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Fundamentals of Trusts and Estates

FOURTH EDITION

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MATTHEW  BENDER

DEDICATIONS

Roger W. Andersen
To Howard & Ethel and Bobbie & Bill

Ira Mark Bloom
To my wife, Margaret Roberts,
and our grandchildren, Claudia Elena Bloom and Sofia Anna Bloom

PREFACE

This edition updates and selectively expands the prior edition to meet the need for a lean set of materials, flexibly structured to accommodate 3-hour and 4-hour courses. The book seeks to present fundamental material clearly and concisely while providing creative vehicles for further inquiry. These materials, therefore, can also serve as the core for more extensive courses.

The trusts and estates course has always presented the range of human experience: caring and indifference, generosity and greed, comfort and pain, support and abandonment. In addition, current movements of the law provide a rich variety of debates, as new approaches challenge traditional doctrine. To help students develop skills and values to carry throughout their professional lives, this book's Questions and problems illuminate both the human and the doctrinal dramas, often by placing students in various roles.

The Questions and problems are also the keys to the book's flexibility. Teachers can structure their courses in various ways by ignoring, focusing upon, or expanding upon different Questions and problems. The excerpted readings fulfill the same function — they can serve as background or as springboards for further inquiry. Policy debates, ethics issues, and practical considerations lace their way through the material.

This edition follows the largely traditional organization of earlier versions. The first chapter personalizes the variety of careers available in this field, offers overviews of the wealth transfer and the transfer tax systems, and introduces the topic of lawyer malpractice. Chapters on intestacy and wills develop the basic doctrines upon which the system depends. To facilitate an understanding of the law's movement toward integration, will substitutes are covered before discussing the problems caused by changed circumstances and the devices for protecting the family. The chapter on planning for incapacity serves as a bridge to a look at trusts, where we pay particular attention to the Uniform Trust Code and the revisions to the Restatement (Third) of Trusts. A chapter covering future interests, including moves against the Rule Against Perpetuities, follows. The final chapter covers fiduciary administration. An Appendix contains forms that are useful at several stages in the course.

We owe a continuing debt to the late John Gaubatz and to Lew Solomon, whose work on earlier incarnations of this book continues to bear fruit. We also acknowledge with thanks the helpful and careful efforts of our editor, Christine Frost.

Ira Bloom wishes to thank his research assistants, Emma Maceko, Meaghan Murphy, and David Szalda. He also acknowledges Albany Law School's financial support.

PREFACE

Finally, and most importantly, we thank our families for their love and support.

Roger W. Andersen
Ira Mark Bloom

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TABLE OF CONTENTS

Preface	v
Acknowledgments	vii

Chapter 1: LAWYERS, ESTATES, AND TRUSTS 1

§ 1.01	OPPORTUNITIES	1
§ 1.02	AN OVERVIEW OF INTER-GENERATIONAL WEALTH TRANSFER .	6
	A. Probate	7
1.	The Process	7
	Figure 1-1	7
	Question	13
2.	Is Probate Necessary?	14
B.	Lifetime Transfers	15
1.	Trusts	15
2.	Other Lifetime Transfers	15
C.	Guardianships	16
	Notes and Question	17
D.	The Uniform Codes and the Restatements	18
§ 1.03	FEDERAL WEALTH TRANSFER TAXES	19
A.	A Unified System	20
B.	The Gift Tax	22
	Question	23
C.	The Estate Tax	23
1.	The Gross Estate	24
2.	The Marital Deduction	25
	Lawrence J. Fox & Susan R. Martyn, Red Flags: A Lawyer's Handbook on Legal Ethics (ALI-ABA 2d ed. 2010)	26
	Note	26
	Problem	27
D.	The Generation-Skipping Transfer Tax	27
	Problems	27
§ 1.04	DUTIES LAWYERS OWE CLIENTS (AND OTHERS)	28
	<i>Schneider v. Finmann</i>	29
	<i>Robinson v. Benton</i>	31
	Questions and Notes	33
	Problems	34

TABLE OF CONTENTS

Chapter 2:	INTESTACY	37
§ 2.01	OVERVIEW	37
A.	Terminology	37
B.	Survivorship	38
	<i>Uniform Probate Code</i>	39
C.	Choice of Law	39
D.	Protective Provisions	40
	Florida Constitution, Article X, Section 4 Homestead —	
	exemptions	40
E.	The Structure of Intestate Schemes	41
	<i>Uniform Probate Code</i>	44
	Notes and Questions	45
	Problems	46
§ 2.02	QUALIFYING TO TAKE	46
	Susan N. Gary, <i>Adapting Intestacy Laws to Changing Families</i>	47
A.	Spouses and Partners	48
	<i>In Re Estate of Gardiner</i>	49
	Notes and Questions	51
B.	Descendants	53
1.	Non-marital Children	53
	Browne Lewis, <i>Children of Men: Balancing the Inheritance Rights of</i>	
	<i>Marital and Non-marital Children</i>	53
	<i>Uniform Probate Code</i>	54
	N.Y. Est. Powers & Trusts Law § 4-1.2	54
	Question	55
2.	Adopted Persons	56
	<i>Uniform Probate Code</i>	57
	Questions and Notes	58
	Problems	59
3.	Children of Assisted Reproduction	60
	<i>Finley v. Commissioner, Social Security Administration</i>	60
	Notes and Question	64
	<i>Uniform Probate Code</i>	65
	Question	68
	Problem	68
C.	Half Bloods	69
D.	Stepchildren	69
	Question	69
E.	Ancestors and Collateral Relatives	70
§ 2.03	ALLOCATING SHARES	71
A.	Spouses	71

TABLE OF CONTENTS

	Problems	72
B.	Descendants and Collaterals	72
1.	<i>Per Capita</i>	73
2.	Representation	73
a.	Strict <i>Per Stirpes</i>	73
b.	<i>Per Stirpes: Per Capita</i> with Representation	74
c.	Representation: <i>Per Capita</i> at Each Generation	74
3.	Drafting Lessons	76
	Problems	77
Chapter 3:	WILLS	81
§ 3.01	THE PLANNING PROCESS	81
	Thomas Shaffer, Death, Property, and Lawyers	82
	Question	82
	Question	84
§ 3.02	CREATION OF WILLS	85
A.	What's a Will?	85
	<i>Uniform Probate Code</i>	85
B.	The Mental Element	86
1.	Intention	86
	<i>In Re Estate of Kuralt</i>	86
	Notes and Questions	89
2.	Testamentary Capacity	90
	<i>In Re Estate of Romero</i>	91
	Robert P. Roca, <i>Determining Decisional Capacity: A Medical Perspective</i>	95
	Notes and Questions	95
3.	Undue Influence	96
	<i>Restatement (Third) of Property (Wills and Other Donative Transfers)</i>	98
	<i>In Re Estate of Saucier</i>	98
	Notes	101
	Carla Spivack, <i>Why the Testamentary Doctrine of Undue Influence Should Be Abolished</i>	103
	Question	106
	Problems	106
4.	Tortious Interference with Expectancy	108
	Irene D. Johnson, <i>Tortious Interference with Expectancy of Inheritance or Gift — Suggestions for Resort to the Tort</i>	108
	<i>In Re Estate of Ellis</i>	108
	Notes and Questions	113

TABLE OF CONTENTS

	Problem	113
5.	Fraud	114
	Problem	114
C.	Will Execution	114
1.	The Policies	114
	James Lindgren, <i>The Fall of Formalism</i>	115
	Deborah S. Gordon, <i>Reflecting on the Language of Death</i>	115
2.	A Typical “Statute of Wills”	116
	<i>Ohio Rev. Code</i>	117
	<i>Uniform Probate Code</i>	117
a.	In Writing (usually)	117
	<i>Nev. Rev. Stat.</i>	118
	Question	119
b.	Signed	119
	Question	120
c.	Attested in the Testator’s Presence	120
	<i>In Re Demaris’ Estate</i>	120
	Notes and Questions	122
d.	By Competent Witnesses	123
	<i>Estate of Parsons</i>	123
	Notes and Questions	125
	Problem	126
e.	Some Other Rules	126
	Note and Question	126
f.	Attestation Clauses and Self-Proving Affidavits	127
	<i>Uniform Probate Code</i>	127
	Problems	130
3.	Holographic Wills	131
	Question	131
	Problems	132
	Richard Lewis Brown, <i>The Holograph Problem — The Case Against Holographic Wills</i>	132
4.	Mistake in Execution	135
	George J. Alexander, <i>Premature Probate: A Different Perspective on Guardianship for the Elderly</i>	135
	Bruce H. Mann, <i>Formalities and Formalism in the Uniform Probate Code</i>	136
	Notes	137
	<i>Uniform Probate Code</i>	138
	<i>In Re Estate of Wiltfong</i>	138
	Notes	142

TABLE OF CONTENTS

	Question	143
	Problems	143
D.	Protective Planning	144
1.	Who Might Challenge	144
	Problem	144
2.	Structural Elements	145
3.	Conduct	147
	Problems	149
§ 3.03	COMPONENTS OF THE WILL	150
A.	Integration	150
B.	Incorporation by Reference	150
	<i>Simon v. Grayson</i>	150
	Notes and Questions	152
	Problems	153
C.	Independent Significance	154
	Problem	155
§ 3.04	INTERPRETING WILLS: EXTRINSIC EVIDENCE	155
A.	Patent and Latent Ambiguities	155
	<i>In Re Estate of Gibbs</i>	156
	Notes and Questions	158
	Problems	159
B.	Interpretation or Reformation?	160
	John H. Langbein & Lawrence W. Waggoner, <i>Reformation of Wills on</i> <i>the Ground of Mistake: Change of Direction in American Law?</i> . . .	160
	<i>Restatement (Third) of Property (Donative Transfers)</i>	161
	<i>Flannery v. McNamara</i>	162
	Notes and Questions	165
§ 3.05	REVOCATION	166
A.	By a Writing or Physical Act	166
	<i>Uniform Probate Code</i>	167
	<i>Estate of Gushwa</i>	168
	Notes and Questions	172
	Problems	173
B.	By Operation of Law	174
§ 3.06	REVIVAL	174
	<i>Uniform Probate Code</i>	175
	Problems	175
§ 3.07	DEPENDENT RELATIVE REVOCATION	176
	<i>In Re Estate of Patten</i>	177
	Notes and Questions	179
	Problems	180

TABLE OF CONTENTS

§ 3.08	OPTIONS FOR SAFEGUARDING WILLS	180
	Notes and Questions	181
§ 3.09	CONTRACTS REGARDING WILLS	183
	<i>Ernest v. Chumley</i>	184
	Notes	187
	Problems	189
Chapter 4:	LIFETIME ALTERNATIVES TO WILLS	191
	John H. Langbein, <i>The Nonprobate Revolution and the Future of the Law of Succession</i>	191
	Kent D. Schenkel, <i>Testamentary Fragmentation and the Diminishing Role of the Will: An Argument for Revival</i>	194
	Uniform Probate Code	194
§ 4.01	LIFETIME GIFTS	195
	<i>Henkle v. Henkle</i>	197
	Question and Notes	198
	Problems	199
	Note: Gifts to Minors	199
§ 4.02	JOINT INTERESTS	200
A.	Joint Tenancy	200
	Note and Questions	200
	Thomas L. Shaffer, <i>Legal Interviewing and Counseling</i>	201
	Problems	201
B.	Multiple Party Accounts	202
§ 4.03	PROPERTY IN MARRIAGE	203
§ 4.04	TRANSFER ON DEATH DEEDS	204
§ 4.05	LIFETIME TRUSTS	205
A.	Validity of Revocable Trusts	206
	<i>Farkas v. Williams</i>	206
	Notes	210
	<i>Uniform Trust Code</i>	211
	Notes and Questions	211
	Note: Pour-Over Wills	212
	<i>Uniform Probate Code</i>	213
	Question	213
C.	Ignoring Trust Form: Creditors' Rights in Revocable Trusts	214
	<i>State St. Bank & Trust Co. v. Reiser</i>	214
	Note and Problems	215
§ 4.06	LIFE INSURANCE AND OTHER CONTRACTS	215
	Problems	217
	Note	217
§ 4.07	RETIREMENT FUNDS	217

TABLE OF CONTENTS

A.	Annuities	217
B.	Pensions	218
1.	Private Sector Benefit Plans	218
2.	Public Retirement Plans	220
	Problems	220
Chapter 5:	CHANGED CIRCUMSTANCES	223
	Adam J. Hirsch, <i>Text and Time: A Theory of Testamentary</i> <i>Obsolescence</i>	223
	John H. Langbein, <i>The Nonprobate Revolution and the Future of the</i> <i>Law of Succession</i>	225
	Uniform Trust Code	227
§ 5.01	ACTS OF THE PROPERTY HOLDER	228
A.	Advancements	228
	Notes and Questions	229
	Problem	229
B.	Satisfaction	229
	<i>Yivo Institute For Jewish Research v. Zaleski</i>	230
	Notes and Questions	236
C.	Divorce	236
	<i>Friedman v. Hannan</i>	236
	<i>Uniform Probate Code</i>	241
	Notes and Questions	243
	Problem	244
§ 5.02	ACTS OF BENEFICIARIES	244
A.	Disclaimers	244
	<i>In Re Estate of Holden</i>	245
	Notes	249
	<i>Uniform Probate Code</i>	251
	Problem	252
B.	Assignments of Expectancies	252
C.	Misconduct	253
	<i>Uniform Probate Code</i>	254
	<i>In The Matter of the Estates of Swansons</i>	255
	Notes and Questions	259
	Problems	261
§ 5.03	CHANGES IN PROPERTY	262
A.	Classification of Gifts	262
	Problem	263
B.	Dividends and Stock Splits	263
C.	Ademption	264
	<i>Wasserman v. Cohen</i>	264

TABLE OF CONTENTS

	Notes and Question	267
	<i>Uniform Probate Code</i>	269
	Questions	269
	Problems	269
D.	Abatement and Exoneration	269
	Problems	270
§ 5.04	LAPSE	270
A.	Traditional Antilapse Statutes	271
	<i>Estate of Kehler</i>	272
	Notes	274
	Problems	276
B.	The Uniform Probate Code	277
	<i>Uniform Probate Code</i>	277
	Notes and Question	279
	Problems	279
Chapter 6:	PROTECTING THE FAMILY	281
§ 6.01	DISINHERITED SPOUSES	281
A.	Community Property	282
	<i>In Re Kobylski</i>	282
	Question and Notes	290
	Problems	290
	<i>Olver v. Fowler</i>	291
	Question and Notes	295
B.	Dower	296
	Note	296
	Problem	296
C.	The Right to Elect	297
1.	The Basics	297
	Notes and Questions	298
2.	Exceptions	299
	<i>Bongaards v. Millen</i>	300
	Notes and Questions	311
	Problems	313
3.	The Uniform Probate Code	313
a.	The Original Augmented Estate	314
b.	A Partnership Approach	315
	Lawrence W. Waggoner, <i>The Multiple-Marriage Society and</i> <i>Spousal Rights Under the Uniform Probate Code</i>	315
	Uniform Probate Code Article II, Part 2 Elective Share of Surviving Spouse General Comment	319

TABLE OF CONTENTS

	Note: Determining the Elective Share	323
	Question	324
	Problems	324
	Questions	325
D.	Changes in Domicile	326
	<i>Estate of Hanau v. Hanau</i>	326
	Notes and Questions	327
E.	Agreements Waiving Marital Rights	328
	<i>In Re Estate of Greiff</i>	328
	<i>Uniform Probate Code</i>	330
	Notes and Questions	331
	Problem	332
§ 6.02	FORGOTTEN SPOUSES AND CHILDREN	332
	<i>Uniform Probate Code</i>	333
	Notes and Questions	335
	Problems	335
	Note: Intentional Disinheritance	336
	Problems	336
	Ralph C. Brashier, <i>Disinheritance and the Modern Family</i>	337
	Note	337
	Question	337
§ 6.03	CHARITABLE GIFTS	338
§ 6.04	PUBLIC POLICY LIMITS	338
	Jeffrey G. Sherman, <i>Posthumous Meddling: An Instrumentalist Theory of Testamentary Restraints on Conjugal and Religious Choices</i>	338
	Notes and Questions	341
	<i>Hecht v. Superior Court</i>	342
	Notes and Questions	347
	Problems	347
Chapter 7:	PLANNING FOR INCAPACITY	351
§ 7.01	PROPERTY MANAGEMENT AND PRESERVATION	351
A.	Durable Powers of Attorney	351
	<i>Russ Ex Rel. Schwartz v. Russ</i>	352
	<i>Uniform Power of Attorney Act</i>	361
	Notes and Questions	363
	Lawrence J. Fox & Susan R. Martyn, <i>Red Flags: A Lawyer's Handbook on Legal Ethics</i>	364
	Problem	365
B.	Long-Term Care Insurance	366
	David M. English, <i>A Checklist for Long-Term Care Coverage: Know the</i>	

TABLE OF CONTENTS

	<i>Policy and Know Your Client</i>	367
§ 7.02	HEALTH CARE DECISIONMAKING	369
	A New Tattoo	370
	Note and Question	370
	<i>Cruzan v. Director, Missouri Department Of Health</i>	371
	Notes	376
	David M. English & Alan Meisel, <i>Uniform Health-Care Decisions Act Gives New Guidance</i>	376
	Questions	379
	Problem	379
Chapter 8:	TRUSTS	381
§ 8.01	AN OVERVIEW	381
A.	History	381
B.	Modern Trust Law	382
C.	Express, Resulting and Constructive Trusts	383
D.	Terminology	385
	<i>Uniform Trust Code</i>	386
E.	Contemporary Reasons for Trusts	387
F.	Choice of Law	387
	<i>Uniform Trust Code</i>	388
	Notes and Question	388
§ 8.02	CREATION	389
A.	Intent	389
	<i>Burton v. Irwin</i>	389
	Notes and Questions	391
	<i>In Re Estate of Zukerman</i>	392
	Notes and Question	394
	Problems	395
B.	Trust Property	396
	<i>Kully v. Goldman</i>	396
	Notes and Question	397
	<i>Gordon v. Portland Trust Bank</i>	398
	Notes and Questions	399
C.	Beneficiaries	400
	<i>Morsman v. Commissioner</i>	400
	Notes and Question	402
	Note: Unidentifiable Beneficiaries and Resulting Trusts	403
	<i>Uniform Trust Code</i>	404
	Note: Purpose Trusts (Trusts Without Beneficiaries)	404
	Note: Other Situations Involving Resulting Trusts	406

TABLE OF CONTENTS

	Problems	406
D.	Trustee	407
E.	Trust Purposes	410
	Uniform Trust Code	410
	Questions	411
F.	Formalities for Trust Creation	411
	Problems	413
§ 8.03	THE NATURE OF A BENEFICIARY’S INTEREST	413
A.	Mandatory Trusts	413
1.	Right to Income Trusts	413
2.	Annuity Trusts	414
3.	Unitrusts	414
B.	Discretionary and Support Trusts	415
	<i>Emmert v. Old National Bank of Martinsburg</i>	415
	Restatement (Third) of Trusts	419
	Uniform Trust Code	419
	Notes and Questions	419
	Problem	420
C.	Transfers of Beneficial Interests in Trust	421
1.	General Principles	421
	<i>Uniform Trust Code</i>	421
	Problems	421
2.	Spendthrift Provisions and Other Restraints on Alienation	422
	Adam J. Hirsch, <i>Spendthrift Trusts and Public Policy: Economic and Cognitive Perspectives</i>	422
a.	Restraints on Voluntary Transfers	423
	Question and Problem	423
b.	Restraints on Involuntary Transfers	424
	<i>Broadway National Bank v. Adams</i>	424
	Notes and Questions	426
	<i>Shelley v. Shelley</i>	427
	Notes and Questions	432
3.	Asset Protection Trusts	433
	Question	435
4.	Medicaid Eligibility	436
	<i>Pohlmann v. Nebraska Department Of health and Human Services</i>	436
	Notes and Questions	440
§ 8.04	REFORMATION, MODIFICATION, AND TERMINATION	444
A.	Reformation and Modification Based on Ambiguity and Mistake	444
	Question	444

TABLE OF CONTENTS

B.	Termination and Modification Prescribed by Settlor	444
C.	Termination and Modification by the Trust Beneficiaries	446
1.	The Claflin Doctrine	446
	<i>Claflin v. Claflin</i>	446
	Notes and Questions	448
	Problems	449
2.	Indestructible Trusts	450
	Restatement (Second) of Property (Donative Transfers)	450
	Note: Representing Unidentified and Incapacitated Beneficiaries	451
	<i>Uniform Trust Code</i>	451
	Questions	452
D.	Judicial Modification or Termination	452
	<i>In Re Trusteeship of Mayo</i>	452
	<i>Uniform Trust Code</i>	455
	Notes	455
	Problem	456
§ 8.05	CHARITABLE TRUSTS	456
A.	Creation and Enforcement of Charitable Trusts	457
	<i>St. Mary's Medical Center, Inc. v. McCarthy</i>	457
	Notes	463
	Question	464
B.	Charitable Purposes	467
	Notes and Question	469
	Problem	470
C.	Modification (Cy Pres and Equitable Deviation)	471
1.	Cy Pres	471
	<i>Obermeyer v. Bank of Am., N.A.</i>	471
	Restatement (Third) of Trusts	477
	<i>Uniform Trust Code</i>	477
	Notes and Questions	478
	Problem	480
2.	Equitable Deviation	480
	<i>In Re Estate of Wilson</i>	481
	Note	484
Chapter 9:	PLANNING FOR THE FUTURE: SUCCESSIVE TRUST INTERESTS	489
§ 9.01	FUNDAMENTALS	489
A.	Dividing by Time	489
B.	Defeasibility	490
C.	Life Estates, Term of Years and Reversions	492

TABLE OF CONTENTS

D.	Remainders and Executory Interests	492
1.	Vested Remainders	493
2.	Contingent Remainders	493
E.	Trusts and Future Interests	495
F.	Problems in Classification	496
	Problems	496
G.	The Restatement (Third) of Property's Simplified Classification System	497
§ 9.02	INTERPRETATION QUESTIONS	499
A.	Survival	500
1.	Traditional Approaches	500
	<i>Swanson v. Swanson</i>	501
	Notes and Questions	503
	Note: Implied Survival Requirements	504
	Problems	505
2.	The UPC	506
	<i>Uniform Probate Code</i>	506
	Edward C. Halbach, Jr. & Lawrence W. Waggoner, <i>The UPC's New Survivorship and Antilapse Provisions</i>	509
	Jesse Dukeminier, <i>The Uniform Probate Code Upends the Law of Remainders</i>	510
	Notes and Questions	511
	Problems	513
B.	Class Gifts	514
1.	Status Questions	514
	<i>First National Bank of Chicago v. King</i>	515
	Uniform Probate Code	518
	Notes and Questions on Changing the Rules	520
	Notes and Questions on Adoption Issues	520
	Notes and Questions on Other Status Issues	521
	Problems	522
2.	Class Closing	522
	Problems	524
3.	Class Gifts Involving Multiple Generations	525
a.	Gifts to Descendants	525
	<i>Uniform Probate Code</i>	526
	Problems	526
b.	Gifts to Heirs	527
i.	Identifying Heirs	527
	<i>Uniform Probate Code</i>	528
	Note and Problems	528

TABLE OF CONTENTS

ii.	The Rule in Shelley's Case	529
	Problems	529
iii.	The Doctrine of Worthier Title	530
iv.	Drafting Gifts to Heirs	530
	<i>Harris Trust And Savings Bank v. Beach</i>	531
	Notes	535
	Problems	535
4.	The Rule in <i>Wild's Case</i>	535
C.	Death Without (or With) Issue	536
	Problems	537
§ 9.03	POWERS OF APPOINTMENT	538
A.	The Basics	538
1.	The Players	539
2.	Classification of Powers	539
a.	Objects (Permissible Appointees)	539
b.	Method of Exercise	540
3.	Estate Tax Treatment	540
4.	Who Owns the Property	540
	Note and Problems	542
B.	Creation and Exercise	542
	<i>Beals v. State St. Bank and Trust Co.</i>	543
	Notes and Questions	546
	Note: The Scope of Special Powers	548
	Problem	549
§ 9.04	THE RULE AGAINST PERPETUITIES	549
A.	Framework for Analysis	550
	Problems	553
B.	A Possibilities Test	554
	<i>Perkins v. Iglehart</i>	554
	Notes	557
	Problem	557
C.	Class Gifts	558
	Problems	560
D.	Powers of Appointment	562
1.	Validity of the Power	562
2.	Validity of the Appointed Interests	563
3.	Takers in Default	563
	Problems	563
E.	Saving Clauses	564
	<i>In Re Estate of Lee</i>	564
	Notes and Questions	566

TABLE OF CONTENTS

F.	Reform	567
1.	Wait-and-See	568
	<i>In Re Estate of Anderson</i>	568
	<i>Uniform Probate Code</i>	571
	Notes and Question	571
2.	Reformation	572
	<i>Berry v. Union National Bank</i>	572
	<i>Uniform Probate Code</i>	574
	Notes and Questions	574
	Problem	575
	Robert J. Lynn, <i>Perpetuities Literacy for the 21st Century</i>	575
3.	The Restatement of Property's New Formulation of the Rule Against Perpetuities	577
G.	Perpetuities Repeal Movement	578
§ 9.05	OTHER RULES ON DEAD HAND CONTROL OVER TRUSTS	582
A.	The Rule Against the Undue Suspension of the Power of Alienation	582
B.	The Rule Against the Unreasonable Accumulation of Trust Income	583
	Restatement (Second) of Property (Donative Transfers)	583
	Question	584
Chapter 10:	PROBLEMS IN ADMINISTRATION	585
§ 10.01	AN OVERVIEW	585
§ 10.02	DUTY OF LOYALTY	588
	<i>In Re Estate of Hines</i>	588
	Notes and Questions	591
	<i>Uniform Trust Code</i>	594
	Problems	594
	Christopher H. Gadsden, <i>Ethical Guidelines for the Fiduciary's Lawyer</i> Reprinted from <i>Trusts & Estates</i> , March 1995. © 1996 Argus, Inc., A Division of Intertec Publishing Corporation. Atlanta, GA, U.S.A.	595
	Notes and Question	596
	Problem	598
§ 10.03	MANAGERIAL ISSUES	598
A.	Duties and Powers	598
	<i>Uniform Trust Code</i>	599
	Notes and Questions	602
	Problem	603
B.	Investments	604
1.	The Traditional "Prudent Man"	605
	<i>In Re Estate of Janes</i>	605
	Notes	610

TABLE OF CONTENTS

2.	The Prudent Investor	612
	Restatement (Third) of Trusts	612
	Edward C. Halbach, Jr., <i>Trust Investment Law in the</i> <i>Third Restatement</i>	613
	Notes and Questions	616
	Problems Involving the Prudent Investor Rule	616
3.	Delegation and Direction	618
a.	Delegation	618
	John H. Langbein, <i>Reversing the Nondelegation Rule of Trust-</i> <i>Investment Law</i>	619
	Stewart E. Sterk, <i>Rethinking Trust Law Reform: How Prudent Is</i> <i>Modern Prudent Investor Doctrine?</i>	620
b.	Direction	621
	Notes and Question	622
	Problem	623
4.	Settlor's Directions	624
	<i>Americans For The Arts v. Ruth Lilly Charitable Remainder Annuity</i> <i>Trust</i>	624
	Notes	628
	Notes	631
C.	Principal and Income Issues	631
1.	Principal and Income Allocation Rules	632
	Notes	637
2.	Trustee's Adjustment Power	638
	Jeffrey N. Gordon, <i>The Puzzling Persistence of the Constrained</i> <i>Prudent Man Rule</i>	638
	Note and Question	642
	Problem	642
3.	The Noncharitable Unitrust Alternative	642
	<i>In Re Heller</i>	643
	Question	648
D.	Other Fiduciary Duties	648
	<i>Estate of Baldwin</i>	649
	Notes and Questions	653
	Problem	654
	<i>Johnson v. Johnson</i>	654
	<i>Uniform Trust Code</i>	659
	Notes	660
	Problems	663
E.	Liability to Third Parties	663
	Problem	664

TABLE OF CONTENTS

§ 10.04	REMEDIES FOR BREACH OF FIDUCIARY DUTIES	665
A.	Remedies in General	665
	<i>In Re Estate of Rothko</i>	667
	Restatement (Third) of Trusts	670
	Notes and Questions	670
	Problem	672
B.	Bars to Relief	673
	<i>In Re Williams</i>	673
	<i>Uniform Trust Code</i>	676
	Notes and Questions	677
	Problems	678
	Appendix	681
	Table of Cases	TC-1
	Table of Statutes	TS-1
	Index	I-1

