

Florida Wills, Trusts, and Estates

Florida Wills, Trusts, and Estates

Cases and Materials

Third Edition

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Contents

Table of Cases	xxvii
Table of Authors	xxxv
Table of Internet Resources	xxxvii
Preface	xxxix
Overview	xxxix
Editorial Comments	xli
Acknowledgments	xli
Chapter 1 · Donative Freedom, Probate Estates, and Nonprobate Assets	3
I. Statutory and Case References	3
II. Introduction	3
III. Terminology	3
A. Terminology Related to Wills and Intestacy	4
B. Terminology Related to Trusts	5
C. Other Terminology	5
IV. Wills and the Constitutional Right to Devise	6
A. The Right to Devise	6
<i>Shriners Hospitals v. Zrillic</i>	6
Notes and Discussion Questions	9
B. Family Protection Limitations on the Right to Dispose of Property	10
C. Problems Caused by Forgoing the Right to Devise	10
1. Intestate Succession	11
2. Other Functions of a Will	11
V. Overview of Will-Related Issues	12
A. The Client's Goals	12
B. Other Factors an Attorney Should Consider Related to Wills	12
C. Federal Involvement in the Administration of Estates	13
VI. Probate, Elective, and Gross Estates	14
A. Probate Estate	14
B. Elective Estate	14
C. Gross Estate	15
D. Relationship of Probate, Elective, and Gross Estates	15

E. Other Rights and Interests	16
VII. Property That Is Not Subject to Probate	16
A. Jointly Owned Property with Survivorship Rights	16
1. Tenancy by the Entirety	16
2. Joint Tenancy with Right of Survivorship	17
3. Special Rules Governing Tenancies in Bank Accounts	17
B. Pay on Death and In Trust for Accounts	17
C. Life Insurance Proceeds	18
D. Pensions and Other Retirement Assets	19
E. Annuities	19
F. Trusts	20
G. Property Subject to a Power of Appointment	20
H. Homestead	20
I. Transfers Before Death	20
J. Other Nonprobate Property	21
K. Federal Estate Tax Gross Estate Table	21
Chapter 2 · Intestate Estates	23
I. Statutory and Case References	23
II. Intestate Succession	23
A. Statutory Distribution Pattern	24
1. Surviving Spouse	24
a. Status as Surviving Spouse	24
b. Share of Surviving Spouse	25
<i>Hall v. Maal</i>	26
<i>In re Estate of Butler</i>	29
2. Descendants	31
3. Parents	31
4. Siblings and Their Descendants	32
5. Paternal and Maternal Kindred	32
<i>In re Estate of Tim</i>	33
<i>State v. Rudawski (In re Estate of Tim)</i>	33
6. Kindred of Deceased Spouse	35
7. Escheat	36
B. Problems with Statutory Scheme	36
C. Exceptions	36
Notes and Discussion Questions	36
III. Intestate Distribution Systems	37
A. Florida's Distribution Scheme	37
B. Other Distribution Schemes	38
C. Comparative Illustrations	39
<i>In re Estate of Davol</i>	43
Notes and Discussion Questions	45
Problems	46

IV. Special Circumstances—Adoption, Out of Wedlock Births, Afterborn Children, and Half Blood Relationships	47
A. Effect of Adoption on Inheritance	47
<i>Kay v. Swartz (In re Estate of Kanevsky)</i>	47
<i>Estate of Huskea v. Doody</i>	49
<i>Williams v. Estate of Pender</i>	50
Notes and Discussion Questions	53
Problems	53
B. Children Born Out of Wedlock	54
<i>Brown v. Johnson (In re Estate of Broxton)</i>	54
C. Afterborn Children	56
Problems	56
D. Half Blood Heirs	57
<i>Estes v. Nicholson</i>	57
Problems	59
E. Children Born through Assisted Reproductive Methods	60
<i>Astrue v. Capato (ex rel. BNC)</i>	60
Chapter 3 · Appointment of Personal Representative and Formalities of Execution	67
I. Statutory and Case References	67
II. Appointment of Personal Representative	67
A. Qualifications of Personal Representative	67
B. Priority in Appointment as Personal Representative	68
C. Special Rules	69
<i>Werner v. Estate of McCloskey</i>	69
III. Execution of Wills	70
A. Statutory Requirements	70
B. Qualifying as a Witness	71
C. Signing at End	71
D. The Presence Requirement	72
IV. Testimonium and Attestation Clause	73
V. Self-Proof Affidavit and Admitting Will to Probate	73
VI. Integration	74
<i>Baron v. Williams (In re Estate of Williams)</i>	74
<i>In re Schiele's Estate</i>	77
<i>Bradley v. Bradley</i>	78
<i>Dalk v. Allen</i>	81
<i>In re Estate of Charry</i>	84
<i>Simpson v. Williamson</i>	85
<i>Price v. Abate</i>	88
Notes and Discussion Questions	90
Problems	91

Chapter 4 · Testamentary Capacity and Undue Influence	93
I. Statutory and Case References	93
II. Overview	93
III. Requirements for Testamentary Capacity	94
A. Age or Emancipation	94
B. Sound Mind	94
Elena Marty-Nelson, Angela Gilmore & Eloisa Rodriguez-Dod, <i>Testamentary Capacity, Undue Influence and Validity of Wills</i>	95
<i>Edwards v. Citizens National Bank of Leesburg (In re Estate of Edwards)</i>	96
<i>Levin v. Levin</i>	98
<i>American Red Cross v. Estate of Haynsworth</i>	100
<i>Pangborn v. Union Trust National Bank (In re Estate of Burkhart)</i>	105
Notes and Discussion Questions	108
IV. Undue Influence	109
A. Presumption of Undue Influence	110
1. Substantial Beneficiary	110
2. Confidential Relationship	110
3. Actively Involved in Procuring the Will	110
<i>Carpenter v. Carpenter (In re Estate of Carpenter)</i>	110
<i>In re Estate of Carpenter</i>	118
<i>RBC Ministries v. Tompkins</i>	119
<i>Carter v. Carter</i>	122
<i>Diaz v. Ashworth</i>	124
B. Spousal Undue Influence	126
<i>Tarsagian v. Watt</i>	127
<i>Blinn v. Carlman</i>	128
Notes and Discussion Questions	131
Problems	133
V. Attorney-Client Relationship	133
 Chapter 5 · Fraud, Duress, Spoliation, Tortious Interference, Mistake, and Ambiguity	 135
I. Statutory and Case References	135
II. Overview	135
III. Intentional Misconduct	135
A. Fraud	135
B. Duress	136
C. Spoliation	136
<i>Lowy v. Roberts</i>	137
D. Tortious Interference	139
<i>Schilling v. Herrera</i>	140

	<i>Neumann v. Wordock</i>	145
	<i>Claveloux v. Bacotti</i>	147
	Notes and Discussion Questions	149
IV.	Mistake and Ambiguity	150
	<i>Harbie v. Falk</i>	152
	<i>Fine Arts Museums Foundation v. First National in Palm Beach</i>	154
	Notes and Discussion Questions	156
	Problems	156
Chapter 6	· Amendment and Revocation; and Dispositions by Other Means	159
I.	Statutory and Case References	159
II.	Terminology	160
III.	Revoking or Amending a Will or Codicil	160
	A. Express Revocation by Subsequent Writing	160
	B. Revocation by Inconsistent Subsequent Writing	161
	C. Revocation by Act	161
	<i>In re Estate of Bancker</i>	161
	<i>Moneyham v. Hamilton</i>	163
IV.	Revival or Republication of Revoked Will or Codicil	164
	<i>In re Estate of Tolin</i>	165
	<i>In re Estate of Kuhn</i>	167
	<i>Wider v. Wider (In re Wider's Estate)</i>	169
	<i>Jones v. Shifflet (In re Estate of Shifflet)</i>	174
	<i>Dahly v. Dahly</i>	176
V.	Testamentary Dispositions Involving Other Documents	178
	A. Incorporation by Reference and Acts of Independent Significance	178
	B. Devise to an Existing Trust	179
	C. Separate Written List of Tangible Personal Property	179
	<i>In re Estate of Baer</i>	180
	Notes and Discussion Questions	182
	Problems	183
Chapter 7	· Dependent Relative Revocation; Lost or Destroyed Wills; and Later Discovery of a Will	185
I.	Statutory and Case References	185
II.	Overview	185
III.	Dependent Relative Revocation	185
	<i>Stewart v. Johnson</i>	187
	<i>Wehrheim v. Golden Pond Assisted Living Facility</i>	190
	<i>In re Estate of Murphy</i>	194
	Notes and Discussion Questions	207
	Problems	207
IV.	Lost or Destroyed Wills	208

	<i>Upson v. Estate of Carville</i>	209
	<i>Walton v. Estate of Walton</i>	210
	<i>In re Estate of Parker</i>	212
	<i>Smith v. DeParry</i>	214
	<i>Brennan v. Honsberger</i>	222
	<i>Tartaglia v. Hatten (In re Estate of Hatten)</i>	223
	Problems	227
V.	Later Discovery of a Will	227
Chapter 8 · Rules of Construction		229
I.	Statutory and Case References	229
II.	Overview	229
III.	Common Law Rules of Construction	229
	<i>Dutcher v. Estate of Dutcher</i>	230
	<i>Aldrich v. Basile</i>	231
	<i>Romaniello v. Romaniello</i>	236
	Notes and Discussion Questions	237
IV.	Statutory Rules of Construction	237
	Notes and Discussion Questions	238
Chapter 9 · Types of Devises; Abatement; Ademption; Accessions; Exoneration; and Apportionment of Taxes		241
I.	Statutory and Case References	241
II.	Overview	241
III.	Types of Devises	242
	<i>Babcock v. Estate of Babcock</i>	244
	Notes and Discussion Questions	245
	Problems	246
IV.	Abatement	246
A.	Abatement of Devises	247
	<i>In re Estate of Potter</i>	248
	Notes and Discussion Questions	250
B.	Priority of Expenses and Obligations	251
	Notes and Discussion Questions	251
	Problems	252
V.	Ademption by Extinction	252
A.	Significance of Type of Devise	253
B.	Effect of Testator's Intent When Property Is Not in Estate	253
	<i>Ott v. Ott</i>	254
	<i>Hall v. Jones (In re Estate of Jones)</i>	256
	Notes and Discussion Questions	259
	Problems	260
VI.	Devises of Securities: Accessions and Ademption	261
A.	Events Related to Securities	261

B. Default Rules for Devises of Securities	261
Notes and Discussion Questions	262
Problems	262
VII. Exoneration	263
<i>Woodward v. Smith (In re Estate of Woodward)</i>	264
Notes and Discussion Questions	265
Problems	266
VIII. Apportionment of Taxes	266
A. Federal Estate Tax Computation	266
B. Apportioning the Estate Tax	267
C. Importance of Drafting	268
Notes and Discussion Questions	269
Chapter 10 · Presumed Intent—Pretermission and Divorce	271
I. Statutory and Case References	271
II. Overview	271
III. Pretermitted Spouses	271
A. Introduction	271
1. Prenuptial or Postnuptial Agreements	272
2. Providing for Spouse in Will	272
3. Will Indicates Intent to Omit Spouse	273
B. Rights of a Pretermitted Spouse	273
Notes and Discussion Questions	273
Problems	273
C. Effect on Other Devisees	274
<i>Via v. Putnam</i>	274
IV. Pretermitted Children	275
<i>Azcunce v. Estate of Azcunce</i>	276
<i>Estate of Maher v. Iglkova</i>	279
Notes and Discussion Questions	281
Problems	282
V. Divorce and Annulment	282
<i>Bauer v. Reese (In re Estate of Bauer)</i>	283
Notes and Discussion Questions	285
Problems	286
VI. Other Death Benefit Rules	286
Chapter 11 · Lapse and Antilapse and Class Gifts	289
I. Statutory and Case References	289
II. Overview	289
III. Lapse and Antilapse Provisions	289
A. Contrary Language	290
B. Covered Devisees	290
C. Death of Devisee	291

D. Class Devises	291
<i>Davis v. Arkenberg</i>	292
IV. Distribution of Failed Devises	293
<i>Lorenzo v. Medina</i>	293
Notes and Discussion Questions	295
Problems	295
Chapter 12 · Homestead; Personal Property Exemptions; and Family Allowance	297
I. Constitutional, Statutory, and Case References	297
II. Overview	297
III. Homestead Protections	298
A. What Property Constitutes Homestead	299
<i>Davis v. Davis</i>	299
<i>Bayview Loan Servicing, LLC v. Giblin</i>	300
Notes and Discussion Questions	301
B. Claims of Creditors	302
<i>Chames v. DeMayo</i>	302
Notes and Discussion Questions	307
C. Preserving the Creditor Protection for Heirs	307
<i>Snyder v. Davis</i>	308
<i>Pajares v. Donahue</i>	314
Notes and Discussion Questions	316
D. Restrictions on Alienation and Devise	317
<i>In re Estate of Finch</i>	318
<i>City National Bank of Florida v. Tescher</i>	319
Notes and Discussion Questions	320
Problems	322
E. Personal Representative's Power over Homestead	324
IV. Exempt Property	325
V. Family Allowance	326
Problems	326
Chapter 13 · Elective Share	329
I. Statutory and Case References	329
II. Overview	329
III. Spousal Share: Relevant Factors	329
IV. Brief History of the Elective Share	330
A. Dower and Curtesy	330
B. Elective Share in Florida before October 1, 2001	331
Problems	331
C. Uniform Probate Code Elective Share	332
Notes and Discussion Questions	332
D. Current Florida Elective Share Rules	332

	<i>Magee v. Magee (In re Estate of Magee)</i>	333
V.	Computing the Elective Share	336
	A. Assets Included in Elective Estate	336
	Notes and Discussion Questions	342
	B. Assets Excluded from Elective Estate	342
	Notes and Discussion Questions	343
	C. Overlap Rules	344
	Problems	344
	D. Valuation of Elective Estate	344
	<i>McDonald v. Johnson</i>	345
	Problems	347
	E. Property Interests Used to Satisfy the Elective Share	347
	Notes and Discussion Questions	348
	Problems	349
	F. Abatement of Assets to Satisfy the Elective Share	349
	G. Valuation of Property Used to Satisfy Elective Share	351
	H. Consequences of Taking Elective Share	352
	Notes and Discussion Questions	352
	Problems	352
	I. Miscellaneous Elective Share Issues	354
	Notes and Discussion Questions	355
	Problems	357
Chapter 14	· Miscellaneous Issues Affecting Testate and Intestate Estates	359
I.	Statutory and Case References	359
II.	Overview	359
III.	Simultaneous Death	359
	A. Situations Covered	360
	B. Establishing Order of Death	361
	<i>Rimmer v. Tesla</i>	361
	<i>In re Estate of Shine</i>	363
	C. Establishing Contrary Intention	363
	D. Length of Survivorship	364
	Notes and Discussion Questions	365
	Problems	365
IV.	Killer Statute	365
	A. Establishing Individual Is a Killer	366
	B. Who Takes the Property?	366
	<i>Congleton v. Sansom</i>	367
	<i>Kendall v. Starnes (In re Estate of Benson)</i>	371
	<i>Fiel v. Hoffman</i>	373
	<i>LoCascio v. Sharpe</i>	377
	Notes and Discussion Questions	378
	Problems	379

V.	Effect of Inter Vivos Transfers on Recipient's Share of Estate	380
A.	Loans to Beneficiary	380
B.	Advancements	381
C.	Ademption by Satisfaction	381
	<i>Livingston v. Crickenberger</i>	382
	Notes and Discussion Questions	383
	Problems	383
Chapter 15 · Agreements, Spousal Waivers, and Disclaimers		385
I.	Statutory and Case References	385
II.	Introduction	385
III.	Pre-Death Succession Agreements	386
A.	Florida Contract Law Versus Florida Probate Code	386
B.	Required Formalities for Succession Agreements	387
C.	Enforcing Succession Agreements	388
D.	Joint Estate Plans	388
	<i>Renfro v. Dodge</i>	388
	<i>Algar v. King (In re Estate of Algar)</i>	390
	<i>Spoehr v. Berryman</i>	392
	<i>Donner v. Donner</i>	395
	<i>In re Estate of Waks</i>	402
	Notes and Discussion Questions	405
	Problems	407
IV.	Spousal Waivers	407
	<i>Taylor v. Taylor</i>	408
	<i>Foster v. Estate of Gomes</i>	411
	<i>Herpich v. Estate of Herpich</i>	412
	Notes and Discussion Questions	413
	Problems	414
V.	Disclaimers	415
A.	Tax Reasons for Disclaiming	415
B.	Who Takes the Disclaimed Property?	415
C.	Disclaimants in Financial Difficulty	416
	<i>Drye v. United States</i>	416
	Notes and Discussion Questions	417
	Problems	417
VI.	Post-Death Private Agreements	418
	Problems	418
Chapter 16 · Nonresidents and Ancillary Administration		419
I.	Statutory and Case References	419
II.	Introduction	419
III.	Nonresident Decedents	420
A.	Ancillary Administration	420

B. Determining Domicile	420
<i>Pastor v. Pastor</i>	421
<i>Cuevas v. Kelly</i>	422
C. Governing Law for Testate and Intestate Nonresidents	425
<i>Fajardo v. Domingo (In re Estate of Fajardo)</i>	426
<i>Piloto v. Lauria</i>	427
D. Validity of Wills of Nonresidents	429
<i>Lee v. Estate of Payne</i>	430
E. Community Property Owned by Florida Residents	432
Notes and Discussion Questions	433
IV. Nonresident Beneficiaries	434
Chapter 17 · Introduction to Trusts	435
I. Statutory References	435
II. Overview	435
A. Increase in Use and Change in Role of Trusts	436
B. Changes in Trust Laws—In General	437
C. Changes in Trust Laws—In Florida	438
III. Terminology	439
A. Parties in Private Express Trust	439
B. Methods for Creating Express Trusts	440
C. Inter Vivos or Testamentary Trusts	440
D. Revocable or Irrevocable Trusts	440
Notes and Discussion Questions	443
Chapter 18 · Substantive Trust Elements	445
I. Statutory and Case References	445
II. Trust Elements for Private Express Trusts	445
A. Res	445
<i>Brainard v. Commissioner</i>	446
<i>Herskowitz v. Smith (In re Estate of Herskowitz)</i>	449
Notes and Discussion Questions	450
Problems	451
B. Settlor Intent and Capacity	451
1. Express Intent to Create Trust	451
<i>Rosen v. Rosen</i>	452
2. Precatory Language	453
<i>Magnant v. Peacock</i>	454
<i>DeRoche v. Mitchell (In re Estate of DeRoche)</i>	455
<i>Glenn v. Roberts</i>	456
Notes and Discussion Questions	459
3. Capacity of Settlor	460
C. Trustee with Duties	460
<i>Adams v. Adams</i>	461

Notes and Discussion Questions	465
D. Beneficiary	465
1. Ascertainable Beneficiary	468
<i>Kunce v. Robinson</i>	468
Notes and Discussion Questions	472
2. Merger Doctrine	472
<i>Grant v. Wells (In re Wells)</i>	472
<i>Contella v. Contella</i>	475
Notes and Discussion Questions	476
E. Valid Trust Purpose	476
Notes and Discussion Questions	478
Chapter 19 · Trust Formalities and Funding Trusts	479
I. Statutory and Case References	479
II. Trust Formalities	479
A. Testamentary Trust Formalities	479
B. Inter Vivos Trust Formalities	480
1. Statute of Frauds for Trusts of Land	480
2. Formalities for Testamentary Aspects of Revocable Trusts	483
<i>Zuckerman v. Alter</i>	485
Notes and Discussion Questions	488
III. Funding Trusts	489
A. Funding a Revocable Trust	489
<i>In re Alexander</i>	492
<i>Engelke v. Estate of Engelke</i>	496
<i>Raborn v. Menotte</i>	500
<i>Flinn v. Van Devere</i>	504
B. Funding an Irrevocable Inter Vivos Trust	505
C. Funding a Testamentary Trust	505
Notes and Discussion Questions	506
Chapter 20 · Revocable Trusts	509
I. Statutory and Case References	509
II. Revocable Trusts	509
A. Nontestamentary Character of Revocable Trusts	509
B. Revocable Trusts and Probate	510
<i>Morey v. Everbank</i>	510
Notes and Discussion Questions	515
C. Designing a Revocable Trust	516
<i>Rene v. Sykes-Kennedy</i>	517
Notes and Discussion Questions	518
D. Rules Governing Revocable Trusts	519
Notes and Discussion Questions	519
E. Amendment, Revocation, or Termination of Revocable Trusts	520

<i>Roberts v. Sarros</i>	520
<i>Provost v. Justin</i>	524
Notes and Discussion Questions	524
Chapter 21 · Wills-Trusts Crossover Issues	527
I. Statutory and Case References	527
II. Crossover Issues	527
A. Mistake, Ambiguity, Construction, and Reformation	527
<i>Barnett First National Bank of Jacksonville v. Cobden</i>	528
<i>Davis v. Rex</i>	529
<i>Megiel-Rollo v. Megiel</i>	534
Notes and Discussion Questions	542
B. Undue Influence, Fraud, and Duress	542
<i>Paananen v. Kruse</i>	542
<i>Florida National Bank of Palm Beach County v. Genova</i>	544
Notes and Discussion Questions	547
C. Lapse and Antilapse	547
1. No Property Interest Created When Devisee Fails to Survive Testator	547
2. Property Interest Created When Inter Vivos Trust Is Created	548
3. Florida Statutory Law for Future Interests in Trusts Reverses Common Law	548
a. Common Law Rule for Outright Gifts	549
<i>Sorrels v. McNally</i>	550
<i>Jackson v. Exchange National Bank of Tampa</i>	555
b. Common Law Rule for Gifts in Inter Vivos Trusts	555
c. Statutory Changes to Common Law Rule	556
d. Settlor's Intent Governs	556
e. Comparison to Wills Antilapse Statute	556
Notes and Discussion Questions	557
D. Divorce	558
Notes and Discussion Questions	558
E. Killer	558
F. Changes in Securities	559
<i>Brundage v. Bank of America</i>	559
G. Penalty Clause	564
<i>Dinkins v. Dinkins</i>	565
Chapter 22 · Trusts Providing Protection from Creditors	567
I. Statutory and Case References	567
II. Introduction	567
III. Creditor Access	567
A. Spendthrift Provisions	568
<i>Waterbury v. Munn</i>	569

Notes and Discussion Questions	573
B. Exceptions That Give Creditors Access	573
1. Type of Creditor	573
<i>Bacardi v. White</i>	574
2. Different Distributive Provisions	580
<i>Berlinger v. Casselberry</i>	581
<i>Miller v. Kresser</i>	585
Notes and Discussion Questions	589
Problems	591
3. Self-Settled Trusts	591
<i>Menotte v. Brown (In re Brown)</i>	592
Notes and Discussion Questions	598
Chapter 23 · Additional Uses for Trusts—Elective Share Trusts; Marital Deduction Planning; Life Insurance Trusts; Trusts for Animals; and Twenty-One Year Trusts for Noncharitable Purposes	601
I. Statutory and Case References	601
II. Overview	601
III. Elective Share Trusts	601
A. Using Life Insurance to Fund the Elective Share	602
B. Establishing an Elective Share Trust	603
<i>Janien v. Janien</i>	603
C. Valuing an Elective Share Trust	606
D. Using Life Insurance for Elective Share Trusts	608
Notes and Discussion Questions	608
Problems	608
IV. Marital Deduction Planning	609
A. Introduction	609
B. Computing the Estate Tax	610
C. Using the Marital Deduction, Unified Credit, and Trusts to Save Estate Tax	611
D. Portability	613
Notes and Discussion Questions	614
V. Life Insurance Trusts	614
<i>Sanders v. Citizens National Bank of Leesburg</i>	615
Notes and Discussion Questions	617
VI. Trusts for Animals	617
A. Overview	617
<i>Phillips v. Estate of Holzmann</i>	618
Notes and Discussion Questions	619
B. Drafting Options	619
VII. Twenty-One Year Trusts for Noncharitable Purposes	620

Chapter 24 · Termination and Modification of Irrevocable Trusts	623
I. Statutory and Case References	623
II. Introduction	623
III. Common Law of Termination and Modification	624
A. Nonjudicial Termination and Modification—Common Law	624
1. Material Purpose	626
<i>Claflin v. Claflin</i>	626
Notes and Discussion Questions	627
2. Unanimous Consent of Beneficiaries	628
<i>White v. Bourne</i>	628
<i>Goldentrestler v. Richard (In re Estate of Goldin)</i>	629
<i>Bieley v. Bieley</i>	634
Notes and Discussion Questions	637
B. Judicial Termination and Modification—Common Law	637
Notes and Discussion Questions	638
<i>Mills v. Ball</i>	638
IV. Florida Statutory Law on Termination and Modification	649
A. Nonjudicial Termination and Modification	650
B. Judicial Termination and Modification	650
1. Termination and Modification Consistent with Settlor’s Intent	651
2. Termination and Modification for Best Interests of Beneficiaries	651
C. Other Termination, Modification, and Reformation Statutes	652
<i>Harrell v. Badger</i>	653
<i>Clement v. Charlotte Hospital Ass’n, Inc.</i>	657
Notes and Discussion Questions	660
Problems	661
Chapter 25 · Charitable Trusts	663
I. Statutory and Case References	663
II. Introduction	663
III. Charitable Trust or Charitable Gift	665
<i>Persan v. Life Concepts, Inc.</i>	666
<i>Schwarzkopf v. American Heart Ass’n of Greater Miami, Inc.</i>	671
Notes and Discussion Questions	672
IV. Standing and Enforcement	672
<i>Delaware v. Florida First National Bank of Jacksonville</i>	673
Notes and Discussion Questions	675
V. Rule Against Perpetuities and Charity to Charity Exception	676
Notes and Discussion Questions	677
Problems	677
VI. Cy Pres Doctrine	677
<i>Jewish Guild for the Blind v. First National Bank in</i>	
<i>St. Petersburg</i>	678
<i>SPCA Wildlife Care Center v. Abraham</i>	680
Notes and Discussion Questions	683

Chapter 26 · Powers of Appointment	685
I. Statutory and Case References	685
II. Introduction	685
III. Powers of Appointment	685
A. Terminology	686
<i>Ferrell-French v. Ferrell</i>	687
B. Proper Exercise of Power	689
<i>Cessac v. Stevens</i>	690
<i>Vetrick v. Keating</i>	694
<i>Timmons v. Ingrahm</i>	698
Notes and Discussion Questions	701
Problems	703
Chapter 27 · Classifying Future Interests and the Rule Against Perpetuities	705
I. Statutory and Case References	705
II. Introduction	705
III. Review of Future Interests	707
A. Classifying Interests	707
1. Future Interests Retained by Grantor	709
a. Possibility of Reverter and Right of Re-Entry	709
b. Reversion	710
2. Future Interests Received by Grantees	711
a. Remainders	711
<i>Bryan v. Dethlefs</i>	713
b. Executory Interests	715
B. Classifying Estates	716
<i>Speck v. Bussey (In re Estate of Colding)</i>	716
<i>Brown v. Harris</i>	717
IV. Common Law Rules Other Than Rule Against Perpetuities	718
A. Doctrine of Worthier Title	719
B. Rule in Shelley's Case	720
C. Rule of Destructibility of Contingent Remainders	721
<i>Rentz v. Unborn Grandchildren of Rentz</i>	
(<i>In re Estate of Rentz</i>)	722
<i>Blocker v. Blocker</i>	727
V. The Rule Against Perpetuities	731
A. Classic Formulation	731
B. Purposes Served by the Rule Against Perpetuities	732
C. Future Interests That Are Vulnerable	733
D. Method for Testing	734
1. Time for Testing	734
2. Testing Vulnerable Interests	735
<i>Ludwig v. AmSouth Bank of Florida</i>	738
Notes and Discussion Questions	741

E. Charity to Charity Exception	742
Notes and Discussion Questions	743
F. Florida's Uniform Statutory Rule Against Perpetuities	743
<i>Old Port Cove Holdings, Inc. v. Old Port Condominium Association One, Inc.</i>	745
Notes and Discussion Questions	749
G. Perpetuities Savings Clauses	750
Chapter 28 · Fiduciary Powers, Duties, and Liabilities	753
I. Statutory and Case References	753
II. Overview	753
III. Powers	754
<i>McMullin v. Beaver</i>	754
Notes and Discussion Questions	755
IV. Duties	755
A. Duty to Administer Trust in Good Faith	756
<i>Anton v. Anton</i>	756
<i>Kritchman v. Wolk</i>	757
B. Duty of Loyalty	762
Karen E. Boxx, <i>Of Punctilios and Paybacks: The Duty of Loyalty Under the Uniform Trust Code</i>	762
<i>Wickman v. McGraw (In re Trust under Will of Wickman)</i>	763
<i>Keye v. Gautier</i>	766
Notes and Discussion Questions	768
C. Duty of Impartiality	769
D. Duty to Administer Trust Prudently	770
<i>In re Estate of Feldstein</i>	771
<i>Figel v. Wells Fargo Bank, N.A.</i>	772
Notes and Discussion Questions	776
E. Duty to Incur Only Reasonable Expenses	776
F. Duty to Use Special Skills	776
G. Duty to Prudently Exercise Power to Delegate	777
<i>Little River Bank & Trust Co. v. Peskin (In re Estate of Rosenthal)</i>	777
Notes and Discussion Questions	779
H. Duty to Control and Protect Trust Property	780
<i>Flagship Bank of Orlando v. Reinman, Harrell, Silberhorn, Moule & Graham, P.A.</i>	780
Notes and Discussion Questions	783
I. Duty to Inform and Account	784
<i>Mesler v. Holly</i>	784
<i>Harris Trust Co. of Florida v. Davis</i>	786
Notes and Discussion Questions	787
Problems	788

J. Duty to Not Commingle	788
V. Multiple Fiduciaries	789
<i>Minassian v. Rachins</i>	789
VI. Liabilities	796
A. Liability to Beneficiaries	797
<i>Anton v. Anton</i>	797
<i>Aiello v. Hyland</i>	801
<i>McCormick v. Cox</i>	803
Notes and Discussion Questions	809
Problems	810
B. Liability to Third Parties	812
<i>Hastings Potato Growers Ass'n v. Pomar</i>	812
Notes and Discussion Questions	813
Chapter 29 · Constructive Trusts and Resulting Trusts	815
I. Statutory and Case References	815
II. Introduction	815
III. Distinguishing Constructive and Resulting Trusts from Express Trusts	815
IV. Constructive Trusts	816
<i>Wodonos v. Wodonos</i>	817
<i>Williams v. Grogan</i>	819
<i>Mayer v. Cianciolo</i>	822
<i>Allen v. Dalk</i>	824
Notes and Discussion Questions	826
Problems	827
V. Resulting Trusts	828
<i>Key v. Trattmann</i>	829
Notes and Discussion Questions	835
Problems	836
Chapter 30 · Principal and Income	837
I. Statutory and Case References	837
II. Introduction	837
III. Applicable Rules	837
A. Use of Statutory Rules	838
<i>Jenkins v. Donahoo</i>	838
B. Discretion of Fiduciary	841
<i>Florida Coast Bank of Pompano Beach v. Mayes</i>	841
IV. Overview of Principal and Income	842
A. Terminology	842
1. Receipts and Disbursements	842
2. Principal and Income	842
B. Significance of Classification	843
V. Trusts and Estates	843

A. Trusts	844
B. Estates	845
1. Income Due or Accrued before Death	845
2. Income and Expenses after Death	845
3. Interrelationship between Estates and Trusts	846
VI. Allocating Receipts and Disbursements	846
A. Overview	846
B. Specific Types of Property	847
1. Receipts and Disbursements from Rental Property	847
2. Corporations and Other Business Entities	847
3. Unincorporated Businesses Operated by Fiduciary	847
4. Bonds	848
5. Unproductive or Underproductive Property	848
6. Special Types of Income and Disbursements	849
C. Adjustments between Income and Principal	850
VII. Drafting Issues	850
Notes and Discussion Questions	851
Problems	852
Chapter 31 · Planning for Incapacity	855
I. Statutory and Case References	855
II. In General	855
III. Durable Power of Attorney	856
A. Durability and Formalities	856
B. When Power Commences	856
C. Powers, Duties, and Liabilities of Agent	857
1. Powers and Property Subject to Powers	857
<i>Gurfinkel v. Josi</i>	858
2. Duties and Liabilities	860
<i>Krevatas v. Wright</i>	860
D. Termination of Power	863
Notes and Discussion Questions	864
Problems	864
IV. Designation of Health Care Surrogate	865
A. Purpose of Designation	865
B. Creation of Designation of Health Care Surrogate	866
C. When Power Commences	866
D. Rights and Responsibilities of Surrogate	867
E. Termination of Authority	868
V. Living Will	869
A. Purpose and Creation of Living Will	869
<i>Satz v. Perlmutter</i>	869
<i>Satz v. Perlmutter</i>	873
B. Effect of Living Will	874

	<i>John F. Kennedy Memorial Hospital, Inc. v. Bludworth</i>	875
VI.	Absence of Advance Directives	880
	<i>Schindler v. Schiavo (In re Guardianship of Schiavo)</i>	881
	Notes and Discussion Questions	884
VII.	Burial and Cremation	885
	Notes and Discussion Questions	885
Chapter 32 · Introduction to Tax Aspects of Estate Planning		887
I.	Constitutional and Statutory References	887
II.	Introduction	887
III.	Relevant Taxes	888
	A. Income Tax	888
	B. Transfer Taxes	890
IV.	Federal Gift Tax	891
	A. Taxable Gifts	891
	1. Gift Tax Exclusions	891
	a. Annual Exclusion	891
	b. Transfers to Pay Educational Expenses	893
	c. Transfers to Pay Medical Expenses	894
	2. Gift Tax Deductions	894
	3. Applicable Exclusion Amount	894
	B. Gift Tax Rates	894
	C. Value of Gift	895
	D. Adjusted Taxable Gifts and Effect on Estate Tax	895
	E. Lifetime Gifts and Effects on Non-Tax Planning	895
V.	Federal Estate Tax	896
	A. Gross Estate	896
	1. Probate Assets	896
	2. Revocable Trusts	897
	3. Life Insurance	897
	4. Tenancy by the Entirety Property and Property Held by Spouses as Joint Tenants with Right of Survivorship	898
	5. Joint Tenancy with Right of Survivorship—Unmarried Co-Tenants	899
	6. Other Property Included in the Gross Estate	899
	B. Deductions and Taxable Estate	900
	1. In General	900
	2. Marital Trusts and Florida Elective Share Trusts	900
	Donna Litman, <i>The Interrelationship Between the Elective Share and the Marital Deduction</i>	900
	3. Credit Shelter Trusts and Portability	903
	a. Overview	903
	b. Estate Tax Savings	903

c. General Powers of Appointment and Ascertainable Standards	905
C. Estate Tax	906
VI. Impact of Income, Gift, and Estate Tax on Estate Planning	907
Chapter 33 · Probate Administration	909
I. Statutory and Case References	909
II. Introduction	909
III. Overview of Purpose and Procedure	910
IV. Probate versus Nonprobate Property	911
A. Probate Property	911
B. Nonprobate Property	912
1. Uniform Transfers to Minors Act Accounts	912
2. Community Property	913
V. Gathering Probate Property	913
Problems	914
VI. Creditors' Claims	915
<i>Grainger v. Wald</i>	915
A. Notifying Creditors	918
1. Reasonably Ascertainable Creditor	918
<i>Jones v. Sun Bank/Miami</i>	919
2. Additional Rules	922
B. Creditors' Obligations	923
Notes and Discussion Questions	924
C. Dispute or Resolution of Claims	925
D. Payment of Claims and Taxes	926
VII. Distribution of Probate Estate	927
Appendices	929
Preface to Appendices	929
Appendix A · Will with Testamentary Trust (Northern Trust Form 101)	931
Appendix B · Will with Trust for Minors (Northern Trust Form 106)	971
Appendix C · Will with Pour Over Devise (Northern Trust Form 110)	979
Appendix D · Will for Unmarried Testator (Northern Trust Form 111)	993
Appendix E · Codicil to Will (Northern Trust Form 113)	1007
Appendix F · Revocable Trust Agreement (Married Settlor)	
(Northern Trust Form 201)	1015
Appendix G · Revocable Trust Agreement (Unmarried Settlor)	
(Northern Trust Form 208)	1057
Index	1065

Table of Cases

- Adams v. Adams*, 88 U.S. 185 (1874), 461
Adkins v. Woodfin, 525 So. 2d 447 (Fla. 4th DCA 1988), 180
Aiello v. Hyland, 793 So. 2d 1150 (Fla. 4th DCA 2001), 801
Aldrich v. Basile, 136 So. 3d 530 (Fla. 2014), 231
Algar v. King (In re Estate of Algar), 383 So. 2d 676 (Fla. 5th DCA 1980), 390
Allen v. Dalk, 826 So. 2d 245 (Fla. 2002), 88, 824
Allen v. Estate of Dutton, 384 So. 2d 171 (Fla. 5th DCA 1980), 406
Allen v. In re Estate of Dutton, 394 So. 2d 132 (Fla. 5th DCA 1980), 133
American Red Cross v. Estate of Haynsworth, 708 So. 2d 602 (Fla. 3d DCA 1998), 100
Anton v. Anton, 763 So. 2d 404 (Fla. 4th DCA 2000), 797
Anton v. Anton, 815 So. 2d 768 (Fla. 4th DCA 2002), 756, 797
Ashkenazy v. Estate of Ashkenazy, 140 So. 2d 331 (Fla. 3d DCA 1962), 263
Astrue v. Capato (ex rel. BNC), 132 S. Ct. 2021 (2012), 60
Azcunce v. Estate of Azcunce, 586 So. 2d 1216 (Fla. 3d DCA 1991), 276
Babcock v. Estate of Babcock, 995 So. 2d 1044 (Fla. 4th DCA 2008), 180, 244
Bacardi v. White, 463 So. 2d 218 (Fla. 1985), 574, 583
Barnett First National Bank of Jacksonville v. Cobden, 393 So. 2d 78 (Fla. 4th DCA 1981), 527, 528
Baron v. Williams (In re Estate of Williams), 182 So. 2d 10 (Fla. 1965), 74
Bauer v. Reese (In re Estate of Bauer), 161 So. 2d 678 (Fla. 1st DCA 1964), 283
Bayview Loan Servicing, LLC v. Giblin, 9 So. 3d 1276 (Fla. 4th DCA 2009), 300
Beale v Beale, 807 So.2d 797 (Fla. 1st DCA 2002), 420
Belanger v. Salvation Army, 556 F.3d 1153 (11th Cir. 2009), 17
Berlinger v. Casselberry, 133 So. 3d 961 (Fla. 2d DCA 2013), 581
Biden v. Lord, 147 So. 3d 632 (Fla. 1st DCA 2014), 676
Bieley v. Bieley, 398 So. 2d 932 (Fla. 3d DCA 1981), 634
Blinn v. Carlman, 159 So. 3d 390 (Fla. 4th DCA 2015), 128
Blocker v. Blocker, 137 So. 249 (Fla. 1931), 727
Boyd v. Cooper (In re Estate of Supplee), 247 So. 2d 488 (Fla. 2d DCA 1971), 108
Bradley v. Bradley, 371 So. 2d 168 (Fla. 3d DCA 1979), 78
Brainard v. Commissioner, 91 F.2d 880 (7th Cir. 1937), 446
Brennan v. Honsberger, 101 So. 2d 415 (Fla. 5th DCA 2012), 185, 222
Brown v. Harris, 106 So. 412 (Fla. 1925), 717
Brown v. Johnson (In re Estate of Broxton), 425 So. 2d 23 (Fla. 4th DCA 1982), 54

- Brundage v. Bank of America*, 996 So. 2d 877 (Fla. 4th DCA 2008), 559
- Bryan v. Dethlefs*, 959 So. 2d 314 (Fla. 3d DCA 2007), 457, 513, 713
- Budny v. Mikell*, 815 So. 2d 781 (Fla. 2d DCA 2002), 260
- Bush v. Schiavo*, 885 So. 2d 321 (Fla. 2004), 885
- Burcham v. Kamoraski (In re Estate of Lubbe)*, 142 So. 2d 130 (Fla. 2d DCA 1962), 207
- California v. Texas*, 457 U.S. 164 (1982), 13, 433
- Campbell v. Campbell*, 489 So. 2d 774 (Fla. 3d DCA 1986), 151
- Capital Bank v. MVB, Inc.*, 644 So. 2d 515 (Fla. 3d DCA 1994), 860
- Carpenter v. Carpenter (In re Estate of Carpenter)*, 253 So. 2d 697 (Fla. 1971), 110, 120
- Carter v. Carter*, 526 So. 2d 141 (Fla. 3d DCA 1988), 122
- Cessac v. Stevens*, 127 So. 3d 675 (Fla. 1st DCA 2013), 690
- Chames v. DeMayo*, 972 So. 2d 850 (Fla. 2007), 302
- City National Bank of Miami v. General Coffee Corp. (In re General Coffee Corp.)*, 828 F.2d 699 (11th Cir. 1987), 827
- City National Bank of Florida v. Tescher*, 578 So. 2d 701 (Fla. 1991), 304, 319
- Clafin v. Clafin*, 20 N.E. 454 (Mass. 1889), 623, 626
- Claveloux v. Bacotti*, 778 So. 2d 399 (Fla. 2d DCA 2001), 142, 147
- Clement v. Charlotte Hospital Ass'n*, 137 So. 2d 615 (Fla. 2d DCA 1962), 657
- Clemons v. Thornton*, 993 So. 2d 1054 (Fla. 1st DCA 2008), 322
- Cohen v. Cohen*, 567 So. 2d 1015 (Fla. 3d DCA 1990), 379
- Congleton v. Sansom*, 664 So. 2d 276 (Fla. 1st DCA 1995), 367
- Contella v. Contella*, 559 So. 2d 1217 (Fla. 5th DCA 1990), 475, 539, 589
- Cosman v. Rodriguez*, 153 So. 3d 371 (Fla. 2d DCA 2014), 379
- Crews v. Bosonetto (In re Bosonetto)*, 271 B.R. 403 (Bankr. M.D. Fla. 2001), 490
- Cruzan v. Missouri Department of Health*, 497 U.S. 261 (1990), 875
- Dahly v. Dahly*, 866 So. 2d 745 (Fla. 5th DCA 2004), 176
- Dalk v. Allen*, 774 So. 2d 787 (Fla. 5th DCA 2000), 81, 824
- Davis v. Arkenberg*, 195 So. 2d 46 (Fla. 1967), 292
- Davis v. Davis*, 864 So. 2d 458 (Fla. 1st DCA 2003), 299
- Davis v. Rex*, 876 So. 2d 609 (Fla. 4th DCA 2004), 529, 537
- Delaware v. Florida First National Bank of Jacksonville*, 381 So. 2d 1075 (Fla. 1st DCA 1979), 673
- DeWitt v. Duce*, 408 So. 2d 216 (Fla. 1981), 143, 147, 149
- DeRoche v. Mitchell (In re Estate of DeRoche)*, 330 So. 2d 860 (Fla. 2d DCA 1976), 455
- Diaz v. Ashworth*, 963 So. 2d 731 (Fla. 3d DCA 2007), 121, 124
- Dinkins v. Dinkins*, 120 So. 3d 601 (Fla. 5th DCA 2013), 352, 565
- Donner v. Donner*, 302 So. 2d 452 (Fla. 3d DCA 1974), 395
- Drye v. United States*, 528 U.S. 49 (1999), 416
- Dutcher v. Estate of Dutcher*, 437 So. 2d 788 (Fla. 2d DCA 1983), 201, 230
- Edwards v. Citizens National Bank of Leesburg (In re Estate of Edwards)*, 433 So. 2d 1349 (Fla. 5th DCA 1983), 96
- Egelhoff v. Egelhoff*, 532 U.S. 141 (2001), 286
- Engelke v. Estate of Engelke*, 921 So. 2d 693 (Fla. 4th DCA 2006), 495, 496, 514, 534
- Espinosa v. Sparber, Shevin, Shapo, Rosen & Heilbronner*, 612 So. 2d 1378 (Fla. 1993), 281
- Estate of Ganier v. Estate of Ganier*, 418 So. 2d 256 (Fla. 1982), 272
- Estate of Huskea v. Doody*, 391 So. 2d 779 (Fla. 4th DCA 1980), 49
- Estate of Maher v. Iglíkova*, 138 So. 3d 484 (Fla. 3d DCA 2014), 279

- Estate of Shefner v. Shefner-Holden*, 2 So. 3d 1076 (Fla. 3d DCA 2009), 317
- Estate of Somogyi v. Marosites*, 389 So. 2d 244 (Fla. 5th DCA 1980), 405
- Estes v. Nicholson*, 23 So. 490 (Fla. 1898), 57
- Fajardo v. Domingo (In re Estate of Fajardo)*, 597 So. 2d 362 (Fla. 3d DCA 1992), 426
- Faskowitz v. Department of Legal Affairs (In re Estate of Faskowitz)*, 941 So. 2d 390 (Fla. 2d DCA 2006), 37
- Ferrell-French v. Ferrell*, 691 So. 2d 500 (Fla. 4th DCA 1997), 687
- Fiel v. Hoffman*, 169 So. 3d 1274 (Fla. 4th DCA 2015), 373
- Figel v. Wells Fargo Bank, N.A.*, 2011 WL 860470 (S.D. Fla. Mar. 9, 2011), 772
- Fine Arts Museums Foundation v. First National in Palm Beach*, 633 So. 2d 1179 (Fla. 4th DCA 1994), 154
- Flagship Bank of Orlando v. Reinman, Harrell, Silberhorn, Moule & Graham, P.A.*, 503 So. 2d 913 (Fla. 5th DCA 1987), 780
- Flagship National Bank of Boynton Beach v. Kelley*, 516 So. 2d 1067 (Fla. 4th DCA 1987), 179
- Fleming v. Fleming*, 352 So. 2d 895 (Fla. 1st DCA 1977), 108
- Flinn v. Van Devere*, 502 So. 2d 454 (Fla. 3d DCA 1986), 504
- Florida Coast Bank of Pompano Beach v. Mayes*, 437 So. 2d 160 (Fla. 4th DCA 1983), 841
- Foster v. Estate of Gomes*, 27 So. 3d 145 (Fla. 5th DCA 2010), 411
- Foundation for the Developmentally Disabled, Inc., v. Step by Step Early Childhood Education and Therapy Center, Inc.*, 29 So. 3d 1221 (Fla. 2d DCA 2010), 672
- Gable v. Miller*, 104 So. 2d 358 (Fla. 1958), 386
- Gardiner v. Goertner*, 149 So. 186 (Fla. 1933), 94
- Geraci v. Sunstar EMS*, 93 So. 3d 384 (Fla. 2d DCA 2012)
- Gerson v. Haines*, 428 So. 2d 766, 767 (Fla. 3d DCA 1983), 302
- Glenn v. Roberts*, 95 So. 3d 271 (Fla. 3d DCA 2012), 456
- Goldentrestler v. Richard (In re Estate of Goldin)*, 498 So. 2d 1303 (Fla. 3d DCA 1986), 629
- Grainger v. Wald*, 29 So. 3d 1155 (Fla. 1st DCA 2010), 915
- Grant v. Wells (In re Wells)*, 259 B.R. 776 (Bankr. M.D. Fla. 2001), 472
- Griffis v. Scott (In re Estate of Scott)*, 659 So. 2d 361 (Fla. 1st DCA 1995), 295
- Gunster, Yoakley & Stewart, P.A. v. McAdam*, 965 So. 2d 182, 183 (Fla. 4th DCA 2007), 506
- Gurfinkel v. Josi*, 972 So. 2d 927 (Fla. 3d DCA 2007), 855, 858
- Hack v. Janes*, 878 So. 2d 440 (Fla. 5th DCA 2004), 121, 205
- Hall v. Jones (In re Estate of Jones)*, 472 So. 2d 1299 (Fla. 2d DCA 1985), 256
- Hall v. Maal*, 32 So. 3d 682 (Fla. 1st DCA 2010), 26
- Hamilton v. Florida Nat'l Bank*, 151 So. 409 (Fla. 1933), 702
- Hansen v. Bothe*, 10 So. 3d 213 (Fla. 2d DCA 2009), 589
- Harbie v. Falk*, 907 So. 2d 566 (Fla. 3d DCA 2005), 152
- Harrell v. Badger*, 171 So. 3d 764 (Fla. 5th DCA 2015), 653
- Harrell v. Snyder*, 913 So. 2d 749 (Fla. 5th DCA 2005), 325
- Harris Trust Co. of Florida v. Davis*, 668 So. 2d 689 (Fla. 4th DCA 1996), 786
- Hastings Potato Growers Ass'n v. Pomar*, 296 So. 2d 55 (Fla. 1st DCA 1974), 812
- Herpich v. Estate of Herpich*, 994 So. 2d 1195 (Fla. 5th DCA 2008), 412
- Herrilka v. Yates*, 13 So. 3d 122 (Fla. 4th DCA 2009), 325
- Herskowitz v. Smith (In re Estate of Herskowitz)*, 338 So. 2d 210 (Fla. 3d DCA 1976), 449
- Houston v. Taylor (In re Estate of Beakes)*, 306 So. 2d 99 (Fla. 1974), 74
- In re Alexander*, 346 B.R. 546 (Bankr. M.D. Fla. 2006), 492
- In re Estate of Anderson*, 149 So. 2d 65 (Fla. 2d DCA 1963), 326

- In re Estate of Baer*, 446 So. 2d 1128 (Fla. 4th DCA 1984), 180, 201
- In re Estate of Bancker*, 232 So. 2d 431 (Fla. 4th DCA 1970), 90, 161, 182
- In re Estate of Butler*, 444 So. 2d 477 (Fla. 2d DCA 1984), 29
- In re Estate of Carpenter*, 289 So. 2d 410 (Fla. 4th DCA 1974), 118
- In re Estate of Charry*, 359 So. 2d 544 (Fla. 4th DCA 1978), 84
- In re Estate of Dalton*, 246 So.2d 612, 614 (Fla. 3d DCA 1971), 422
- In re Estate of Davol*, 100 So. 2d 188 (Fla. 3d DCA 1958), 43
- In re Estate of Feldstein*, 292 So. 2d 404 (Fla. 3d DCA 1974), 771
- In re Estate of Finch*, 401 So. 2d 1308 (Fla. 1981), 318
- In re Estate of Golden*, 211 So. 2d 234 (Fla. 4th DCA 1968), 182
- In re Estate of Grant*, 558 So. 2d 208 (Fla. 2d DCA 1990), 325
- In re Estate of Harrison*, No. 8:08-bk-07002-KRM, 2010 WL 503077 (Bankr. M.D. Fla. Jan. 29, 2010), 924
- In re Estate of Kuhn*, 286 So. 2d 276 (Fla. 3d DCA 1973), 167
- In re Estate of Murphy*, 184 So. 3d 1221 (Fla. 2d DCA 2016), 194
- In re Estate of Parker*, 382 So. 2d 652 (Fla. 1980), 212, 216, 223
- In re Estate of Potter*, 469 So. 2d 957 (Fla. 4th DCA 1985), 248
- In re Radtke*, 344 B.R. 690 (Bankr. S.D. Fla. 2006), 301
- In re Estate of Shine*, 389 So. 2d 1191 (Fla. 4th DCA 1980), 359, 363
- In re Estate of Tim*, 161 So. 2d 40 (Fla. 3d DCA 1964), 33
- In re Estate of Tolin*, 622 So. 2d 988 (Fla. 1993), 165, 177, 825
- In re Estate of Waks*, 386 So. 2d 307 (Fla. 4th DCA 1980), 402
- In re Estate of Wartels*, 357 So. 2d 708 (Fla. 1978), 321
- In re Guardianship of Barry*, 445 So. 2d 365 (Fla. 2d DCA 1984), 885
- In re Oullete*, 21 Fla. L. Weekly Fed. B 773, 2009 WL 1936896 (Bankr. M.D. Fla. 2009), 302
- In re Radtke*, 344 B.R. 690 (Bankr. S.D. Fla. 2006), 301
- In re Schiele's Estate*, 51 So. 2d 287 (Fla. 1951), 77, 84, 86
- In re Steffen*, 405 B.R. 486 (Bankr. M.D. Fla. 2009), 506
- J.P. Morgan Trust Co. v. Siegel*, 965 So. 2d 1193 (Fla. 4th DCA 2007), 810
- Jackson v. Exchange National Bank of Tampa*, 12 So. 2d 450 (Fla. 1943), 555
- Janien v. Janien*, 939 So. 2d 264 (Fla. 4th DCA 2006), 603
- Jenkins v. Donahoo*, 231 So.2d 809 (Fla. 1970), 838
- Jewish Guild for the Blind v. First National Bank in St. Petersburg*, 226 So. 2d 414 (Fla. 2d DCA 1969), 678
- John F. Kennedy Memorial Hospital, Inc. v. Bludworth*, 452 So. 2d 921 (Fla. 1984), 875
- Johns v. Bowden*, 66 So. 155 (Fla. 1914), 499
- Jones v. Shifflet (In re Estate of Shifflet)*, 170 So. 2d 96 (Fla. 3d DCA 1964), 159, 174
- Jones v. Sun Bank/Miami*, 609 So. 2d 98 (Fla. 3d DCA 1992), 919
- Kay v. Swartz (In re Estate of Kanevsky)*, 506 So. 2d 1101 (Fla. 3d DCA 1987), 47
- Kendall v. Starnes (In re Estate of Benson)*, 548 So. 2d 775 (Fla. 2d DCA 1989), 371
- Kennedy v. Plan Adm'r for DuPont Sav. and Inv. Plan*, 555 U.S. 285 (2009), 286
- Key v. Trattmann*, 959 So. 2d 339 (Fla. 1st DCA 2007), 829
- Keye v. Gautier*, 684 So. 2d 210 (Fla. 3d DCA 1997), 753, 766
- Kotsch v. Kotsch*, 608 So. 2d 879 (Fla. 2d DCA 1992), 859
- Krevatas v. Wright*, 518 So. 2d 435 (Fla. 1st DCA 1988), 860
- Kritchman v. Wolk*, 152 So. 3d 628 (Fla. 3d DCA 2014), 757

- Kunce v. Robinson*, 469 So. 2d 874 (Fla. 3d DCA 1985), 468, 533, 539
- Kupec v. Cooper*, 593 So. 2d 1176 (Fla. 5th DCA 1992), 53
- Lee v Estate of Payne*, 148 So. 3d 776 (Fla. 2d DCA 2013), 430
- Levin v. Levin*, 60 So. 3d 1116 (Fla. 4th DCA 2011), 98, 128
- Levine v. Hirshon*, 980 So. 2d 1053 (Fla. 2008), 321
- Levy v. Hebrew Technical Institute*, 196 So. 2d 225 (Fla. 3d DCA 1967), 45
- Little River Bank & Trust Co. v. Peskin (In re Estate of Rosenthal)*, 189 So. 2d 507 (Fla. 3d DCA 1966), 777
- Livingston v. Crickenberger*, 141 So. 2d 794 (Fla. 1st DCA 1962), 382
- LoCascio v. Sharpe*, 23 So. 3d 1209 (Fla. 3d DCA 2009), 377
- Lorenzo v. Medina*, 47 So. 3d 927 (Fla. 3d DCA 2010), 293
- Lowy v. Roberts*, 453 So. 2d 886 (Fla. 3d DCA 1984), 137
- Ludwig v. AmSouth Bank of Florida*, 686 So. 2d 1373 (Fla. 2d DCA 1997), 738
- Mack v. Perri*, 24 So.3d 697 (Fla. 1st DCA 2009), 917
- Magee v. Magee (In re Estate of Magee)*, 988 So. 2d 1 (Fla. 2d DCA 2007), 9, 333
- Magnant v. Peacock*, 25 So. 2d 566 (Fla. 1946), 454
- Marshall v. Marshall*, 547 U.S. 293 (2006), 13
- Martin v. Martin*, 687 So. 2d 903 (Fla. 4th DCA 1997), 178
- May v. Illinois National Ins. Co.*, 771 So. 2d 1143, 1161 (Fla. 2000), 924
- Mayer v. Cianciolo*, 463 So. 2d 1219 (Fla. 3d DCA 1985), 822
- McCormick v. Cox*, 118 So. 3d 980 (Fla. 3d DCA 2013), 803
- McDonald v. Johnson*, 83 So. 3d 889 (Fla. 2d DCA 2012), 345
- McEnderfer v. Keefe (In re Estate of Mahaney)*, 903 So. 2d 234 (Fla. 2d DCA 2005), 246
- McKean v. Warburton*, 919 So. 2d 341 (Fla. 2005), 316, 321, 514
- McMullin v. Beaver*, 905 So. 2d 928 (Fla. 4th DCA 2005), 754
- Megiél-Rollo v. Megiél*, 162 So. 3d 1088 (Fla. 2d DCA 2015), 476, 534
- Menotte v. Brown (In re Brown)*, 303 F.3d 1261 (11th Cir. 2002), 592
- Mesler v. Holly*, 318 So. 2d 530 (Fla. 2d DCA 1975), 784
- Miller v. Kresser*, 34 So. 3d 172 (Fla. 4th DCA 2010), 476, 585
- Mills v. Ball*, 380 So. 2d 1134 (Fla. 1st DCA 1980), 638
- Minassian v. Rachins*, 152 So. 3d 719 (Fla. 4th DCA 2014), 789
- Moneyham v. Hamilton*, 168 So. 522 (Fla. 1936), 163
- Morey v. Everbank*, 93 So. 3d 482 (Fla. 1st DCA 2012), 510, 538, 541
- Moss v. Estate of Moss*, 777 So. 2d 1110 (Fla. 4th DCA 2001), 316
- Neumann v. Wordock*, 873 So. 2d 502 (Fla. 2d DCA 2004), 145
- Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), 37
- Old Port Cove Holdings, Inc. v. Old Port Condominium Association One, Inc.*, 986 So. 2d 1279 (Fla. 2008), 745
- Ott v. Ott*, 418 So. 2d 460 (Fla. 4th DCA 1982), 254
- Paananen v. Kruse*, 581 So. 2d 186 (Fla. 2d DCA 1991), 542
- Pajares v. Donahue*, 33 So. 3d 700 (Fla. 4th DCA 2010), 314
- Pangborn v. Union Trust National Bank (In re Estate of Burkhardt)*, 204 So. 2d 737 (Fla. 2d DCA 1967), 105
- Pastor v. Pastor*, 929 So. 2d 576 (Fla. 4th DCA 2006), 421
- Persan v. Life Concepts*, 738 So. 2d 1008 (Fla. 5th DCA 1999), 666
- Phillips v. Estate of Holzmann*, 740 So. 2d 1 (Fla. 3d DCA 1998), 618
- Phillips v. Hirshon*, 958 So. 2d 425 (Fla. 3d DCA 2007), 321
- Pierce v. Pierce*, 128 So. 3d 204 (Fla. 1st DCA 2013), 418
- Piloto v. Lauria*, 45 So. 3d 565 (Fla. 4th DCA 2010), 427

- Popp v. Rex*, 916 So. 2d 954 (Fla. 4th DCA 2005), 542
- Preston v. City National Bank of Miami*, 294 So. 2d 11 (Fla. 3d DCA 1974), 637
- Price v. Abate*, 9 So. 3d 37 (Fla. 3d DCA 2009), 88
- Provost v. Justin*, 19 So. 3d 333 (Fla. 2d DCA 2009), 524
- Prudential Ins. Co. of Am. v. Baitinger*, 452 So. 2d 140 (Fla. 3d DCA 1984), 378
- R.I. v. Dept. of Children & Families*, 47 So. 3d 357 (Fla. 4th DCA 2010), 506
- Raborn v. Menotte*, 974 So. 2d 328 (Fla. 2008), 500
- Raimi v. Furlong*, 702 So. 2d 1273 (Fla. 3d DCA 1977), 99, 125, 128
- RBC Ministries v. Tompkins*, 974 So. 2d 569 (Fla. 2d DCA 2008), 119, 200
- Reid v. Temple Judea*, 994 So. 2d 1146 (Fla. 3d DCA 2008), 538, 542, 653
- Rene v. Sykes-Kennedy*, 156 So. 3d 518 (Fla. 5th DCA 2015), 517
- Renfro v. Dodge*, 520 So. 2d 690 (Fla. 4th DCA 1988), 388
- Rentz v. Unborn Grandchildren of Rentz (In re Estate of Rentz)*, 152 So. 2d 480 (Fla. 3d DCA 1963), 722
- Rimmer v. Tesla*, 201 So. 2d 573 (Fla. 1967), 361
- Roberts v. Sarros*, 920 So. 2d 193 (Fla. 2d DCA 2006), 514, 520, 524, 714
- Robertson v. Gallagher (In re Estate of Robertson)*, 372 So. 2d 1138 (Fla. 3d DCA 1979), 132
- Romaniello v. Romaniello*, 760 So. 2d 1083 (Fla. 5th DCA 2000), 236
- Rosen v. Rosen*, 167 So. 2d 70 (Fla. 3d DCA 1964), 452
- Rosoff v. Harding*, 901 So. 2d 1006 (Fla. 4th DCA 2005), 689
- Rothko v. Reis (In Re Estate of Rothko)*, 372 N.E.2d 291 (N.Y. 1977), 810
- Sanders v. Citizens National Bank of Leesburg*, 585 So. 2d 1064 (Fla. 5th DCA 1991), 615
- Satz v. Perlmutter*, 362 So. 2d 160 (Fla. 4th DCA 1978), 869
- Satz v. Perlmutter*, 379 So. 2d 359 (Fla. 1980), 873
- Scheurer v. Tomberlin*, 240 So. 2d 172 (Fla. 1st DCA 1970), 156
- Schilling v. Herrera*, 952 So. 2d 1231 (Fla. 3d DCA 2007), 140
- Schindler v. Schiavo (In re Guardianship of Schiavo)*, 780 So. 2d 176 (Fla. 2d DCA 2001), 881
- Schrivier v. Schrivier (In re Estate of Schrivier)*, 441 So. 2d 1105 (Fla. 5th DCA 1983), 860
- Schwarzkopf v. American Heart Ass'n of Greater Miami*, 541 So. 2d 1348 (Fla. 3d DCA 1989), 478, 671
- Sharps v. Sharps*, 219 So. 2d 735 (Fla. 3d DCA 1969), 387
- Shriners Hospitals v. Zrillic*, 563 So. 2d 64 (Fla. 1990), 6, 334
- Silver v. Schroeder*, 474 So. 2d 857 (Fla. 3d DCA 1985), 364
- Simpson v. Williamson*, 611 So. 2d 544 (Fla. 5th DCA 1992), 85, 88
- Smith v. DeParry*, 86 So. 3d 1228 (Fla. 2d DCA 2012), 214
- Snyder v. Davis*, 699 So. 2d 999 (Fla. 1997), 308, 498
- Solomon v. Dunlap*, 372 So. 2d 218 (Fla. 1st DCA 1979), 273
- Sorrrels v. McNally*, 105 So. 106 (Fla. 1925), 457, 532, 550, 714
- Souder v. Johnson*, 501 So. 2d 745 (Fla. 4th DCA 1987), 237, 740
- Southern Walls, Inc. v. Stilwell Corp.*, 810 So. 2d 566 (Fla. 5th DCA 2002), 321, 494, 495
- SPCA Wildlife Care Center v. Abraham*, 75 So. 3d 1271 (Fla. 4th DCA 2011), 680
- Speck v. Bussey (In re Estate of Colding)*, 147 So. 2d 338 (Fla. 3d DCA 1962), 716
- Spoehr v. Berryman*, 589 So. 2d 225 (Fla. 1991), 392, 830, 831
- State v. Rudawski (In re Estate of Tim)*, 180 So. 2d 161 (Fla. 1965), 33
- Stewart v. Johnson*, 194 So. 869 (Fla. 1940), 166, 187, 192, 199, 217
- Story v. First National Bank & Trust Co.*, 156 So. 101 (Fla. 1934), 731

- Swan v. Florida National Bank of Miami*, 445 So. 2d 622 (Fla. 3d DCA 1984), 182
- Tarsagian v. Watt*, 402 So.2d 471 (Fla. 3d DCA 1981), 127
- Tartaglia v. Hatten (In re Estate of Hatten)*, 880 So. 2d 1271 (Fla. 3d DCA 2004), 216, 223
- Taylor v. Taylor*, 1 So. 3d 348 (Fla. 1st DCA 2009), 408
- Timmons v. Ingrahm*, 36 So. 3d 861 (Fla. 5th DCA 2010), 698
- Tonnelier v. Tonnelier*, 181 So. 150 (Fla. 1938), 160
- Trotter v. Van Pelt*, 198 So. 215 (Fla. 1940), 420
- Union National Bank of Florida v. Estate of Mizell*, 807 So. 2d 78 (Fla. 5th DCA 2001), 160
- Upson v. Estate of Carville*, 369 So. 2d 113 (Fla. 1st DCA 1979), 209
- Van Woy v. Willis*, 14 So. 2d 185 (Fla. 1943), 860
- Vaughn v. Batchelder*, 633 So. 2d 526 (Fla. 2d DCA 1994), 859, 864
- Vetrick v. Keating*, 877 So. 2d 54 (Fla. 4th DCA 2004), 691, 694
- Via v. Putnam*, 656 So. 2d 460 (Fla. 1995), 274, 335
- Walton v. Estate of Walton*, 601 So. 2d 1266 (Fla. 3d DCA 1992), 210
- Wartmann v. Burlison*, 190 So. 789 (Fla. 1939), 108
- Waterbury v. Munn*, 32 So. 2d 603 (Fla. 1947), 569, 575, 587, 594
- Wehrheim v. Golden Pond Assisted Living Facility*, 905 So. 2d 1002 (Fla. 5th DCA 2005), 190, 197, 207, 458
- Werner v. Estate of McCloskey*, 943 So. 2d 1007 (Fla. 1st DCA 2006), 69
- West v. Chrisman*, 518 B.R. 655 (M.D. Fla. 2014), 780
- White v. Bourne*, 9 So. 2d 170 (Fla. 1942), 628, 633
- Wickman v. McGraw (In re Trust Under Will of Wickman)*, 289 So. 2d 788 (Fla. 2d DCA 1974), 763
- Wider v. Wider (In re Wider's Estate)*, 62 So. 2d 422 (Fla. 1952), 169
- Wilkins v. Wilkins*, 198 So. 335 (Fla. 1940), 788
- Williams v. Dorrell*, 714 So. 2d 574 (Fla. 3d DCA 1998), 320
- Williams v. Estate of Pender*, 738 So. 2d 453 (Fla. 1st DCA 1999), 50, 53
- Williams v. Grogan*, 100 So. 2d 407 (Fla. 1958), 819, 833
- Wodonos v. Wodonos*, 62 So. 2d 78 (Fla. 1952), 817
- Woodward v. Smith (In re Estate of Woodward)*, 978 So. 2d 865 (Fla. 2d DCA 2008), 264
- York v. Smith*, 385 So. 2d 1110 (Fla. 1st DCA 1980), 156
- Zuckerman v. Alter*, 615 So. 2d 661 (Fla. 1993), 485

Table of Authors

Antúnez, Juan C., 614
Becker, David M., 706, 734
Beyer, Gerry W., 614, 619
Boje, Debra L., 438, 490, 506
Boxx, Karen E., 762
Brown, Ronald Benton, 749
Caron, Paul L., 614
Commerford, Joel M., 53
Dobris, Joel C., 436
Dolan, Brian R., 53
Dukeminier, Jesse, 556
Eisenberg, Michael E., 60
Feder, David Joseph, 518
Fyfield, Frances, 159
Gallanis, T.P., 721
Gallant, Keith Bradoc, 600
Gans, Mitchell M., 599
Gans, Richard R., 417
Garner, Bryan A., 160
Gary, Susan N., 60
Gaubatz, John T., 616
Gilmore, Angela, 72, 90, 95, 742
Harrison, Jeffery L., 749
Hirsch, Adam J., 417, 599, 621
Iannantuoni, Rebecca A., 600
Landau, Barbara, 701
Langbein, John H., 436, 768
Lischer, Henry J., 599
Litman, Donna, 322, 525, 900
Marty-Nelson, Elena, 72, 95
Maurer, Jani, 912
McCouch, Grayson M. P., 749
Newman, Alan, 580
Reiser, Alyse M., 490, 506
Rodriguez-Dod, Eloisa C., 356, 557, 885
Schanzenbach, Max M., 599, 749
Simes, Lewis M., 733
Sitkoff, Robert H., 518, 599, 749
Smith, David T., 136
Smith, Phyllis C., 599
Soled, Jay A, 599
Sterk, Stewart E., 599
Turnier, William J., 749
Waggoner, Lawrence W., 735

Table of Internet Resources

Florida Statutes and Committee Staff Analysis

<http://www.leg.state.fl.us/welcome/index.cfm> (last visited June 6, 2016), 331

<http://www.flsenate.gov/> (last visited June 6, 2016), 438

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Employee Retirement Income Security Act (ERISA)

<http://www.dol.gov/dol/topic/health-plans/erisa.htm> (last visited January 3, 2016),
286

Social Security Act (SSA)

<https://www.ssa.gov/planners/retire/divspouse.html> (last visited January 3, 2016),
286

Uniform Codes

<http://www.uniformlaws.org/> (last visited January 3, 2016), 437

<http://www.uniformlaws.org/Act.aspx?title=Trust%20Code> (last visited January 3,
2016), 437

http://www.uniformlaws.org/shared/docs/principal%20and%20income/upia_final_08.pdf (last visited June 6, 2016), 851–852

Living Wills

<https://agingwithdignity.org/five-wishes/individuals-and-families> (last visited June 6,
2016), 884

Trusts for Animals

http://www.professorbeyer.com/Articles/Pet_Trusts_06-02-2014.pdf (last visited June
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Wills, Trust, and Estates—Generally

<http://www.flprobatelitigation.com/> (last visited June 6, 2016), 614

Wills and Trust Forms

<https://www.northerntrust.com/wealth-management/united-states/wealth-advisor/will-trust-forms> (last visited June 6, 2016), 929

Wills, Trust, and Estates—Generally

<http://www.flprobatelitigation.com/> (last visited June 6, 2016), 614

http://lawprofessors.typepad.com/trusts_estates_prof/ (last visited June 6, 2016), 614

Tax Issues

<http://taxprof.typepad.com/> (last visited June 6, 2016), 614

Preface

Overview

Wills, trusts, and estates is a dynamic and exciting area of the law. Since our first edition, there have been critical changes in this ever-developing area. Florida statutes have been enacted, and cases have been decided, affecting the rights parties may have in the context of estates, trusts, or other methods for transmitting wealth. This book reflects these changes to offer students current information, together with the challenge of considering questions not yet answered by statutes or case law.

In revising this book for the third edition, we were careful to retain the features from the earlier editions that made it a success. Thus, we maintained the breadth and depth of its coverage. The book covers trusts as extensively as it does wills. That coverage recognizes modern trends in family wealth planning. The book also goes beyond wills and trusts and includes several related topics, such as durable powers of attorney, designations of health care surrogates, and principal and income allocations. It also discusses estate planning and the probate process. These topics are a useful bridge to such advanced courses as Elder Law, Estate Planning, and Probate Practice.

The third edition maintains the book's unique focus on Florida law. Despite widespread adoptions of uniform acts and codes, the rules governing wills and trusts continue to be state-law driven. We believe that there is much to be gained by studying the laws of one jurisdiction as a whole. Florida is particularly well-suited for studying this area of the law. Florida has a well-developed probate code and an extensive trust code. Moreover, case decisions in Florida address wills and trusts issues in fascinating factual situations that students find engaging. Although Florida law is the focus, this book includes discussions of the common law from other states (including excerpts from the Restatements) and of uniform codes (including the Uniform Probate Code (UPC) and the Uniform Trust Code (UTC)), particularly when they differ significantly from Florida law. Although case or statutory law differs from state to state, the concepts and issues students will encounter and ponder are the same. Knowledge of the rules governing Florida wills and trusts is thus important for attorneys practicing in Florida

or elsewhere. We have designed this book to encourage students to think about the cases from the standpoint of both planners and litigators. Accordingly, we include numerous questions and problems that require students to think about ways to draft or plan around issues to avoid litigation while accomplishing clients' goals.

In this third edition, not only have we included new cases and statutes, but we have also added numerous new problems, notes, and questions. Several of these highlight best practices for drafting estate planning documents. These problems, notes, and questions are also designed to stimulate discussion of statutory interpretation and policy. This third edition expands the coverage of wealth management, asset protection planning, estate counseling, and changing family dynamics. This edition continues our endeavor to introduce students to the depth and breadth of wills, trusts, and estates practice.

This book can be used in separate Wills and Trusts courses or in a course that combines both topics. Although it covers wills before trusts, these topics can be addressed in a different order.

Chapter 1 introduces some of the terminology encountered in intestacy, wills, trusts, and certain related areas. Chapter 1 also addresses property interests that are not subject to probate. Finally, Chapter 1 introduces the difference between the probate estate and the gross estate. Chapter 2 covers the rules for intestate succession. The intestacy rules apply to probate property that is not effectively disposed of by the decedent's will.

Chapters 3 through 11 cover property passing by will. Topics include the requirements for a valid will and for amending and revoking a will. These chapters also address rules designed to implement a testator's presumed intent, such as the rules for pretermitted children or spouses, rules of construction of will provisions, and rules dealing with situations where beneficiaries predeceased the testator. They also cover various types of misconduct, such as undue influence and fraud.

Chapters 12 through 16 consider topics that apply to both testate and intestate estates. These include homestead, family allowance, elective share, simultaneous death, disclaimer, and issues concerning nonresidents.

Chapters 17 through 25 focus on express trusts as a particular tool used to manage property for the benefit of one or more individuals, charities, or other beneficiaries. Topics include the necessary substantive elements and formalities to establish a trust, spousal elective share trusts, creditor access to trusts, charitable trusts, trusts for animals, modification and termination of trusts, and issues that affect both wills and trusts, such as mistake, undue influence, killers, and divorce.

Chapter 26 introduces powers of appointment, which are another flexible estate planning tool. Chapter 27 covers future interests and the Rule Against Perpetuities. Chapter 28 addresses the very important topic of trustees' powers, duties, and liabilities. Chapter 29 considers constructive and resulting trusts and distinguishes them from express trusts.

The concluding chapters cover an array of related topics. Chapter 30 covers the allocation of trust and estate property between principal and income. Chapter 31 in-

cludes materials on such documents as designations of health care surrogates, living wills, and durable powers of attorney. Chapter 32 provides an introduction to the tax aspects of estate planning. Finally, Chapter 33 provides an overview of the probate process, by which assets are transferred from the decedent to beneficiaries.

The Appendices consist of forms and annotations made available by Northern Trust Corporation.

Editorial Comments

Some editorial notes are in order. We follow casebook conventions and liberally omit footnotes from cases and excerpted materials without disclosure. Footnotes that are included from cases and materials include Editors' Notes indicating their number from the original source. In addition, Editors' Notes may also indicate changes in the laws. When we omit citations from cases, we demonstrate those omissions by way of ellipses. Asterisks (* * *), and sometime ellipses, indicate substantive omissions, but concurring and dissenting opinions may have been omitted without a specific notation that such an omission was made. This book assumes that the students will also study the Florida statutes assigned in each chapter. The Florida statutes are available on the official website of the Florida Legislature, referred to as Online Sunshine, at <http://www.leg.state.fl.us/welcome/index.cfm>. All statutes were current as of the date this book went to press.

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