

Fundamentals of Trusts and Estates

SIXTH EDITION

2024 SUPPLEMENT

Prepared by

Professor Ira Mark Bloom

PROFESSOR EMERITUS OF LAW

ALBANY LAW SCHOOL

CAROLINA ACADEMIC PRESS

Durham, North Carolina

Copyright © 2024
Carolina Academic Press, LLC
All Rights Reserved

Carolina Academic Press
700 Kent Street
Durham, North Carolina 27701
Telephone (919) 489-7486
Fax (919) 493-5668
E-mail: cap@cap-press.com
www.cap-press.com

Preface

This Supplement primarily updates noteworthy cases and statutory developments since the manuscript for the Sixth Edition was submitted in late 2021. Specifically, this Supplement provides updates from December 1, 2021, to July 25, 2024. During this period there were no new major Uniform laws nor any major federal tax legislation. Inflation-adjusted tax items, however, are included in this Supplement.

I express my appreciation to William Gaskill, Research, Instructions and Scholarly Communications Librarian, Albany Law School for his help in preparing this Supplement.

Ira Mark Bloom

August 2024

Chapter 1: LAWYERS, ESTATES, AND TRUSTS

§ 1.02 AN OVERVIEW OF INTER-GENERATIONAL WEALTH TRANSFER

D. The Uniform Codes and the Restatements

Page 16. *Add in the context of Restatements before “Noveletsky” cite:*

Lonely Maiden Productions, LLC v. GoldenTree Asset Management, LP, 135 Cal. Rptr.3d 69,78 (Cal. App. 2011) (“California trust law is essentially derived from the Restatement Second of Trusts. Over a number of years, the Restatement Second of Trusts has been superseded by the Restatement Third of Trusts . . . As a result, we may look to the Restatement Third of Trusts for guidance.”) and

§ 1.03 FEDERAL WEALTH TRANSFER TAXES

Page 19. In 1st full paragraph, delete sentence about exemption amount and replace with:

For 2023, the exemption amount is \$ 13,610,000.

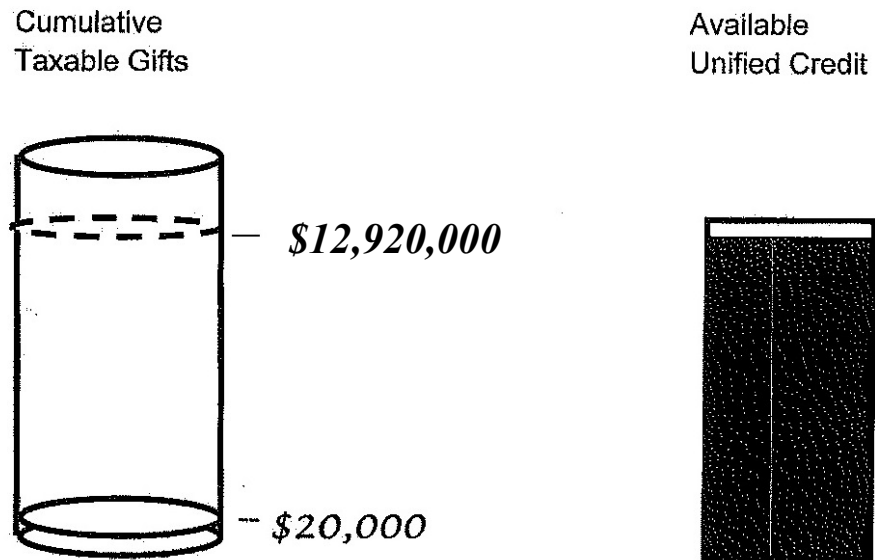
A. A Unified System

Page 20. In 2d paragraph, delete “For 2022, the exemption amount is \$12,060,000.” and replace with:

For 2024, the exemption amount is \$13,610,000.

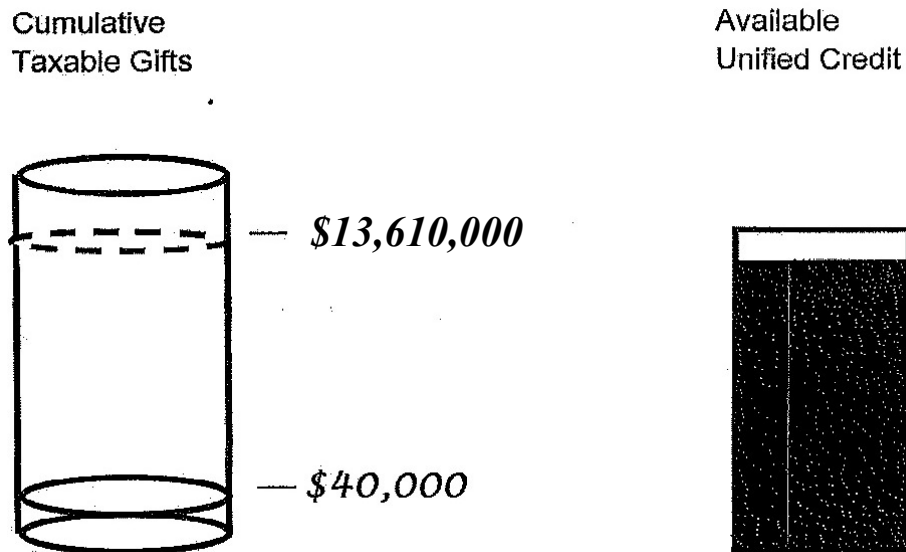
To see how the unified credit works, imagine Marc, who has incurred no prior transfer tax liability. Because his son, Ben, needed a down payment for his first house, in 2023 Marc gave Ben \$37,000, \$17,000 of which was exempt from taxation under an annual exclusion designed to reduce the gift tax consequences of lifetime transfers. The other \$20,000 was subject to gift tax. *See* IRC § 2501. Rather than actually paying any tax, however, Marc used up a small piece of his unified credit. Figure 1-2 on the next page illustrates Marc’s situation after making the gift.

Figure 1-2 Marc's First Gift in 2023



Suppose further that in early 2024, Ben's house was seriously damaged in a storm, so Marc gave him \$38,000 for repairs, \$18,000 of which was exempt from taxation under an annual exclusion designed to reduce the gift tax consequences of lifetime transfers and which was increased from \$17,000 in 2023 to \$18,000 in 2024. The other \$20,000 is subject to tax. This second gift, however, was taxed at a higher rate, because it comes on top of Marc's earlier gift. To achieve that result as an accounting matter, we add in the prior gift for the purpose of figuring the tax on the new gift. Marc is not taxed twice on the first gift. The earlier gift only served to push the second gift into a higher bracket. Marc still used his unified credit and pays no tax. See Figure 1-3.

Figure 1-3 Marc's Second Gift in 2024



Other taxable gifts will be treated the same way. Suppose that Marc died at the end of 2024 having given away a combined total of \$100,000 in taxable gifts none of which were includable as part of his taxable estate. Now the value of his taxable estate will be added in just like the gifts. If the taxable estate was \$13,510,000 or less, the rest of his unified credit could cover the tax.¹ If the taxable estate pushed his lifetime-plus-death total over \$13,610,000 his estate will be able to use the rest of his available credit to offset some of the tax, but his estate will be liable for the excess over \$13,610,000, all of which will be taxed at a 40% rate.

B. The Gift Tax

Page 22. Add after " \$16,000 for 2022":

and to \$17,000 in 2023 and \$18,000 for 2024

C. The Estate Tax

2. *The Marital Deduction*

Page 25. In the second paragraph of the boxed text, replace 2022 with 2024 and replace \$11,060,000 with \$12,610,000.

¹ Although no federal estate tax will be payable if the combined lifetime transfers and the taxable estate is \$13,610,000 or less, state death taxes may be payable in over 10 states which set the exemption or threshold level lower. For example, in Massachusetts only estates up to \$1 million are effectively exempt from estate taxation.

D. The Generation-Skipping Transfer Tax

Page 27. At end of 1st full paragraph:

Replace 2022 with 2024 and \$12,060,000 with \$13,610,000.

Chapter 2: INTESTACY

§ 2.01 OVERVIEW

B. Survivorship

Page 42. Add as new *Selected Reference* after 2d line:

Emily Gootzeit, *The Evolution of the Uniform Simultaneous Death Act and Its Shortcomings*, 16 Univ. St. Thomas J.L. & Pub. Pol’y 464 (2023).

A. Spouses and Partners

Page 54. Add to FN 12:

In re Estate of Jenkins, 290 A.3d 524 (D.C. 2023), is an interesting case involving aspects of common-law marriages.

Page 55. Add to Selected References;

Gary E. Spitko, *Integrated Nonmarital Property Rights*, 75 SMU L. Rev. 151 (2022).

3. Children of Assisted Reproduction

Page 73. Add before “Sharon L. Klein” in Note 3:

Kristine S. Knaplund, *Reimagining Postmortem Conception*, 37 Ga. St. U. L. Rev. 905 (2021). (surveys all states treatment on rights of posthumously conceived individuals) and

Page 78: Add to Selected References:

Naomi Cahn, *Functional Siblings, Donor-Conceived People and Intestacy*, 48 ACTEC L.J. 5 (2022).

Chapter 3: WILLS

§ THE PLANNING PROCESS

Page 98. Add after 1st sentence in *the Client's property*:

Digital assets are becoming increasingly common and important. *See generally* Gerry W. Beyer and Kerri Nipp, *Estate Planning for Cyber Property – Electronic Communications, Cryptocurrency, Non-Fungible Tokens, and the Metaverse*, 16 Est. Plan. & Cmty. Prop. L. J. 1 (2023).

§ 3.02 CREATION OF WILLS

A. What's A Will?

Page 100. Add after “unusual”:

apart from UPC 1-201(56), albeit a few non-UPC states including New York and Pennsylvania will recognize negative will provisions. *See In re Will of Beu*, cited in Note 1 and *In re Estate of Bebout*, 2024 WL 47939 (Pa. Supr. Ct. 2024).

Page 101. Add to FN 3:

Other states are following suit to allow natural organic reduction. *See, e.g.*, New York Public Health Law § 4202 and 18 Vt, Stat. Ann. § 5224.

Page 102. Add at end of the 3d line:

See Sharon Klein and Jenna Cohn, The Post-Mortem Right of Publicity: Defining It, Valuing It, Defending It, and Planning for It, 48 ACTEC L.J. 63 (2022).

B. The Mental Element

1. Intention

Page 102. Add after sentence ending with “may be unclear”:

See, e.g., In re Estate of Evensen, 531 P.3d 969 (Alaska 2023).

Page 106. Delete *Ellerbeck* cite in Note 3 and replace with:

Estate of Rick, 2024 WL 412253 (La. Ct. App. 2024) and

2. Testamentary Capacity

Page 112. Add as new Note 8:

For capacity contests, the Colorado Supreme Court in *In re Estate of Ashworth*, 549 P.3d 1003 (Colo. 2024), held that “the physician-patient privilege survives the privilege holder's death, but the testamentary exception provides for disclosure of the decedent's privileged medical records if they are required to administer the estate.” The same conclusion applies for the attorney-client privilege.

Page 113. Add to Selected References:

Reid Kress Weisbord and David Horton, *The Future of Testamentary Capacity*, 79 Wash. & Lee L. Rev. 609 (2022).

3. *Undue Influence*

Page 120. Add as new Note 2A:

For undue influence contests, the Colorado Supreme Court in *In re Estate of Ashworth*, 549 P.3d 1003 (Colo. 2024), held that “the physician-patient privilege survives the privilege holder's death, but the testamentary exception provides for disclosure of the decedent's privileged medical records if they are required to administer the estate.” The same conclusion applies for the attorney-client privilege.

Page 126. Add to Selected References:

Payton Yahn, *Conspiracy Theory Belief and the Case for Abolishing Insane Delusion Doctrine*, 16 Univ. St. Thomas J.L. & Pub. Pol’y 516 (2023).

5. *Tortious Interference with Expectancy*

Page 133. In Note 5, add after *Accord*:

Nelsen v. Nelsen, 508 P.3d 301 (Idaho 2022) and

C. Will Execution

2. *A Typical “Statute of Wills”*

b. Signed

Page 138. Add after “necessary” in 2d line:

; probate denied because signature of predeceased witness could not be proved. *See In re Will of Beard*, 334 So. 3d 1154 (Miss. 2022).

d. By Competent Witnesses

Page 145. Add after 2d line:

Selected Reference

Mark Glover, *Conditional Purging of Wills*, 54 U. Rich. L. Rev. 275 (2023).

e. Attestation and Self-Proving Affidavits

Page 148. Add before *Dellinger* cite in 1st full paragraph:

In re Harris, 282 A.3d 467 (Conn. App. Ct. 2022) and

3. Electronic Wills

Page 149. District of Columbia, Idaho, Missouri, Texas and have also enacted the Act.

Page 150. Add as new last paragraph:

In 2022, the Uniform Law Commission approved the Uniform Electronic Estate Planning Documents Act. The Act, which has been enacted in Colorado, Illinois, Oklahoma, and Washington, authorizes the use of electronic use of non-testamentary documents such as lifetime trusts and powers of attorney.

4. Holographic Wills

Page 150. Add after last sentence in paragraph 2:

In re Estate of Evensen, 531 P.3d 969 (Alaska 2023) (probate allowed because material portion of will was proved to be in the testator's handwriting) *with Estate of Beach*, 969 N.W.2d 198 (N.Dak. 2022) (probate denied because material portion of will was not proved to be in the testator's handwriting).

D. Protective Planning

2. Structural Elements

Page 166. Add as new last sentence before box:

See also Salce v. Cardello, 348 Conn. 90 (Conn. 2023) (because actions against executor made in good faith no-contest clause not applied).

Add before *Cook v. Cook* in Note 24:

In re Estate of Poston, 514 P.3d 1073 (Mont. 2023) (challenge to common-law marriage violated no contest clause),

§ 3.04 INTERPRETING WILLS: EXTRINSIC EVIDENCE

B. Interpretation or Reformation?.

Page 183. Add before Notes:

Uniform Probate Code

§ 2-805 Reformation to Correct Mistakes.

The court may reform the terms of a governing instrument, even if unambiguous, to conform the terms to the transferor’s intention if it is proved by clear and convincing evidence what the transferor’s intention was and that the terms of the governing instrument were affected by a mistake of fact or law, whether in expression or inducement.

Add at end of Note 1:

Similarly, UPC § 2-805 applies to governing instruments, which can include a whole range of documents. However, reformation under UPC § 2-805 will not be applied simply because a will does not provide for a contingency in a residuary clause that results in intestacy. *See In re Estate of Giguere*, 315 A.3d 737 (Maine 2024).

§ 3.05 REVOCATION

A. By a Writing or Physical Act

Page 195. Add after 1st sentence in 2d paragraph of Note 4:

See, e.g., In re Estate of Nicholas N. Kittrie, 2024 D.C. App. LEXIS 269 (D.C. 2024) and *In re Estate of Evensen*, 531 P.3d 969 (Alaska 2023).

Page 196. Add to Selected Reference(s):

David Horton, *Revoking Wills*, 97 Notre Dame L. Rev. 563 (2022).

§ 3.06 REVIVAL

Page 197. Add after “split of opinion” in 4th paragraph:

See generally Richard Storrow, *Reviving Revival in the Law of Wills*, 55 Tex. Tech L. Rev. 501 (2023),

§ 3.09 CONTRACTS REGARDING WILLS

Page 206. Add after last sentence in the 1st paragraph:

See White v. White, 6 N.W.3d 204 (Neb. 2024) (party to contract to leave property by will treated as beneficiary not creditor of estate so nonclaim statute irrelevant).

Add before *Leonard* cite in 3d paragraph:

Tremblay v. Bald, 2024 WL 332101 (N.H. 2024) (continued cohabitation by unmarried partner furnished contractual consideration for promise to leave property by will) and

Chapter 4: LIFETIME ALTERNATIVES TO WILLS

§ 4.01 LIFETIME GIFTS

Page 224. South Carolina has enacted the Uniform Transfers to Minors Act.

§ 4.04 TRANSFER ON DEATH DEEDS

Page 209. After 1st sentence, add:

See generally Danaya C. Wright and Stephanie L. Emric, *Tearing Down the Wall: How Transfer-on-Death Real-Estate Deeds Challenge the Inter Vivos/Testamentary Divide*, 78 Md. L. Rev. 511 (2019).

Add to 1st sentence of FN 5: Maine, Montana, New Hampshire, and Utah

§ 4.05 LIFETIME TRUSTS

A. Validity of Revocable Trusts

Page 236. Add before *DelFosse* cite in Note 6:

Diaz v. Zuniga, 91 Cal.App.5th 916 (Ca. App 2023) (amendment not made by required certified letter);

Add after last sentence in Note 4:

But cf. Sacks v. Dissinger, 178 N.E.3d 388 (Mass. 2022) (undue influence claim can be asserted beyond time limits for contesting validity of revocable trust because based on tort of intentional interference with expectancy which Massachusetts recognizes).

In 1st paragraph of Note 6, add as last sentence:

Revocation may be effective based on substantial compliance with a required revocation method but not all acts may be treated as substantial compliance. *See Grassfield v. Grassfield*, 2023 WL 8608324 (Fla. Dist. Ct. App. 2023).

In 2d paragraph of Note 6 before “*Cundall*”, add:

e.g. In re Omega Trust, 281 A.3d. 1281 (N.H.2022) (email between settlor and settlor’s lawyer effectuated amendment) and

At end of 2d paragraph, add:

Trust modification, as opposed to trust revocation, can be made following the rules for trust revocation. *See Haggerty v. Thorton*, 542 P.3d 645 (Cal. 2024). Accord 3d. Rest. Trusts §63, cmt i.

Page 238. Add as last sentence in 2d paragraph re **Note: Pour-Over Wills:**

The trustee of a revocable trust who is the beneficiary of the settlor's residuary estate may have a duty to collect and protect property in the residuary estate that is to be transferred to the trustee. *See Barash v. Lembo*, 301 A.3d 577 (Conn. 2023).

Chapter 5: CHANGED CIRCUMSTANCES

§ 5.01 ACTS OF THE PROPERTY HOLDER

C. Divorce

Page 270. Add after 2d sentence in Note 1:

Although Minnesota’s revocation on divorce statute, unlike UPC § 2-804, does not bar relatives of a former spouse from taking under a will, those relatives, do not take because by divorcing the class of his spouse’s heirs does not exist. *See Matter of Estate of Tomczik*, 2023 Westlaw 4340196 (Minn. 2023), *rev’g* 976 N.W.2d 143 (Minn. App. Ct. 2022).

D. Misconduct

Page 289. Add as new Note 9:

9. Should relatives of a slayer be allowed to take even though the slayer would be barred from taking? *See Matter of Estate of Cordray*, 294 A.3d 99 (Del.Ch. 2023) (yes).

Page 290. Add to Selected References:

David Horton and Reid Kress Weisbord, *Inheritance Crimes*, 96 Wash. L. Rev. 561 (2021).

Fredrick Vars, *The Slayer Rule: An Empirical Examination*, 48 ACTEC L.J. 201 (2023).

§ 5.03 CHANGES IN PROPERTY

A. Classification of gifts

Page 291. Add after *Demonstrative gifts* are rare.:

See, e.g., Bruno v. Knippen, 2023 WL 2155408 (Ill. App. Ct. 2023) (gift of proceeds of sale specific, not demonstrative gift).

Add after 1st sentence in the 3d paragraph:

See, e.g., In Connery v. Shea, 259 A.3d 118 (Me. 2021) (trust disposition of “all Bank stock” treated as a specific disposition).

C. Ademption

Page 297. Add before “Courts sometimes”:

But cf. In re Estate of Cone, 652 S.W.3d 822 (Tenn. Ct. App. 2022) (change of form exception did not apply when bequeathed stock in corporation which was sold to LLC).

§ 5.04 LAPSE

Page 302. Add as last sentence in 2d full paragraph:

See generally Adam Hirsch, *When Beneficiaries Predecease: An Empirical Analysis*, 72 Emory L.J. 307 (2022).

Page 304. In Note 2, add before *Estate of Kuruzovich*:

Shirley v. Dawkins, 2022 WL 2286416 (Ala. 2022) (Will that excluded relatives not mentioned in the will did not prevent application of Alabama’s anti-lapse statute when a child named as beneficiary predeceased the testator) and

Page 305. Add after “statute not apply”:

see, e.g., Gibney v. Hossack, 230 N.E.3d 1009 (Mass. 2024).

Chapter 6: PROTECTING THE FAMILY

§ 6.01 DISINHERITED SPOUSES

B. Dower

Page 322. Add before “There is” in 3rd line of 2d paragraph:

But cf. Simpson v. Wethington, 641 S.W.3d 124 (Ky. 2022) (dower rights in Kentucky, which includes personal property, may be violated by fraudulent lifetime conveyance).

C. The Right to Elect

4. Exceptions

Page 325. Add after 1st sentence:

Nor will the existence of a revocable trust in favor of a surviving spouse affect nor prevent her from exercising her right to elect against property which is subject to disposition under a will. *See Matter of Estate of Tokowitz*, 541 P.3d 446 (Wyo. 2024).

§ 6.02 FORGOTTEN SPOUSES AND CHILDREN

Page 364. Add after 1st sentence in Note 5:

See, e.g., Johnson v. Johnson, 2023 Ill.App.LEXIS 134 (Ill. App. 2023) (after-adopted adults allowed to take under Illinois statute).

§ 6.04 PUBLIC POLICY LIMITS

Page 372. Add before “Julian Valdes cite:

Christian Poppe, *Testamentary Restrictions on Marriage: A Reexamination of In re Estate of Feinberg in Light of Obergefell v. Hodges*, 16 Univ. St. Thomas J.L. & Pub. Pol’y 481 (2023) and

Chapter 7: PLANNING FOR INCAPACITY

§ 7.01 PROPERTY MANAGEMENT AND PRESERVATION

A. Durable Powers of Attorney

Page 395. Add as 2d sentence in Note 8:

However, under Section 201(a)(1) of the Uniform Act and in non-Uniform states, the principal must expressly authorize the agent to create a trust. *See, e.g., Barbetti v. Stempniewicz*, 189 N.E.3d 264 (Mass. 2022).

§ 7.02 HEALTH CARE DECISIONMAKING

Page 410. Correction for Note 1: Alaska not Arkansas has enacted the Act.

Chapter 8: TRUSTS

§ 8.01 AN OVERVIEW

B. Modern Trust Law

Page 417. Add before “In addition” in the full paragraph:

Although Comment a to Section 2 of the Restatement (Third) would recognize a trust as a juridical entity, the prevailing view is that a trust is not a juridical entity so that suit must be brought by or against the trustee not the trust. *See, e.g., Jo Redland Trust, U.A.D. 4-6-05 v. CITI Bank*, 95 Cal. App.5th 142 (Ca. App. 2023).

C. Express, Resulting and Constructive Trusts

Page 418. Add in 2d full paragraph before last sentence:

In *Indianapolis Museum of Art v. Hurley*, 206 N.E.3d 488 (Ind. Ct. App. 2023), a resulting trust was created in favor of the deceased trust creator’s estate).

Add in 3d full paragraph before *Marriage of Kendra*:

Wilson v. United States, 644 F.Supp.3d 1344 (N.D. Ga. 2022) and

Add in 4th full paragraph before “Indeed”:

See, e.g., JPMorgan Chase Bank, N.A. v. Winget, 2022 U.S. App. LEXIS 18332 (6th Cir. 2022) (constructive trust imposed in context of loan guarantee).

§ 8.02 CREATION

A. Intent

Page 428. Add at the end of Note 3:

Gestner v. Divine, 519 P.3d 439 (Idaho 2022), provides an excellent discussion of undue influence, including the court’s adoption of the Restatement (Third)’s presumption, which is set forth on Text Pages 114-115.

Page 429. Note 6. The no-contest clause in *Barger* was **unenforceable** because probable cause existed for the contest.

Add as last sentence to Note 6:

Of course, if a trust is invalidated because undue influence was exerted to create the trust, a no-contest provision in the trust necessarily has no effect. *See Slosberg v. Giller*, 858 S.E.2d 747 (Ga. 2022).

B. Property

Page 435. Add as new Note 2A:

2A. The expected proceeds from a wrongful death action may be transferred into trust. *See In re Estate of Williams v. Welsh*, 538 P.3d 176 (Okla. 2023).

C. Trustee

Page 437. Add to 1st paragraph before “Depending on the”:

In some states, however, based on Section 16 of the Restatement (Third) of Trusts, the “delivery” requirement to a third-party trustee for real property may be satisfied without the necessity of a deed. *See, e.g., Davies v. Codney*, 522 P.3d 427 (Nev. 2022) (trust recital that real property transferred into trust sufficient without necessity for deed of real property). *Contra* New York Estates, Powers and Trusts Law § 7-1.18.

Page 438. Add to Selected References:

Richard Ausness, *Keeping it in the Family: The Pitfalls of Naming a Family Member as a Trustee*, 34 J. Am. Acad. Matrim. Law. 1 (2021).

David F. Johnson, *The More the Merrier? Issues Arising from Co-trustees Administering Trusts*, 15 Est. Plan. & Comm. Prop. L.J. 35 (2022).

D. Beneficiaries

Page 445. Add to Selected References:

Alexander A. Bove, Jr. & Melissa Langa, *The Perpetual Business Purpose Trust: The Business Planning Vehicle for the Future, Starting Now*, 47 ACTEC L.J. 3 (2021).

§ 8.03 THE NATURE OF A BENEFICIARY’S INTEREST

B. Discretionary and Support Trusts

Page 456. Add after “station in life” in Note 2:

See Matter of Katherine E. Reece Trust, 2023 WL 6300306 (Colo. App. 2023) (standard of living surviving spouse enjoyed at decedent’s time of death (and during period of legal separation) following 3d Rest. Trusts § 50 *cmt. d(2)*).

C. Transfers of Beneficial Interests in Trust

2. Spendthrift Provisions and Other Restraints on Alienation

Page 460. Add after 1st sentence in 1st full paragraph:

See, e.g., Haymond v. Haymond, 900 S.E.2d 10 (W.Va. 2024) (transfer by beneficiaries of spendthrifted interest void ab initio).

Add new Question 1A as follows:

1A. If a trust includes a spendthrift provision which precludes a beneficiary from encumbering his interest, can a beneficiary in his capacity as sole trustee mortgage trust property to obtain a personal loan? *See Plains Commerce Bank, Inc. v. Beck*, 986 N.W.2d 519 (S.D. 2023) (no).

4. Medicaid Eligibility

Page 479. Add after “*See*” in 2d to last line on Page:

In re Trust Under the Will of Riessen, 990 N.W.2d 683 (Iowa Ct. App. 2022) and

§ 8.04 REFORMATION, MODIFICATION, AND TERMINATION

A. Reformation and Modification Based on Ambiguity and Mistake

Page 482. Add before *In re Jill Petrie*:

In re Beebe, 380 So.3d 905 (Miss. 2024)

Add as last sentence on page:

If, however, the settlor cannot show that he or she made a mistake or fraud was involved, trust reformation will not be allowed. *See In re Jeremy Paradise Dynasty Trust*, 2023 Del. Ch. LEXIS 28 (Del. Ch. Ct. 2023).

B. Termination and Modification Prescribed by Settlor

Page 483. Add before “*See generally* Maureen”:

But see *Little v. Davis*, 974 N.W.2d 70 (Iowa 2022) (trust amendment is not allowed if one of the co-settlors has predeceased). In *In re Trust under Deed of Garrison*, 288 A.3d 866 (Pa. 2023), the settlor and beneficiaries were allowed to change original trust provision for removal of trustee.

Page 484. Add as last sentence of 1st paragraph under **Note on Decanting**:

Decanting is not permissible if the trustee of an irrevocable trust does not have the power to invade the trust principal. *See In re Niki & Darren Irrevocable Trust*, 2024 WL 3515556 (Del. Chan. Ct. 2024).

Add Connecticut, Indiana, Vermont, Maryland, and Wisconsin to enacting states.

C. Judicial Modification or Termination

Page 497. Add as new Note 4:

4. UTC § 416 allows a court to modify a trust to achieve a settlor's tax objectives as do non-UTC states such as New York. Applying UTC § 416, a trust was retroactively modified to allow compliance with federal tax requirements to retain tax exempt status. *See. Robinson Charitable See In re Marvin Trust*, 531 P.3d 1224 (Kan. 2023).

§ 8.05 Charitable Trusts

A. Creation and Enforcement of Charitable Trusts

Page 505. Add after 1st sentence in Note 1:

See, e.g., In the Matter of Wylie Street Emergency Fund, 537 P.3d 30 (Idaho 2023).

Page 506. Add after *But see* in 2d line:

In re Keeler Maintenance Fund, 176 N.H. 87 (2023) (denying donor's estate and contingent beneficiaries standing based on special interest status) and

Page 523. Add as new last paragraph to Note 2:

In re Keeler Maintenance Fund, 176 N.H. 87 (2023), the court recognized that a finding of general charitable intent was unnecessary to apply the *cy pres* doctrine under UTC § 413 and UPMIFA.

Chapter 9: PLANNING FOR THE FUTURE: SUCCESSIVE TRUST INTERESTS

§ 9.01 Fundamentals

E. Trusts and Future Interests

Page 538. Add as new last paragraph:

Persons having a future beneficial interest in a trust, as well as those having a present beneficial interest in a trust, are deemed trust beneficiaries. *See* UTC § 103(3). For example, a person having the right to property after an income beneficiary has a remainder interest and is therefor a trust beneficiary even though the interest may be eliminated by the exercise of a power of appointment. *See Beck v. Pact*, 2023 Ill.App.LEXIS 241 (Ill. Ct App. 2023).

G. The Restatement (Third) of Property’s Simplified Classification System

Page 541. Add at end of 1st full paragraph:

In May 2022, the ALI membership approved Tentative Draft No. 3 for the Restatement (Fourth) of Property, which includes Volume 4, Division One: The Estate Tax System. This Division includes the simplification of present and future interests and essentially follows the simplification made in the Restatement (Third) of Property. For example, possibilities of reverter and rights of entry are not recognized but are treated as reversions. Executory interests are not recognized as all interests in third parties are treated as remainders.

Add to last sentence after “(Third)”:

and (Fourth)

§ 9.04 The Rule Against Perpetuities

G. Perpetuities Repeal Movement

Page 628. Florida’s USRAP period has been extended from 360 years to 1,000 for trusts created on or after July 1, 2022.

Page 632. Add to Selected References:

Eric Kades, *A New Feudalism: Selfish Genes, Great Wealth, and the Rise of the Dynastic Family Trust (DFT)*, 55 Conn. L. Rev. 19 (2022).

Jeffrey Pennell and Reid Weisbord, *Trust Alteration and the Dead Hand Paradox*, 48 ACTEC L.J. 147 (2023).

Jack Whiteley, *Perpetuities in an Unequal Age*, 177 Nw. Univ. L. Rev. 1477 (2023).

Chapter 10: PROBLEMS IN ADMINISTRATION

§ 10.01 An Overview

Page 637. Add as new FN2 at end of 1st sentence in paragraph 2:

Austin Trust Co. v. Houren, 664 S.W.3d 35 (Tex. 2023), held that an executor does not owe fiduciary duties to estate creditors.

Page 638. Add to 4th full paragraph after “over the trustee.”:

See also Luongo v. Luongo, 306 A.3d 610 (Me. 2023).

§ 10.02 Duty of Loyalty

Page 644. Add after 1st sentence in Note 3:

See, e.g., Kleeberg v. Eber, 665 F.Supp.3d 543 (S.D.N.Y. 2023).

Page 645. Add before “*In re Trust Created by Inman* in Note 4:

See also In re Otto Bremer Trust, 2 N.W.3d 308 (Minn. 2024) (breach of duty of loyalty by appropriating trust assets and staff for own benefit); *Vouk v. Chapman*, 521 P.3d 712 (Idaho 2022) (breach of duty of loyalty by trustee distributing trust property only to himself); *Forbes v. Forbes*, 509 P.3d 888 (Wyo. 2022) (trustee breached duty of loyalty by buying stock in a sealed bid process controlled by trustee);

Add before *In re Estate of Stevenson* in Note 5:

Hill v. Brinkman, 2023 Ill. App 3d 220394 (Ill. App Ct. 2023) (trustee authorized to engage self to care for mother) and

Add at end of Note 5:

See also Darrow v. White, 531 P.3d 1169 (Id. 2023) (settlor can override duty to obtain court approval for sale involving conflict of interest but trustee must comply with specific trust requirements to do so).

Page 646. Add before “More controversial” in 1st line:

Recent cases hold that a provision allowing an executor or trustee to make non-pro rata distributions of property permitted fiduciary to distribute property to themselves and was not a breach of the duty of loyalty. *See Bennett v. Estate of King*, 875 S.E.2d 46 (S.C. 2022) (executor) and *In Culliss v. Culliss as Trustee of Julia A. Culliss Trust*, 514 P.3d 376 (Kan. Ct. App. 2022) (trustee).

Page 648. Add as Problem 4:

4. If a trustee allows one beneficiary to live rent free in a property pending its sale, does the trustee violate the duty of impartiality? *See J. Kent Kinniburgh Revocable Trust v. Moncur*, 530 P.3d 579 (Wyo. 2023) (no).

§ 10.03 Managerial Issues

A. Duties and Powers

1. *In General*

Page 653. Add as new paragraph to *1. In General*:

In a UTC jurisdiction, a settlor may waive most fiduciary duties that are otherwise imposed on a trustee, *see* UTC § 105(a). For example, the duty to act prudently under UTC § 804, may be waived by a settlor. However, some duties, such as the duty to act in good faith, are mandatorily required of a trustee by the UTC. *See* UTC § 105(b). Absent a settlor's permissible waiver of a duty- for example, the duty to act prudently-a trustee has common law duties and will be liable for breaching any such duty in a non-UTC state. *See Hillblom v. Wilmington Trust Co.*, 2022 Del. Ch. LEXIS 351 (Del. Ch. Ct. 2022).

B. Investments

2. *The Prudent Investor*

Page 677. Add before *Carter v. Carter* in Note 2:

Redlin v. First Interstate Bank, 2 N.W.3d 729 (S.Dak. 2024) (because prudent investor duty waived, investment in low yield money market account was not a breach).

Page 679. Add to Selected References:

Ian Ayres & Edward Fox, *Alpha Duties: The Search for Excess Returns and Appropriate Fiduciary Duties*, 97 Tex. L. Rev. 445 (2019).

Jennifer Goode and Andrea Kushn, *Fiduciary ESG Investing: Navigating the New Frontier*, 57 Real Prop., Tr. & Est. J. 3 (2022).

Jane Gorham Ditelberg, *Investing in and for the Future: ESG Investing for Trust Assets Under the Prudent Investor Rule*, 47 ACTEC L.J. 23 (2021).

3. Delegation and Direction

b. Direction

Page 685. Add California, Kansas, Pennsylvania, and Vermont in 1st line on page.

Add to Selected References:

Timothy Ferges, Melisa Dibble, Adam Ansari, and Daniel Ebner, *Who's the Boss? Fiduciary Liability and Directed Trusts*, 57 Real Prop., Tr. & Est. J. 3 (2022).

C. Principal and Income Issues

Page 699. California, Florida, and Missouri have also enacted the Act.

D. Other Fiduciary Duties

Page 724. Add as Note 42A after 1st sentence in Note 1:

FN 42A. *See, e.g., J. Kent Kinniburgh Revocable Trust v. Moncur*, 530 P.3d 579 (Wyo. 2023) (failure to provide information constituted breach of duty to inform and report).

Page 725. Add as last sentence to Note 2:

Nevada denies discretionary beneficiaries the right to an accounting but entitles such beneficiaries to other information. *See Nedder v. Deluca*, 521 P.3d 1190 (Nev. 2022).

Page 726. Add after “settlor” in line 2 of Note 6:

of a revocable trust

Add as last sentence of last paragraph in Note 3:

See, e.g., In re Otto Bremer Trust, 2 N.W.3d 308 (Minn. 2024) (breach by failure to provide name of successor trustee).

Page 727. Note 8. Add at end:

Estate of Worrall by Worrall v. J. P. Morgan Bank, N.A., 645 S.W.3d 441 (Ky. 2022) contains a good discussion of breach of duty on trust termination including violation of Kentucky’s adoption of UTC § 817.

§ 10.04 Remedies for Breach of Fiduciary Duties

Page 730. Add before *Conte v. Ditta*:

Haines v. Lamprecht, 2 N.W.3d 81 (Neb. 2024) (removal of individual co-trustee based on hostile relations);

Add before *Tigani* cite:

Martin v. Martin, 888 S.E.2d 434 (W.Va. 2023) (no removal by requesting court clarification of trust); *J. Kent Kinniburgh Revocable Trust v. Moncur*, 530 P.3d 579 (Wyo. 2023) (no removal because breach did not show gross and willful misconduct);

Add before *McArthur* cite in 2d paragraph:

Boyle v. Anderson, 871 S.E.2d 226 (Va. 2022).

A. Remedies in General

Page 737. Add as new last paragraph in Note 7: A beneficiary has standing to sue for a trustee's breach of duty even if no monetary damages are recoverable. *See Trust Under Will of Augustus T. Ashton, Deceased Dated January 20, 1950*, 260 A.3d 81 (Pa. 2021).

Page 738. Add before *Goding v. Wilson* cite:

Zahnleuter v. Mueller, 88 Cal. App. 5th 1294 (Cal. App. 2023) (no reimbursement for trustee because the trustee did not participate in the litigation as a neutral trustee to defend the trust and protect its assets).