Contents

Preface Acknowledgments Introduction Instructor Resources	xix xxi xxiii xxv
CHAPTER 1: GENERAL OVERVIEW OF ESTATE PLANNING AND ESTATE ADMINISTRATION	1
Learning Objectives Chapter Overview Estate Planning Estate Planning Strategies Gifts Title Transfers Trusts Life Insurance Wills How to Make an Effective Estate Plan Situational Analysis Estate Administration Situational Analysis Chapter Summary Key Terms Case Studies Exercises Analytical Problem Quick Quiz ABA Model Rules of Professional Conduct	1 2 2 5 5 6 6 7 7 8 10 12 16 17 17 19 21 21 22
	xi

xii Contents

CHAPTER 2: SOURCES OF PROPERTY	23
Learning Objectives	23
Chapter Overview	23
Types of Property	24
Real Property	26
Concurrent Ownership	27
Tenancy in Common	27
Joint Tenancy	27
Tenancy by the Entirety	29
Community Property	30
Tenancy in Partnership	30
Life Estates	31
Leaseholds	33
Other Interests in Real Property	34
Mortgage	34
Easements	34
Liens	35
Elective Share	35
Personal Property	36
General Tangibles	37
Intangibles	38
General Intangibles	38
Intellectual Property	40
Claims and Benefits	42
Situational Analysis	44
Chapter Summary	45
Key Terms	46
Case Studies	48
Exercises	50
Analytical Problem	50
Quick Quiz	50
ABA Model Rules of Professional Conduct	51
CHAPTER 3: THE LAWS OF SUCCESSION	53
Learning Objectives	53
Chapter Overview	53
Intestate Succession Defined	54
How Intestate Succession Works	55
Situational Analysis	58
Intestate Administration	59
The Effect of the Laws of Succession	62
Situational Analysis	63
Chapter Summary	63
Key Terms	64
Case Studies	65

Contents	xiii
Exercises	67
Analytical Problem	67
Quick Quiz	68
ABA Model Rules of Professional Conduct	68
CHAPTER 4: TRUSTS	69
Learning Objectives	69
Chapter Overview	69
Trust Requirements	72
A Trustor	72
Trust Property	73
A Valid Trust Purpose	75
A Trustee	76
A Beneficiary	82
Types of Trusts	84
Express Trusts	84
Implied Trusts	87
Special Situation Trusts	88
Spendthrift Trust	88
Short-Term Trusts	89
Supplemental Needs Trusts	90
Totten Trusts	90
Marital Deduction Trusts	90
Spousal Lifetime Access Trust	91
Disclaimer Trust	91
Life Insurance Trusts	91
Asset Protection Trust	92 92
Qualified Personal Residence Trust Directed Trust	92
Dynasty Trust	92
Creation of the Trust	93
Inter Vivos Trusts	93
Testamentary Trusts	94
Restrictions on Trusts	94
Statute of Uses	95
Rule Against Perpetuities	95
Investments and Roles of the Parties	97
Restrictions on Trust Purpose	98
Termination of Trusts	99
Tax Considerations	102
General	102
Short-Term Trusts	102
Generation Skipping Transfers	103
Drafting a Trust	104
Situational Analysis	109
Chapter Summary	110

xiv	Contents
-----	----------

Key Terms	112
Case Studies	114
Exercises	116
Analytical Problem	117
Quick Quiz	117
ABA Model Rules of Professional Conduct	117
CHAPTER 5: WILLS	119
Learning Objectives	119
Chapter Overview	119
Testamentary Capacity	120
Age	120
Mental Ability	121
Intent	122
Fraud Menace	122 123
Undue Influence	123
Temporary Incapacity	123
Will Provisions	125
Surviving Spouse	125
Antenuptial Agreements	125
Omitted Children	126
Advancements	126
Charitable Gifts	126
Ademption	127
Lapsed Gifts	127
Abatement	127
Drafting a Will	128
Preparation	128
Clauses	130 140
Executing a Will Witnesses	140
Execution	140
Self-Proving Wills	142
Miscellaneous Instruments	143
Nuncupative Wills	143
Holographic Wills	143
Electronic Wills	144
Statutory Wills	144
Living Wills	144
Power of Attorney	145
Changing the Will	146
Amendment Through Codicils	146
Amendment Through Operation of Law	146
Revocation Will Contacts	148
Will Contests Sample Will and Accompanying Documents	148
Sample Will and Accompanying Documents	151

Contents	XV
Contents	XV

Situational Analysis Chapter Summary Key Terms Case Studies Exercises Analytical Problem Quick Quiz ABA Model Rules of Professional Conduct	158 159 160 162 164 164 164 165
CHAPTER 6: ESTATE PLANNING FOR THE ELDERLY	167
Learning Objectives Chapter Overview Health Care and the Elderly Medicare Medicaid Related Health Care Documents Guardianship Income Maintenance Social Security Supplemental Security Income Veterans' Benefits Private Pension Plans Plans Funded by the Individual Plans Funded by the Individual's Employer Ethical Concerns Situational Analysis Chapter Summary Key Terms Case Studies Exercises Analytical Problem Quick Quiz ABA Model Rules of Professional Conduct Social Security Form	167 168 168 171 173 174 177 179 179 180 180 181 182 182 183 185 187 187 187
CHAPTER 7: ESTATE ADMINISTRATION	199
Learning Objectives Chapter Overview The Pre-Probate Process Death Certificate Exhibit 1: Death Certificate Petition to Open Safe Deposit Box Exhibit 2: Petition to Open Safe Deposit Box	199 199 200 201 202 203 204

xvi Contents

Petition to Search	205
Exhibit 3: Petition to Search	206
Petition for Guardian ad Litem	207
Petition for Family Allowance	207
Petition for Interim (Preliminary, Temporary) Letters	207
Probate Administration	208
Exhibit 4: Informal Proceeding Forms	209
Petition for Letters of Administration	212
Exhibit 5: Petition for Letters of Administration	213
Petition for Letters Testamentary	217
Exhibit 6: Petition for Letters Testamentary	218
Notice and Waivers of Notice	220
Exhibit 7: Notices and Waivers	221
Probate Hearing	223
Letters	224
Exhibit 8: Order and Letters	225
Estate Administration	227
Exhibit 9: Final Accounting	230
Chapter Summary	232
Key Terms	233
Case Studies	233
Exercises	236
Analytical Problem	236
Quick Quiz	236
ABA Model Rules of Professional Conduct	237
CHAPTER 8: TAXATION	241
Learning Objectives	241
Chapter Overview	242
Federal Tax Law	244
Federal Tax Forms	245
SS-4: Application for Employer I.D. Number	245
Form 706—United States Estate and Generation Skipping	
Transfer Tax Return	245
Form 706 Schedules Relating to Assets	247
Schedule A: Real Estate	247
Schedule A-1	249
Schedule B: Stocks and Bonds	249
Schedule C: Mortgages, Notes, and Cash	251
Schedule D: Insurance on Decedent's Life	251
Schedule E: Jointly Held Property	252
Schedule F: Other Miscellaneous Property	253
Schedule G: Transfers During Decedent's Life	253
Schedule H: Powers of Appointment	254
Schedule I: Annuities Form 706 Schedules Relating to Deductions	254
rorm 706 Schedules Kelating to Deductions	255

Schedule J: Funeral and Administrative Expenses	255
Schedule K: Debts of the Decedent plus Mortgages	
and Liens	255
Schedule L: Net Losses During Administration	255
Schedule M: Bequests to Surviving Spouse	256
Schedule O: Charitable, Public, and Similar Gifts and	
Bequests	256
Form 706 Schedules Relating to Credits	256
Schedule P: Credit for Foreign Taxes Paid	256
Schedule Q: Credit for Tax on Prior Transfer	257
Schedule R: Generation Skipping Transfer	
[now its own separate form, 706-GS(D)]	257
Schedule S: Excess Retirement Accumulations	258
Schedule U: Qualified Conservation Easement Exclusion	258
Form 1041 — Fiduciary Income Tax Return	258
Form 1040—U.S. Individual Income Tax Return	258
Situational Analysis	259
Chapter Summary	259
Key Terms	261
Case Studies	262
Exercises	264
Analytical Problem	265
Quick Quiz	265
ABA Model Rules of Professional Conduct	266
CHAPTER 9: COMPARISON OF ESTATE LAW	
	267
in the bill bill bill yelloblerion	
Chapter Overview	267
Chapter Summary	319
Exercises	319
APPENDIX A: FORMS	321
A DDENIDIV D. A NOWED C. TO	
APPENDIX B: ANSWERS TO	-6-
THE QUICK QUIZZES	521
Glossary	525
Index	537