | plographic Wills | 206 |
| , | | Discerning Testamentary Intent | 207 |
| | | Ashbel G. Gulliver & Catherine J. Tilson, Classification of Gratuitous Transfers | 207 |
| | | In re Kimmel's Estate | 207 |
| | b | Preprinted Will Forms | 212 |









| | In re Estate of Gonzalez | 213 |
|--------|--|------------|
| | c. Signature and Handwriting | 216 |
| | (1) Signature | 216 |
| | (2) The Extent of the Testator's Handwriting | 216 |
| | d. Extrinsic Evidence | 218 |
| | In re Estate of Kuralt | 218 |
| B. R | evocation of Wills | 225 |
| 1. | Revocation by Writing or by Physical Act | 225 |
| | Uniform Probate Code § 2-507 | 226 |
| | a. Express and Implied Revocatory Writings | 226 |
| | b. Formality in Revocation by Writing or Physical Act | 227 |
| | Thompson v. Royall | 227 |
| | c. Presumption of Physical Act Revocation | 230 |
| | Harrison v. Bird | 230 |
| | Lost Wills and the Presumption of Revocation | 232 |
| | d. Harmless Error in Revocation | 234 |
| | In re Estate of Stoker | 234 |
| 2 | e. Partial Revocation by Physical Act | 239 |
| 2. | Dependent Relative Revocation | 239 |
| | LaCroix v. Senecal | 240 |
| 2 | Restatement (Third) of Property: Wills and Other Donative Transfers § 4.3 Revival of Revoked Wills | 242 244 |
| 3. | Uniform Probate Code § 2-509 | 244 |
| Δ | Revocation by Operation of Law | 246 |
| 4. | a. Divorce | 246 |
| | Uniform Probate Code § 2-804 | 246 |
| | b. Marriage | 247 |
| | c. Birth of Children | 247 |
| C. C | omponents of a Will | 248 |
| | Integration | 248 |
| | In re Estate of Rigsby | 248 |
| 2. | Republication by Codicil | 251 |
| 3. | Incorporation by Reference | 252 |
| | a. Existing Writings | 252 |
| | Uniform Probate Code § 2-510 | 252 |
| | Clark v. Greenhalge | 252 |
| | b. Subsequent Writings and Tangible Personal Property | 259 |
| | Uniform Probate Code § 2-513 | 259 |
| 4. | Acts of Independent Significance | 261 |
| | Uniform Probate Code § 2-512 | 261 |
| | ontracts Relating to Wills | 263 |
| 1. | Contracts to Make a Will | 263 |
| | Uniform Probate Code § 2-514 | 263 |
| 2. | Contracts Not to Revoke a Will | 264 |
| | Keith v. Lulofs | 264 |
| Chapte | r 4 WILLS: CAPACITY AND CONTESTS | 271 |
| • | apacity to Make a Will | 272 |
| | Mental Capacity | 272 |
| 1. | In re Wright's Estate | 273 |
| | | |







•

| | Contents |
|---|------------|
| | |
| Wilson v. Lane | 278 |
| 2. Insane Delusion | 281 |
| In re Strittmater's Estate | 282 |
| Breeden v. Stone | 285 |
| B. Undue Influence | 290 |
| 1. What Is Undue Influence? | 290 |
| 2. Undue Influence in the Cases | 292 |
| In re Estate of Sharis | 292 |
| Presumptions and Burden Shifting in Undue Influence Cases | 297 |
| In re Will of Moses | 299 |
| Lipper v. Weslow | 305 |
| Bequests to Lawyers and Fiduciary Appointments | 313 |
| 3. Planning for and Avoiding a Will Contest | 314 |
| a. Warning Signs | 314 |
| b. Strategies | 315 |
| C. Duress | 318 |
| Latham v. Father Divine | 319 |
| Interference with Inheritance, Restitution and Unjust Enrichment, | |
| and Constructive Trust | 322 |
| D. Fraud | 323 |
| E. Tortious Interference | 326 |
| Schilling v. Herrera | 327 |
| Chapter 5 WILLS: CONSTRUCTION | 335 |
| 1 | |
| A. Mistaken or Ambiguous Language in Wills | 336 |
| Plain Meaning and No Reformation | 336 |
| Mahoney v. Grainger | 336 |
| In re Estate of Cole | 339 |
| 2. Ad Hoc Relief for Mistaken Terms | 345 |
| Arnheiter v. Arnheiter In re Gibbs' Estate | 345 |
| 3. Openly Reforming Wills for Mistake | 347 351 |
| Uniform Probate Code § 2-805 | 351 |
| In re Estate of Duke | 352 |
| B. Death of Beneficiary Before Death of Testator | 361 |
| Lapsed and Void Devises | 361 |
| In re Estate of Russell | 363 |
| 2. Antilapse Statutes | 367 |
| Uniform Probate Code § 2-605 | 367 |
| a. Presumed Intent | 368 |
| b. Scope | 368 |
| c. Default Rules | 369 |
| d. Words of Survivorship | 370 |
| Gibney v. Hossack | 372 |
| 3. Class Gifts | 378 |
| a. What Is a Class? | 378 |
| Restatement (Third) of Property: Wills and Other Donative | 2,0 |
| Transfers §§ 13.1, 13.2 | 379 |
| Dawson v. Yucus | 379 |





xvii





Contents

| b. Application of Antilapse Statutes to Class Gifts4. Summary Diagram | 382 383 |
|--|------------|
| C. Changes in Property After Execution of Will | 384 |
| 1. Ademption by Extinction | 384 |
| In re Estate of Anton | 385 |
| Uniform Probate Code § 2-606 | 391 |
| 2. Stock Splits and the Problem of Increase | 392 |
| 3. Satisfaction of General Pecuniary Bequests | 393 |
| 4. Exoneration of Liens | 394 |
| 5. Abatement | 394 |
| Chapter 6 TRUSTS: CHARACTERISTICS AND CREATION | 397 |
| A. The Trust in American Law | 398 |
| 1. Origins of the Trust | 398 |
| 2. Sources of Law | 399 |
| 3. Vocabulary, Typology, and Illustrative Uses | 403 |
| 4. Bifurcation of Ownership | 406 |
| 5. A Trust Compared with a Legal Life Estate | 409 |
| a. Legal Life Estate | 409 |
| b. Equitable Life Estate — A Trust | 410 |
| 6. Business Trusts | 411 |
| 7. Foreign Trust Law | 412 |
| B. Creation of a Trust | 413 |
| 1. Intent to Create a Trust | 413 |
| a. Testamentary Trust | 413 |
| b. Deed of Trust | 416 |
| Jimenez v. Lee | 416 |
| c. Declaration of Trust | 420 |
| Hebrew University Ass'n v. Nye (1961) | 421 |
| Hebrew University Ass'n v. Nye (1966) | 424 |
| 2. Trust Property | 426 |
| Unthank v. Rippstein | 426 |
| 3. Ascertainable Beneficiaries | 430 |
| a. The Beneficiary Principle Clark v. Campbell | 430 430 |
| b. Pet and Other Noncharitable Purpose Trusts | 434 |
| In re Searight's Estate | 434 |
| 4. A Written Instrument? | 440 |
| a. Oral Inter Vivos Trusts of Personal Property | 441 |
| Uniform Trust Code § 407 | 441 |
| In re Estate of Fournier | 441 |
| b. Secret Testamentary Trusts and the Wills Act | 445 |
| Olliffe v. Wells | 445 |
| c. Oral Inter Vivos Trusts of Land and the Statute of Frauds | 448 |
| Chapter 7 NONPROBATE TRANSFERS AND PLANNING | |
| FOR INCAPACITY | 449 |

(





A. The Rise of Nonprobate Succession

450

02-08-2025 16:48:53



| John H. Langbein, Major Reforms of the Property Restatement and the Uniform Probate Code: Reformation, Harmless Error, and Nonprobate Transfers | 450 |
|---|------------|
| B. Revocable Trusts | 454 |
| 1. The Wills Act and a Present Transfer | 454 |
| 2. Abandoning the Present Transfer Fiction | 456 |
| Uniform Trust Code § 603 | 457 |
| Fulp v. Gilliland | 457 |
| 3. Revoking or Amending a Revocable Trust | 463 |
| Uniform Trust Code § 602 | 463 |
| In re Omega Trust | 464 |
| 4. The Subsidiary Law of Wills | 470 |
| State Street Bank and Trust Co. v. Reiser | 470 |
| Clymer v. Mayo | 473 |
| 5. Revocable Trusts in Contemporary Practice | 476 |
| a. The Pour-Over Will | 477 |
| b. Deathtime Considerationsc. Lifetime Considerations | 478 480 |
| c. Lifetime Considerations | 480 |
| C. The Other Will Substitutes | 481 |
| 1. Life Insurance | 481 |
| Cook v. Equitable Life Assurance Society | 482 |
| 2. Pension and Retirement Plans | 487 |
| a. Tax-Advantaged Saving and Investment | 488 |
| b. Types of Pension and Retirement Plans | 488 |
| c. Succession Issues for Pension and Retirement Accounts | 490 |
| Nunnenman v. Estate of Grubbs | 491 |
| Egelhoff v. Egelhoff | 495 |
| 3. Pay-on-Death (POD) and Transfer-on-Death (TOD) Contracts | 501 |
| Uniform Probate Code § 6-101 | 502 502 |
| Multiple-Party Bank and Brokerage Accounts Varela v. Bernachea | 502 |
| 4. Nonprobate Transfer of Real Property | 506 |
| 4. Nonprobate transier of Real Property | 300 |
| D. Planning for Incapacity | 508 |
| 1. Property Management | 508 |
| a. Conservatorship | 508 |
| b. Revocable Trust | 510 |
| c. Durable Power of Attorney | 512 |
| In re Estate of Kurrelmeyer | 515 |
| 2. Health Care | 521 |
| a. Default Law | 521 |
| b. Advance Directives | 523 |
| c. Physician Aid in Dying3. Disposition of the Body | 524 525 |
| a. Post-Mortem Remains | 525 |
| b. Organ Donation | 526 |
| U. Olgan Donation | 320 |
| Chapter 8 LIMITS ON FREEDOM OF DISPOSITION: PROTECTION | |
| OF THE SPOUSE AND CHILDREN | 529 |
| A. Protection of the Surviving Spouse | 530 |
| 1. The Elective Share of a Separate Property Surviving Spouse | 530 |





| | | a. Separate Property or Community Property? | 530 |
|------|-----|--|----------------|
| | | b. Economic Partnership or Support Obligation? | 532 |
| | | Uniform Probate Code Article II, Part 2, General Comment | 534 |
| | | c. Unmarried Cohabiting Partners | 535 |
| | | d. Variation Across the States | 535 |
| | | e. Nonprobate Property | 538 |
| | | (1) Judicial Responses | 538 |
| | | Sullivan v. Burkin | |
| | | | 538 |
| | | (2) Statutory Reform | 545 |
| | | In re Estate of Myers | 545 |
| | | f. The Uniform Probate Code | 550 |
| | | g. Waiver by Premarital or Postnuptial Agreement | 554 |
| | | Uniform Probate Code § 2-213 | 556 |
| | | Reece v. Elliott | 558 |
| | 2. | Community Property | 563 |
| | | a. The Spread of the Community Property System | 563 |
| | | b. Management and Disposition of Community Property | 566 |
| | 3. | Migrating Couples and Multistate Property Holdings | 568 |
| | | a. Moving from Separate Property to Community Property | 568 |
| | | b. Moving from Community Property to Separate Property | 570 |
| | 4. | Miscellaneous Additional Rights | 571 |
| | | a. Social Security | 571 |
| | | b. Pension and Retirement Accounts | 571 |
| | | c. Homestead | 573 |
| | | | |
| | | d. Personal Property Set-Aside | 573 |
| | | e. Family Allowance | 574 |
| | | f. Dower and Curtesy | 574 |
| R | In | tentional Omission of a Child | 575 |
| D. | | American Law | 575 |
| | | | |
| | ۷. | The Family Maintenance System of the Commonwealth | 576 |
| | | Lambeff v. Farmers Co-operative Executors & Trustees Ltd. | 577 |
| C. | Pr | otection Against Unintentional Omission | 580 |
| | | Spouse Omitted from Premarital Will | 581 |
| | | Uniform Probate Code § 2-301 | 581 |
| | | In re Estate of Prestie | 581 |
| | 2 | Unintentional Disinheritance of a Child | 584 |
| | ۷. | | |
| | | Uniform Probate Code § 2-302 | 584 |
| | | Gray v. Gray | 586 |
| | | In re Estate of Jackson | 592 |
| | | | |
| Chaj | ote | 9 TRUSTS: FIDUCIARY ADMINISTRATION | 597 |
| A | Fr | om Limited Powers to Fiduciary Administration | 598 |
| 11. | | · | 598 |
| | 1. | From Conveyance to Management John H. Langbein, Rise of the Management Trust | 598 |
| | 2 | Trustees' Powers | |
| | | | 601 |
| | 3. | Fiduciary Governance | 603 |
| | | Robert H. Sitkoff, Trust Law as Fiduciary Governance Plus Asset Partitioning | 603 |
| D | | | |
| ь. | Th | e Duty of Loyalty | 606 |
| В. | Th | te Duty of Loyalty Hartman v. Hartle | 606 606 |
| Б. | Th | | |







| C. | The Duty of Prudence | 620 |
|----|--|------------|
| | 1. The Distribution Function | 621 |
| | a. Discretionary Distributions | 621 |
| | Marsman v. Nasca | 621 |
| | b. Sole, Absolute, or Uncontrolled Discretion | 628 |
| | c. Exculpation Clauses | 630 |
| | d. Mandatory Arbitration | 632 |
| | 2. The Investment Function | 633 |
| | a. From Legal Lists to the Prudent Investor Rule | 633 |
| | Uniform Prudent Investor Act §§ 1, 2, 3, 4 | 634 |
| | Max M. Schanzenbach & Robert H. Sitkoff, The Prudent Investor Rule | |
| | and Market Risk: An Empirical Analysis | 635 |
| | b. Applying the Prudent Investor Rule | 642 |
| | (1) The Duty to Diversify and Inception Assets | 642 |
| | In re Estate of Janes | 642 |
| | Compensatory Damages for Imprudent Investment | 652 |
| | (2) Powers, Duties, and the Terms of the Trust | 653 |
| | 3. The Custodial and Administrative Functions | 657 |
| | a. Duty to Collect and Protect Trust Property | 657 |
| | b. Duty to Earmark Trust Property | 658 |
| | c. Duty Not to Mingle Trust Property with the Trustee's Own Property | 659 |
| | d. Duty to Keep Adequate Records of Administration | 659 |
| | e. Duty to Bring and Defend Claims | 660 |
| | 4. Trustee Selection and Divided Trusteeship | 660 |
| | a. Choosing a Trustee | 661 |
| | b. Delegation by a Trustee | 661 |
| | Uniform Trust Code § 807 | 663 |
| | c. Division by a Settlor | 664 |
| | (1) Co-Trustees | 664 |
| | (2) Power of Appointment | 665 |
| | (3) Directed Trusts | 605 |
| | d. Private Trust Company | 669 |
| D. | The Duty of Impartiality | 670 |
| | 1. Due Regard and the Terms of the Trust | 670 |
| | 2. The Principal and Income Problem | 672 |
| | Matter of Will of Kline | 673 |
| E | The Duty to Inform and Account | 670 |
| E. | The Duty to Inform and Account Uniform Trust Code § 813 | 678 |
| | Responding to a Request for Information | 678 679 |
| | Uniform Trust Code § 105 | 679 |
| | Wilson v. Wilson | 680 |
| | 2. Affirmative Disclosure | 686 |
| | Allard v. Pacific National Bank | |
| | · | 686 |
| | 3. Accountings, Beneficiary Authorization, and Repose | 690 |
| | a. Judicial Accountings | 690 |
| | National Academy of Sciences v. Cambridge Trust Co. | 690 695 |
| | b. Informal Accountings | 696 |
| | c. Accounting to a Representative Beneficiary d. Beneficiary Authorization: Consent or Release | 697 |
| | d. Deficiency Authorization. Consent of Release | 09/ |





02-08-2025 16:48:53

697



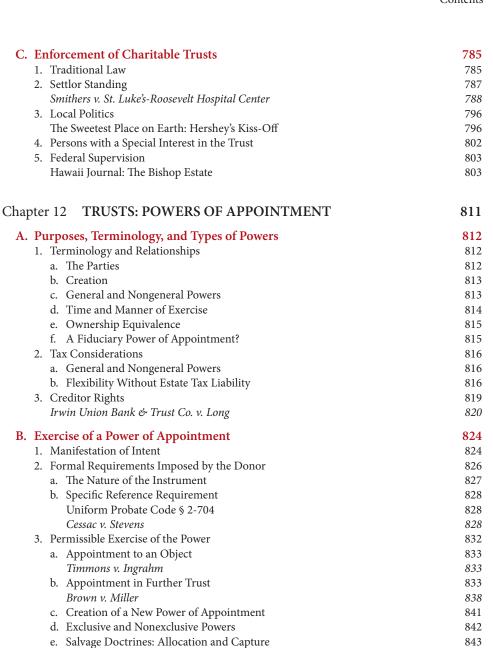
| Chapter 10 TRUSTS: ALIENATION AND MODIFICATION | 699 |
|--|-------------|
| A. Alienation of the Beneficial Interest | 700 |
| 1. Discretionary Trusts | 700 |
| a. Pure Discretionary Trust | 70 |
| b. Support Trust | 704 |
| c. Discretionary Support Trust | 705 |
| d. Collapsing the Categories | 705 |
| Uniform Trust Code § 504 | 706 |
| e. Protective Trusts | 707 |
| 2. Spendthrift Trusts | 707 |
| Uniform Trust Code §§ 502, 503 | 710 |
| Scheffel v. Krueger | 711 |
| 3. Self-Settled Asset Protection Trusts | 716 |
| Huber v. Huber | 718 |
| Trusts for the State Supported Self-Settled Trusts | 726 |
| | 727 |
| b. Trusts Created by Third Parties | 728 |
| B. Modification and Termination | 729 |
| 1. Consent of the Beneficiaries | 730 |
| a. English Law | 730 |
| b. The Claflin Doctrine | 731 |
| In re Estate of Brown | 732 |
| c. The UTC and the Restatement (Third) of Trusts | 735 |
| Uniform Trust Code § 411 | 735 |
| d. Nonjudicial Settlement Agreements | 737 |
| 2. Deviation and Changed Circumstances | 737 |
| a. Traditional Law | 737 |
| b. Extension to Dispositive Provisions | 738 |
| Uniform Trust Code § 412 In re Riddell | 739 |
| | 739 744 |
| c. Tax Objectives 3. Trust Decanting | 745 |
| Hodges v. Johnson | 743 |
| | |
| C. Trustee Removal | 755 |
| Uniform Trust Code § 706 | 750 |
| Davis v. U.S. Bank National Association | 756 |
| Chapter 11 TRUSTS: CHARITABLE PURPOSES, CY PRES, | |
| AND SUPERVISION | 763 |
| A. Chawitahla Dawmaga | 76 |
| A. Charitable Purposes Shenandoah Valley National Bank v. Taylor | 76 4 |
| Shehandoan Valley National Bank V. Taylor | /04 |
| B. Cy Pres and Deviation | 772 |
| 1. Cy Pres | 772 |
| a. Illegal, Impossible, or Impracticable | 772 |
| In re Neher's Will | 772 |
| b. Wasteful | 776 |
| San Francisco Chronicle: The Buck Trust | 776 |
| 2. Deviation | 779 |
| Philadelphia Story: The Barnes Foundation | 780 |
| 3. Discriminatory Trusts | 784 |





xxiii











(1) Allocation

4. Disclaimer, Release, and Contract

C. Failure to Exercise a Power of Appointment

Uniform Powers of Appointment Act § 310

Uniform Powers of Appointment Act § 311

(2) Capture

1. General Power

2. Nongeneral Power

843

844

844

846

846

846

846

847



Chapter 13 TRUSTS: CONSTRUCTION AND **FUTURE INTERESTS** 849 A. Future Interests 850 1. Classification 850 2. Future Interests in the Transferor 851 a. Reversion 851 b. Possibility of Reverter 852 c. Right of Entry 852 3. Future Interests in Transferees 852 a. Remainders 852 (1) Vested and Contingent Remainders 852 (2) Vested Subject to Partial Divestment 853 (3) Vested Subject to Divestment or Contingent? 854 (4) Remainders and Reversions 855 b. Executory Interests 855 4. Future Interests Reform 857 **B.** Construction of Trust Instruments 859 1. Preference for Vested Interests 859 a. Acceleration into Possession 860 b. Transferability 862 (1) Inter Vivos Transfer 862 (2) Transfer at Death 862 c. Requiring Survival to Time of Possession 863 (1) The Traditional No-Survivorship Rule of Construction 863 Tait v. Community First Trust Co. 863 (2) Multigenerational Class Gifts and Other Exceptions 867 Clobberie's Case 868 (3) The Survivorship-Plus-Antilapse Rule of UPC § 2-707 870 2. Gifts to Classes 874 a. Gifts of Income 874 Dewire v. Haveles 874 b. Gifts to Children, Issue, or Descendants 878 (1) Gift to Children 878 (2) Gift to Issue or Descendants 879 c. Gifts to Heirs 880 Estate of Woodworth 880 d. The Rule of Convenience 886 (1) Immediate Gifts 887 (2) Postponed Gifts 888 (3) Gifts of Specific Sums 889 THE RULE AGAINST PERPETUITIES Chapter 14 891 AND TRUST DURATION A. The Common Law Rule 892 1. History 892 a. Predicates to the Rule 892 b. The Duke of Norfolk's Case 893 c. Toward Lives in Being Plus 21 Years 894 2. The Policy Against Remote Vesting 895 a. The Modern Purposes of the Rule 895





897

b. Why "Lives in Being Plus 21 Years"?

XXV



| | c. The Rule and Trust Duration | 898 |
|------|--|------------|
| | 3. A Rule of Logical Proof | 898 |
| | a. Some Life in Being | 898 |
| | b. When the Lives in Being Are Ascertained | 899 |
| | 4. What Might Happen and the Fantastical Characters | 900 |
| | a. The Fertile Octogenarian | 901 |
| | b. The Unborn Widow | 902 |
| | c. The Slothful Executor | 903 |
| | d. The Magic Gravel Pit and Other Marvels | 904 |
| B. | Perpetuities Reform | 904 |
| | 1. Saving Clauses | 904 |
| | 2. Reformation (or Cy Pres) | 906 |
| | 3. Wait-and-See | 907 |
| | 4. Abolition of the Rule Against Perpetuities | 910 |
| | Robert H. Sitkoff & Max M. Schanzenbach, Jurisdictional Competition for | |
| | Trust Funds: An Empirical Analysis of Perpetuities and Taxes | 910 |
| | Lawrence W. Waggoner, From Here to Eternity: The Folly of Perpetual Trusts | 914 |
| | Jesse Dukeminier & James E. Krier, The Rise of the Perpetual Trust | 915 |
| | 5. The Restatement (Third) of Property | 918 |
| | Restatement (Third) of Property: Wills and Other Donative Transfers § 27.1 | 919 |
| C. | Application of the Rule to Class Gifts and Powers of Appointment | 920 |
| | 1. Class Gifts | 920 |
| | a. The All-or-Nothing Rule | 920 |
| | b. Exceptions to the All-or-Nothing Rule | 921 |
| | (1) Gifts to Subclasses | 922 |
| | (2) Specific Sum to Each Class Member | 922 |
| | 2. Powers of Appointment | 922 |
| | a. General Powers Presently Exercisable | 923 |
| | (1) Validity of Power | 923 |
| | (2) Validity of Exercise | 923 |
| | b. General Testamentary Powers and Nongeneral Powers | 923 |
| | (1) Validity of Power | 923 |
| | (2) Validity of Exercise | 924 |
| | c. The Delaware Tax Trap | 925 |
| D. | Other Durational Limits | 926 |
| | 1. The Rule Against Suspension of the Power of Alienation | 926 |
| | 2. The Rule Against Accumulations of Income | 927 |
| Char | oter 15 WEALTH TRANSFER TAXATION | 931 |
| • | | |
| A. | The Federal Gift Tax | 932 |
| | 1. Taxable Gifts | 932 |
| | a. Inadequate Consideration in Money's Worth | 932 |
| | b. Completion | 933 |
| | c. Joint Tenancy | 934 |
| | d. Income Tax Basis | 935 |
| | e. Liability for Gift and Estate Taxes 2. The Annual Exclusion | 935 |
| | The Marital Deduction and Gift Splitting | 936 939 |
| | | |
| В. | The Federal Estate Tax | 940 |

•







1. A Thumbnail Sketch

940



Contents

| 2. The Gross Estate | 942 |
|--|-----|
| a. The Probate Estate | 942 |
| b. Joint Tenancy | 942 |
| c. Annuities and Employee Death Benefits | 944 |
| d. Life Insurance | 944 |
| e. Retained Rights or Powers | 945 |
| Old Colony Trust Co. v. United States | 947 |
| Family Limited Partnerships | 950 |
| f. Revocable Transfers | 952 |
| g. Transfers Within Three Years of Death | 953 |
| h. Powers of Appointment | 954 |
| Estate of Vissering v. Commissioner | 956 |
| 3. Deductions | 959 |
| a. The Marital Deduction | 959 |
| (1) Requirements to Qualify | 959 |
| (2) The Nondeductible Terminable Interest Rule | 960 |
| (3) Exceptions to the Nondeductible Terminable Interest Rule | 960 |
| (4) Qualified Domestic Trusts | 964 |
| (5) Tax Planning for Spouses: The Credit Shelter Trust and Portability | 964 |
| b. The Charitable Deduction | 966 |
| C. The Generation-Skipping Transfer Tax | 967 |
| 1. The Nature of the Tax | 967 |
| a. A Taxable Generation-Skipping Transfer | 968 |
| b. When GST Tax Must Be Paid | 970 |
| 2. Exemption and Exclusions | 970 |
| D. State Estate and Inheritance Taxes | 972 |
| E. Income Taxation of Grantor Trusts | 973 |
| Table of Cases | 000 |
| Author Index | 000 |
| Index | 000 |
| 2.777777 | 500 |

•







02-08-2025 16:48:53