

Summary of Contents

Volume 1

- Chapter 1. Funeral
- Chapter 2. Assets
- Chapter 3. Claims Against the Estate for Debts
 - Appendix 3A. Judgment
- Chapter 4. Expenses and Legal Costs
- Chapter 5. Bequests and Beneficiaries
 - Appendix 5A. Digests
- Chapter 6. Investments Made by Trustees
- Chapter 7. Capital and Income
- Chapter 8. Exercise of Power and Duties
- Chapter 9. Delegation to Agents
- Chapter 10. Breach of Trust and Its Consequences
- Chapter 11. Executor's Compensation
 - Appendix 11A. Case Digests — Cases Concerning Executor's Compensation
- Chapter 12. Application to the Court for Advice of the Court

Volume 2

- Chapter 13. Duty to Keep Records
- Chapter 14. Passing Accounts
- Chapter 15. Resignation, Removal and Appointment of Trustees
- Chapter 16. Variation of Trusts
- Chapter 17. Dependants' Relief Claims and Spousal Property on Death
 - Appendix 17A. Sample Notice of Application for Dependant's Relief
 - Appendix 17B. Sample Affidavit in Dependant's Relief Matter
 - Appendix 17C. Sample Affidavit in Dependant's Relief Matter
 - Appendix 17D. Sample Notice of Application to extend the time to exercise election

Appendix 17E.	Sample Affidavit in support of Application
Appendix 17F.	Sample Order extending time for filing election
Appendix 17G.	Quantum Tables for Dependents' Relief and Spousal Property Claims on Death
Appendix 17H.	Article: Challenging Testamentary Capacity, by Heather Babcock-Cormier
Appendix 17I.	Ontario Succession Law Reform Act

Appendix

Appendix WP. Words and Phrases

Table of Added Cases

Table of Cases

Index

Table of Contents

Volume 1

CHAPTER 1. FUNERAL

- § 1:1 The Body of the Deceased
- § 1:2 Donation of Organs, Remains, or Reproductive Material
- § 1:3 Funeral and Burial Expenses
- § 1:4 Gravestones
- § 1:5 Perpetual Care of Grave

CHAPTER 2. ASSETS

I. WHAT ARE ESTATE ASSETS?

- § 2:1 Generally

II. CUSTODY, INVENTORY AND VALUATION

- § 2:2 Generally

III. CONVERSION, SALE, MORTGAGING AND PLEDGING

A. GENERAL

- § 2:3 Overview

B. SALE POWERS AND DUTIES

- § 2:4 No Power to Postpone
- § 2:5 Power to Postpone
- § 2:6 Direction to Postpone

C. EXERCISE OF POWERS AND DISCRETION; TERMS OF PAYMENT

- § 2:7 Exercise of Powers and Discretion
- § 2:8 Terms of Payment

D. EXCHANGING ASSETS; MORTGAGING AND PLEDGING

- § 2:9 Exchanging Assets
- § 2:10 Mortgaging and Pledging

IV. FAMILY PRIVILEGES

- § 2:11 Household and Personal Goods and Tools of Trade

- § 2:12 Household Allowances and Profits
- § 2:13 Burial Plot
- § 2:14 The Residence
- § 2:15 Property and Support

V. SPECIFIC ASSETS

A. INTRODUCTION

- § 2:16 Generally

B. BUSINESSES

- § 2:17 Goodwill
- § 2:18 Obligation to Sell
- § 2:19 Power to Continue
- § 2:20 Capital Infusion and Loan Guarantees
- § 2:21 Debts and Expenses in Carrying on Business
- § 2:22 Incorporation
- § 2:23 Partnership
- § 2:24 Contract Benefits
- § 2:25 Estate Freezes

C. INSURANCE

- § 2:26 General
- § 2:27 On Testator's Life
- § 2:28 Creditor Proofing
- § 2:29 Designation of Beneficiaries
- § 2:30 Bankruptcy of Life Insured or Beneficiary
- § 2:31 Loans and Debts
- § 2:32 Contracts and Binders
- § 2:33 Conflicts of Law
- § 2:34 Accidental Death
- § 2:35 Life Annuity
- § 2:36 Money on Deposit
- § 2:37 Claimants Born Outside Marriage
- § 2:38 Common Disaster
- § 2:39 On a Third Party's Life
- § 2:40 Premium Refunds
- § 2:41 Living Benefits

D. CROPS, ANIMALS AND FARM QUOTAS; HUMAN REPRODUCTIVE MATERIAL

- § 2:42 Crops, Animals and Farm Quotas
- § 2:43 Human Reproductive Material

E. CLAIMS FOR MONEY; CHOSSES IN ACTION; DEBTS OF EXECUTOR

- § 2:44 Claims for Money

TABLE OF CONTENTS

- § 2:45 Choses in Action
- § 2:46 Debts of Executor

F. RESULTING AND CONSTRUCTIVE TRUST AND JOINT OWNERSHIP

- 1. Introduction
- § 2:47 Generally
- 2. Gift Intended
 - (a) Introduction
 - § 2:48 Generally
 - (b) Presumption of Advancement and Resulting Trust
- § 2:49 Introduction
- § 2:50 Between Parents and Children
- § 2:51 —Joint Bank Accounts
- § 2:52 —Real Estate
- § 2:53 —Shares and Investment Accounts
- § 2:54 —Miscellaneous
- § 2:55 Between Spouses
- § 2:56 —Joint Bank Accounts
- § 2:57 —Real Estate
- § 2:58 —Severance
- 3. Constructive Trust
- § 2:59 Generally

J. GIFTS; MUTUAL WILLS

- § 2:60 Gifts
- § 2:61 Mutual Wills

K. FOREIGN ASSETS; POWERS OF APPOINTMENT

- § 2:62 Foreign Assets
- § 2:63 Powers of Appointment

L. LEASES; REAL PROPERTY

- § 2:64 Leases
- § 2:65 Real Property

M. ROYALTIES; OPTIONS; FREQUENT FLYER POINTS

- § 2:66 Royalties
- § 2:67 Options
- § 2:68 Frequent Flyer Points

N. REGISTERED RETIREMENT PLANS (RRSPs, RRIFs) AND PENSIONS; REGISTERED EDUCATION SAVINGS PLANS (RESPS)

- § 2:69 Registered Savings and Retirement Plans (TFSAs, RRSPs, RRIFs) and Pensions
- § 2:70 Registered Education Savings Plans (RESPs)

O. DIGITAL ASSETS; MISCELLANEOUS

- § 2:71 Digital Assets
- § 2:72 Miscellaneous

VI. SITUS

- § 2:73 Introduction
- § 2:74 Real Estate
- § 2:75 Debts and Mortgages
- § 2:76 Insurance
- § 2:77 Share Certificates
- § 2:78 Bank Deposits
- § 2:79 Partnership Property
- § 2:80 Domicile

CHAPTER 3. CLAIMS AGAINST THE ESTATE FOR DEBTS

I. GENERAL

- § 3:1 Overview

II. ADVERTISING FOR CREDITORS

- § 3:2 General
- § 3:3 When to Publish
- § 3:4 Where to Publish
- § 3:5 Form of Advertisement
- § 3:6 Effect

III. FORM OF CLAIM

- § 3:7 Judgment Against Estate Assets
- § 3:8 Procedural Matters

IV. CONTESTATION OF CLAIMS PROCEDURE

- § 3:9 General
- § 3:10 Procedure for Contesting a Liquidated Debt
- § 3:11 Procedure for Contesting an Unliquidated Debt
- § 3:12 Analysis

V. SPECIAL DEFENCES

A. LACK OF CORROBORATION

- § 3:13 General
- § 3:14 What Constitutes Corroboration
- § 3:15 Corroboration Where Several Essential Facts Must be Proved
- § 3:16 Consistent Only with One Conclusion
- § 3:17 Credibility
- § 3:18 Cases in Provinces Where There is No Statutory Rule

B. LIMITATIONS STATUTES

- § 3:19 Introduction
- § 3:20 *Limitations Act*, R.S.O. 1990, c. L.15, ss. 43, 45(1)(g)
- § 3:21 *Estates Act*, R.S.O. 1990, c. E.21, s. 47
- § 3:22 *Estates Act*, R.S.O. 1990, c. E.21, ss. 44, 45
- § 3:23 *Trustee Act*, R.S.O. 1990, c. T.23, s. 38(3)

C. STATUTE OF FRAUDS; CONTINGENT OBLIGATIONS AND LEASES; GIFT COMMITMENTS

- § 3:24 Statute of Frauds
- § 3:25 Contingent Obligations and Leases
- § 3:26 Gift Commitments

D. CLAIMS BY NEAR RELATIVES AND OTHERS FOR PERSONAL SERVICES RENDERED

- § 3:27 General
- § 3:28 Parent and Child
- § 3:29 Brothers and Sisters
- § 3:30 Grandparents and Grandchildren
- § 3:31 Uncle/Aunt and Nephew/Niece
- § 3:32 Husband and Wife
- § 3:33 *Limitations Act* Applying to Claim for Personal Services

E. OTHER SPECIAL DEFENCES

- § 3:34 Legacies in Satisfaction of Debts
- § 3:35 Distributions to Beneficiaries Before Notice of Debt
- § 3:36 Contracts Personal to the Deceased
- § 3:37 Foreign Taxes and Duties
- § 3:38 Releases

VI. COMPROMISING CLAIMS; TIME FOR PAYMENT AND INTEREST

- § 3:39 Compromising Claims
- § 3:40 Time for Payment and Interest

VII. PRIORITY OF CLAIMS AND INSOLVENT ESTATES; INDEBTEDNESS BETWEEN TESTATOR AND EXECUTOR

- § 3:41 Priority of Claims and Insolvent Estates
- § 3:42 Indebtedness Between Testator and Executor

VIII. WHAT ASSETS CARRY BURDEN OF DEBTS IN SOLVENT ESTATES

- § 3:43 General
- § 3:44 Debts Charged on Estate Assets

IX. CONFLICTS OF LAWS

- § 3:45 Generally
- Appendix 3A. Judgment

CHAPTER 4. EXPENSES AND LEGAL COSTS

I. GENERAL; INDEMNITY FROM ESTATE

- § 4:1 General
- § 4:2 Indemnity From Estate

II. EXECUTOR'S LIEN ON ESTATE ASSETS; INDEMNITY FROM BENEFICIARIES

- § 4:3 Executor's Lien on Estate Assets
- § 4:4 Indemnity From Beneficiaries

III. LEGAL COSTS

- § 4:5 Introduction
- § 4:6 Solicitors' General Accounts to Executors
- § 4:7 Court Proceedings—Costs of Executors
- § 4:8 — —General
- § 4:9 — —Unnecessary or Unsuccessful Actions or Defenses Brought
Or Made by Trustees
- § 4:10 — —Appeals
- § 4:11 Costs of Parties Other Than Executors or Administrators
- § 4:12 Costs Where There is Maladministration by Trustee
- § 4:13 Trust Fund Insufficient to Finance Lawsuit
- § 4:14 Solicitor Doing Trustee's Work
- § 4:15 Solicitor Appointed Executor
- § 4:16 Co-Trustees
- § 4:17 Advice and Representation on Executor's Compensation
- § 4:18 Costs From Special Funds Within Estate
- § 4:19 Security for Costs

IV. EXPENSES OF ADMINISTRATION

- § 4:20 Definition

TABLE OF CONTENTS

§ 4:21 Relating to Specific Gifts

§ 4:22 Insolvent Estates

V. TAXES

§ 4:23 Between Life Tenant and Remainderman

VI. REPAIRS

§ 4:24 General

§ 4:25 Repairs or Improvements Chargeable to Income or Capital

§ 4:26 Dilapidation Existing at Date of Death

VII. INTEREST ON ENCUMBRANCES OR ON BORROWINGS TO REPAIR

§ 4:27 Generally

VIII. INSURANCE

§ 4:28 Duty to Insure—Fire Insurance

§ 4:29 —Public Liability and Other Types of Insurance

§ 4:30 Premiums Payable from Income or Capital

§ 4:31 Insurance Benefits

IX. PRINCIPLES OF LIABILITY FOR CONTRACT AND TORT

§ 4:32 Generally

CHAPTER 5. BEQUESTS AND BENEFICIARIES

I. BENEFITS GENERALLY

A. GENERAL; WHEN DUE

§ 5:1 General

§ 5:2 When Due

B. CONDITIONAL OR CONTINGENT GIFTS; BENEFICIARIES RECEIVING UNEQUAL TREATMENT BY EXECUTOR

§ 5:3 Conditional or Contingent Gifts

§ 5:4 Beneficiaries Receiving Unequal Treatment by Executor

C. EXECUTOR ENTITLED TO RELEASE; RESERVES FOR CONTINGENCIES

§ 5:5 Executor's Entitlement To Release

§ 5:6 Reserves for Contingencies

D. PAYMENT IN SPECIE; LIFE INTEREST

§ 5:7 Payment *in Specie*

§ 5:8 Life Interest

E. INTEREST ON LEGACIES

1. One Year Rule (The Rule of Convenience)

§ 5:9 Generally

2. Inference from Will

§ 5:10 General and Demonstrative Legacies

§ 5:11 Gift of a Life Interest

§ 5:12 Legacies Postponed for Life Tenancies

§ 5:13 Date of Payment of Legacy Specified in the Will

§ 5:14 Date Left to Discretion—Of the executor

§ 5:15 —Of a person not the executor

§ 5:16 —Where the discretion is for the benefit of the residuary legatees

§ 5:17 —Contingent legacy

3. Exceptions to One Year Rule

§ 5:18 Infants

§ 5:19 Creditors and in Lieu of Dower

§ 5:20 Charged on Real Estate

4. Rate of Interest; Specific Legacies; Annuities

§ 5:21 Rate of Interest

§ 5:22 Specific Legacies

§ 5:23 Annuities

5. Settlement Amounts; Summary

§ 5:24 Settlement Amounts

§ 5:25 Summary

F. DEATH OF A BENEFICIARY

§ 5:26 Introduction

§ 5:27 Statutory and Fictitious Presumptions of Survivorship

§ 5:28 Other Statutory Presumptions

§ 5:29 Legacies in Satisfaction of Moral and Legal Obligations

§ 5:30 Implications in Will

§ 5:31 Proof of Death From Absence of Beneficiary

G. DISAPPOINTED BENEFICIARIES; IN TERROREM CLAUSES; MUTUAL WILLS

§ 5:32 Disappointed Beneficiaries

§ 5:33 In Terrorem Clauses

§ 5:34 Mutual Wills

H. CHARITIES CEASING TO EXIST—LAPSE OR APPLICATION *CY-PRÈS*; GIFTING THE ASSETS OF A CORPORATION

§ 5:35 Charities Ceasing to Exist — Lapse or Application *Cy-Près*

§ 5:36 Gifting the Assets of a Corporation

I. LOSS OF BENEFIT TO BENEFICIARY WHO COMMITS MURDER; FRAUDULENT AND IMMORAL ACTS BY BENEFICIARIES

§ 5:37 Loss of Benefit to Beneficiary who Commits Murder

§ 5:38 Fraudulent and Immoral Acts by Beneficiaries

J. PETS AS BENEFICIARIES; RIGHT TO INHERIT IMPACTED BY RELEASE OR AGREEMENT

§ 5:39 Pets as Beneficiaries

§ 5:40 Right to Inherit Impacted by Release or Agreement

K. VESTING (INCLUDING THE RIGHT TO ACCELERATE PAYMENTS AND ASSIGNMENTS); EXPENSES OF PAYMENT AND CURRENCY EXCHANGE; ASCERTAINMENT AND NOTICE TO BENEFICIARIES

§ 5:41 Vesting (Including the Right to Accelerate Payments and Assignments)

§ 5:42 Expenses of Payment and Currency Exchange

§ 5:43 Ascertainment and Notice to Beneficiaries

L. PERSONS BORN OUTSIDE MARRIAGE; STEPCHILDREN; RIGHT OF SELECTION

§ 5:44 Persons Born Outside Marriage

§ 5:45 Stepchildren

§ 5:45.50 Adopted Beneficiaries

§ 5:46 Right of Selection

M. SET-OFF WITH DEBTS AND DEBTS CHARGED ON PROPERTY BEQUEATHED; RIGHT TO EXECUTOR TO RETAIN FOR DEBTS DUE HIM FROM THE TESTATOR

§ 5:47 Set-Off With Debts and Debts Charged on Property Bequeathed

§ 5:48 Right to Executor to Retain for Debts Due Him From the Testator

N. ASSIGNMENT OF INTEREST BY A BENEFICIARY; POUR-OVER CLAUSE; RIGHT OF GUARDIAN TO INFANT'S PROPERTY

§ 5:49 Assignment of Interest by a Beneficiary

§ 5:50 Pour-Over Clause

§ 5:51 Right of Guardian to Infant's Property

O. ANNUITIES; LEGACIES TO EXECUTORS

- § 5:52 Annuities
- § 5:53 Legacies to Executors

P. DISCLOSURE OF DECEASED'S INSTRUCTIONS TO SOLICITOR; OVERPAYMENT OF LEGACIES

- § 5:54 Disclosure of Deceased's Instructions to Solicitor
- § 5:55 Overpayment of Legacies
- § 5:56 Liability for Cost of Delivery of Benefit

II. ABATEMENT OF LEGACIES

- § 5:57 General
- § 5:58 Inference from Will and Relationships
- § 5:59 Legacies for Value

III. ADEPTION OF BEQUESTS OR DEVISES

- § 5:60 General
- § 5:61 Statutory Exceptions

IV. RESIDUE

- § 5:62 Definition and Extent
- § 5:63 Time of Calculation and Division
- § 5:64 Two Residual Clauses
- § 5:65 Undisposed Residue to Executor Personally

V. INTESTACIES

- § 5:66 Who Takes
- § 5:67 Relatives of the Half Blood
- § 5:68 Adopted Persons
- § 5:69 Persons Born Outside Marriage
- § 5:70 Representation
- § 5:71 *Per Stirpital* or *Per Capita* Distribution
- § 5:72 Rights of Spouses
- § 5:73 Next of Kin
- § 5:74 Loss of Right to Inherit on Intestacy Other Than by Release or Agreement
- § 5:75 Presumption of Survivorship
- § 5:76 Date When Next-of-Kin Determined
- § 5:77 Miscellaneous
- § 5:78 Table of Intestate Succession in Ontario for Deaths After March 30, 1978
- § 5:79 Real Property — Ontario
- § 5:80 Advancements—Definition and Requirement of Writing
- § 5:81 —Requirement of Intestacy
- § 5:82 Extra-Territorial Applicability

VI. DISCRETIONARY USE OF FUNDS FOR MAINTENANCE

A. MAINTENANCE OF INFANTS FROM THEIR OWN FUNDS

- § 5:83 General Principles
- § 5:84 Standard of Maintenance
- § 5:85 Other Means of Support
- § 5:86 Past Maintenance

B. DISCRETION IN WILL FOR MAINTENANCE

- § 5:87 Generally

VII. CHARITIES

- § 5:88 Introduction
- § 5:89 General
- § 5:90 Religious Purposes
- § 5:91 Educational Purposes
- § 5:92 Relief of Poverty
- § 5:93 Purposes Beneficial to the Community
- § 5:94 The Scheme Making Power of the Court
- § 5:95 —The *Cy-Près* Doctrine
- § 5:96 —Jurisdiction of The Court to Devise a Scheme Where Objects Not Specified

VIII. CEMETERIES

- § 5:97 Generally

IX. CONFLICT OF LAWS

- § 5:98 Introduction
- § 5:99 General Rules
- § 5:100 Domicile
- § 5:101 Presumption Against Extraterritoriality

Appendix 5A. Digests

CHAPTER 6. INVESTMENTS MADE BY TRUSTEES

I. GENERAL

- § 6:1 History and Background
- § 6:2 Definition
- § 6:3 Fundamental Requirements
- § 6:4 Express Investment Clauses
- § 6:5 The *Trustee Act*
- § 6:6 Acting With Reasonable Care and Prudence

II. SPECIAL CASES

- § 6:7 Effect of Power to Retain Existing Investments
- § 6:8 Diversification
- § 6:9 Investment Advice
- § 6:10 Delegation
- § 6:11 Investment in Mutual Funds
- § 6:12 Investment by Trust Corporation in Common Trust Funds
- § 6:13 Investments Outside The Jurisdiction
- § 6:14 Cash Balances
- § 6:15 Investment Conflict Between Income and Capital Beneficiaries
- § 6:16 Trustee Investing in Its Own Securities
- § 6:17 Ethical Investing
- § 6:18 Variation of Trusts

CHAPTER 7. CAPITAL AND INCOME

I. DISBURSEMENTS

- § 7:1 General
- § 7:2 Repairs
- § 7:3 Expenses of Administration—General
- § 7:4 —Compensation
- § 7:5 Taxes
- § 7:6 Insurance
- § 7:7 Debts of the Testator and Death Duties (Rule in *Allhusen v. Whittell*)
- § 7:8 Losses—Sharing of Losses
- § 7:9 —Business Losses
- § 7:10 Mortgage Payments
- § 7:11 Annuities
- § 7:12 —Obligation of Testator Before Death
- § 7:13 —Created by Will
- § 7:14 Gifts of Chattels and Consumables
- § 7:15 Income Tax

II. RECEIPTS

- § 7:16 Rents
- § 7:17 Benefits From Corporations to Their Shareholders
- § 7:18 Apportionment and Allocation at Commencement and Termination of Trust
- § 7:19 Business Profits
- § 7:20 Royalties, Sales by Instalments and Income Receipts from other Estates
- § 7:21 Amortization of Premiums and Discounts in Investments
- § 7:22 Waste—by Depreciation
- § 7:23 —by Depletion
- § 7:24 Income From Investments Unfair to Life Tenant or

TABLE OF CONTENTS

- Remainderman (Rules in *Howe v. Lord Dartmouth* and *Earl of Chesterfield's Trusts, Re*)
- § 7:25 Refund of Income From Unauthorized Investment in Breach of Trust
- § 7:26 Gains and Losses on Capital Transactions

CHAPTER 8. EXERCISE OF POWER AND DUTIES

I. DISCRETIONARY GENERALLY

- § 8:1 Introduction
- § 8:2 Mere Powers and Trust Powers
- § 8:3 Standard of Care

II. JUDICIAL CONTROL OF TRUSTEE DISCRETION

- § 8:4 Introduction
- § 8:5 Fiduciary Duties
- § 8:6 —Failure to Exercise Discretion
- § 8:7 —Duty to Maintain an Even-Hand
- § 8:8 —Improper Delegation
- § 8:9 Other Grounds for Intervention
- § 8:10 —Improper Purpose
- § 8:11 —Unreasonable Decisions

III. DISPOSITIVE POWERS AND DISCRETIONARY TRUSTS; DRAFTING TO AVOID JUDICIAL REVIEW

- § 8:12 Dispositive Powers and Discretionary Trusts
- § 8:13 Drafting to Avoid Judicial Review

IV. ASKING FOR ADVICE OF THE COURT; TRUSTS WHICH INVEST IN AND CONTROL CORPORATIONS

- § 8:14 Asking for Advice of the Court
- § 8:15 Trusts Which Invest in and Control Corporations

V. CO-EXECUTORS AND CO-TRUSTEES

- § 8:16 Introduction
- § 8:17 Distinction Between Executors and Trustees
- § 8:18 Compromising

VI. PROFESSIONAL TRUSTEES; CONFIDENTIALITY OF TRUSTEE'S REASONS

- § 8:19 Professional Trustees
- § 8:20 Confidentiality of Trustee's Reasons

CHAPTER 9. DELEGATION TO AGENTS

I. COMMON LAW RULES

- § 9:1 Rule Against Delegation
- § 9:2 Circumstances in Which Delegation is Permitted
- § 9:3 Conditions of Delegation

II. MODIFICATIONS TO COMMON LAW

- § 9:4 Statutory Intervention
- § 9:5 Specific Provisions in a Will or Trust Agreement

III. LIABILITY OF TRUSTEE

- § 9:6 To Beneficiaries
- § 9:7 To Third Parties

IV. TYPES OF AGENT

- § 9:8 Co-Executors
- § 9:9 Solicitors
- § 9:10 Bankers
- § 9:11 Accountants
- § 9:12 Stockbrokers and Investment Counsel
- § 9:13 Debt Collectors
- § 9:14 Rent Collectors
- § 9:15 Auctioneers
- § 9:16 Mortgage Collectors
- § 9:17 Real Estate Agents
- § 9:18 Valuers
- § 9:19 Attorneys
- § 9:20 Employees
- § 9:21 Family Members and Beneficiaries
- § 9:22 The Court

V. REIMBURSEMENT AND COMPENSATION

- § 9:23 Generally

CHAPTER 10. BREACH OF TRUST AND ITS CONSEQUENCES

I. SITUATIONS GIVING RISE TO BREACH OF TRUST

A. GENERAL PRINCIPLES OF TRUSTEE LIABILITY

- § 10:1 Generally

B. INNOCENT BUT NEGLIGENT BREACH OF TRUST

- § 10:2 General Principles

TABLE OF CONTENTS

§ 10:3 Holding Cash Balances

C. DEALING WITH TRUST PROPERTY FOR TRUSTEE'S PRIVATE PURPOSES

§ 10:4 Buying or Borrowing from, or Selling or Loaning to, the Trust

§ 10:5 Acquisition of Benefits from Office of Trustee

§ 10:6 Co-Mingling Trust Property

§ 10:7 Loss of Trust Property by Accident or Robbery

II. COMPENSATION AND PENALTIES FOR BREACH OF TRUST

§ 10:8 Innocent But Negligent Breach of Trust

§ 10:9 Dealing with Trust Property for Trustee's Private Purposes

§ 10:10 Calculation of Interest or Profits as a Penalty

III. RELIEF FROM LIABILITY

§ 10:11 General Principles

§ 10:12 Meaning of "Wilful Default"

§ 10:13 Cases Where Relief Granted

§ 10:14 Cases Where Relief Not Granted

§ 10:15 Professional Trustees

IV. LIABILITY OF CO-EXECUTORS AND CO-TRUSTEES FOR BREACH OF TRUST

§ 10:16 Generally

V. DEFENCES AVAILABLE TO THE TRUSTEE

§ 10:17 Concurrence by Beneficiaries, Indemnity and Release to Trustee

§ 10:18 Statute of Limitations

§ 10:19 —*Limitations Act*, R.S.O. 1990, C. L.15

§ 10:20 Exculpatory Clauses

§ 10:21 Applications for Directions

CHAPTER 11. EXECUTOR'S COMPENSATION

I. GENERAL; LEGACIES IN LIEU OF COMPENSATION; COMPENSATION AGREEMENTS

§ 11:1 General

§ 11:2 Legacies in Lieu of Compensation

§ 11:3 Compensation Agreements

II. QUANTUM OF COMPENSATION

A. GENERAL BASIS FOR CALCULATION

§ 11:4 Generally

B. SPECIFIC ASSETS AND COMPENSATION CALCULATIONS UNDER ONTARIO RULES

§ 11:5 Original Assets

§ 11:6 Capital Compensation

§ 11:7 Investment Transactions

§ 11:8 Income Compensation

§ 11:9 Care and Management Fees

§ 11:10 Special Fees

§ 11:11 Appendix: Fee Calculations

§ 11:12 Exclusions from Percentage Calculations—Book Entries

§ 11:13 —Payments from Estate to Executor

§ 11:14 —Distributions to On-going Trusts

§ 11:15 —Distributions to Beneficiaries *in Specie*

§ 11:16 —Risk Assumed by Executor

III. MALADMINISTRATION BY TRUSTEE; WHO, OR WHAT FUND, PAYS THE FEES?

§ 11:17 Maladministration by Trustee

§ 11:18 Who, or What Fund, Pays the Fees?

IV. COMPENSATION DIVISIONS AMONG CO-TRUSTEES; APPEALS

§ 11:19 Compensation Divisions Among Co-Trustees

§ 11:20 Appeals

V. COMPENSATION TO SUCCESSIVE TRUSTEES; PRIORITIES OF COMPENSATION OVER OTHER CLAIMS AND ENFORCEMENT

§ 11:21 Compensation to Successive Trustees

§ 11:22 Priorities of Compensation Over other Claims and Enforcement

VI. PRE-TAKING OF COMPENSATION; PAYMENTS TO REAL ESTATE AGENTS AND OTHER AGENTS AND PROFESSIONALS

§ 11:23 Pre-Taking of Compensation

§ 11:24 Payments to Real Estate Agents and Other Agents and Professionals

VII. DIRECTORS' FEES; SOLICITOR AS EXECUTOR

§ 11:25 Directors' Fees

TABLE OF CONTENTS

§ 11:26 Solicitor as Executor

Appendix 11A. Case Digests — Cases Concerning Executor's
Compensation

CHAPTER 12. APPLICATION TO THE COURT FOR ADVICE OF THE COURT

I. GENERAL; JURISDICTION OF THE COURT

§ 12:1 General

§ 12:2 Jurisdiction of the Court

II. LIMITS ON THE USE OF THE SECTION AND RULE

§ 12:3 Judicial Control of the Exercise of Trustees' Powers and
Discretions

§ 12:4 Hostility Among the Trustees

§ 12:5 Failure to Exercise Discretion

§ 12:6 Trustees are Deadlocked

§ 12:7 Exercise of Business Judgment for Trustees

§ 12:8 Trite Law

§ 12:9 Issues of Ownership Between the Estate and Third Parties

§ 12:10 Hypothetical or Academic Questions and Questions Relating
to Future Events

§ 12:11 Other Court Procedures Available

III. CASES WHERE THE COURT HAS GIVEN ITS OPINION, ADVICE OR DIRECTION TO THE TRUSTEES

§ 12:12 Introduction

§ 12:13 Various

§ 12:14 Interpretation and Construction of Wills

§ 12:15 Charitable Gifts

IV. THE APPLICATION

§ 12:16 Position of the Trustees

§ 12:17 Form of the Application

§ 12:18 Parties to the Application

V. EVIDENTIARY ISSUES; COSTS

§ 12:19 Evidentiary Issues

§ 12:20 Costs

VI. ALTERNATIVES TO AN APPLICATION FOR ADVICE

§ 12:21 Where the Court Might Have Ruled on the Problem on a
"Passing of Accounts"

§ 12:22 "Contestation of Claims" Procedure

- § 12:23 Variation of Trust
- § 12:24 Originating Process

Volume 2

CHAPTER 13. DUTY TO KEEP RECORDS

- § 13:1 Form of Records
- § 13:2 Duty to Provide Information
- § 13:3 Duty to Permit Inspection and Copying
- § 13:4 Penalties

CHAPTER 14. PASSING ACCOUNTS

I. PROPER COURT FOR PASSING ACCOUNTS

- § 14:1 Generally

II. OBLIGATION TO PASS ACCOUNTS

- § 14:2 Voluntary Passings
- § 14:3 Who May Require
- § 14:4 Who May Be Required
- § 14:5 When Will the Court Refuse to Compel
- § 14:6 Charities Accounting

III. FORM OF ACCOUNTS

A. RULES AS TO FORM

- § 14:7 Generally

B. STATEMENTS REQUIRED

- § 14:8 List of Assets
- § 14:9 Receipts
- § 14:10 Disbursements
- § 14:11 Investment Account
- § 14:12 Unrealized Assets
- § 14:13 Closing Statement of Money and Investments
- § 14:14 Closing Statement of Liabilities
- § 14:15 Statement of Compensation Claimed
- § 14:16 Such Other Statements and Information As the Court Requires

IV. PROCEDURE BEFORE HEARING

- § 14:17 Material to Be Filed
- § 14:18 Service of Notice of Application

V. PROCEDURE ON UNOPPOSED APPLICATION

- § 14:19 General

TABLE OF CONTENTS

- § 14:20 Response to Application—Persons Other Than Public Guardian and Trustee and Children’s Lawyer
- § 14:21 —Public Guardian and Trustee or Children’s Lawyer
- § 14:22 Withdrawal of Notice of Objection
- § 14:23 Procedure Without a Hearing
- § 14:24 Costs on a Passing of Accounts Without a Hearing
- § 14:25 —Tariff C
- § 14:26 —Request for Increased Costs
- § 14:27 Judgment Received

VI. CONTESTED PASSING OF ACCOUNTS— PROCEDURE AT HEARING

- § 14:28 General
- § 14:29 Impact of Limitations Act
- § 14:30 Procedure
- § 14:31 Evidence
- § 14:32 Costs
- § 14:33 Judgment Received

VII. PAYMENT INTO COURT; POWERS AND JURISDICTION OF COURT ON PASSING ACCOUNTS

- § 14:34 Payment Into Court
- § 14:35 Powers and Jurisdiction of Court on Passing Accounts

VIII. EFFECT OF ORDER—MISTAKE OR FRAUD; APPEALS

- § 14:36 Effect of Order—Mistake or Fraud
- § 14:37 Appeals

IX. SUGGESTED FORM OF ACCOUNTS IN PASSING FORM; FORM OF JUDGMENT

- § 14:38 Suggested Form of Accounts in Passing Form
- § 14:39 Form of Judgment

CHAPTER 15. RESIGNATION, REMOVAL AND APPOINTMENT OF TRUSTEES

I. INTRODUCTION

- § 15:1 Generally

II. RESIGNATION

- § 15:2 Without Resort to Court
- § 15:3 By Court Application

III. REMOVAL

- § 15:4 Without Resort to Court

§ 15:5 By Court Application

IV. REPLACEMENT

§ 15:6 Introduction

§ 15:7 Appointment by the Court

§ 15:8 Appointment Otherwise Than by Court

V. SURVIVING PERSONAL REPRESENTATIVES; SUCCESSOR PERSONAL REPRESENTATIVES; APPOINTMENT OF ESTATE TRUSTEE PENDING LITIGATION

§ 15:9 Surviving Personal Representatives

§ 15:10 Successor Personal Representatives

§ 15:11 Appointment of Estate Trustee Pending Litigation

CHAPTER 16. VARIATION OF TRUSTS

§ 16:1 Introduction

§ 16:2 Alternatives to a Court Application to Vary a Trust

§ 16:3 Variation of Trusts Legislation in Canada

§ 16:4 Categories of Persons on Whose Behalf the Court Can
Consent

§ 16:5 Prerequisites Before the Court Can Act

§ 16:6 Preserving the Substratum of the Trust

§ 16:7 Determining Whether There is a Benefit

§ 16:8 The Proper Test to Be Applied by the Court Before It Gives
Its Consent

§ 16:9 —Life Insurance As a Benefit

§ 16:10 Equalizing the Interests of Children

§ 16:11 Significance of Tax Savings

§ 16:12 Procedure in Applications to Court

§ 16:13 The Income Tax Consequences of a Variation of Trust

CHAPTER 17. DEPENDANTS' RELIEF CLAIMS AND SPOUSAL PROPERTY ON DEATH

I. INTRODUCTION

§ 17:1 Generally

II. SUPPORT OF DEPENDANTS UNDER PART V OF THE SUCCESSION LAW REFORM ACT

§ 17:2 Restriction on testamentary power

§ 17:3 The power of the court

§ 17:4 Who is a dependant?

§ 17:5 Providing support

§ 17:6 What is adequate provision for support?

§ 17:7 What is the nature of support?

TABLE OF CONTENTS

- § 17:8 Contracting out of support obligations
- § 17:9 Applications — limitation period
- § 17:10 The court's order

III. MATRIMONIAL PROPERTY DIVISION ON DEATH

- § 17:11 History
- § 17:12 Nature of claim
- § 17:13 Who can make a claim?—Spouse
- § 17:14 —Domestic Contract
- § 17:15 —Personal Representatives of the Spouse
- § 17:16 Limitation periods
- § 17:17 Restriction on distribution pending election
- § 17:18 Entitlement—Definition of Net Family Property and Net Family Property, Liabilities
- § 17:19 —Calculation of Net Family Property
- § 17:20 Conclusion
- Appendix 17A. Sample Notice of Application for Dependant's Relief
- Appendix 17B. Sample Affidavit in Dependant's Relief Matter
- Appendix 17C. Sample Affidavit in Dependant's Relief Matter
- Appendix 17D. Sample Notice of Application to extend the time to exercise election
- Appendix 17E. Sample Affidavit in support of Application
- Appendix 17F. Sample Order extending time for filing election
- Appendix 17G. Quantum Tables for Dependents' Relief and Spousal Property Claims on Death
- Appendix 17H. Article: Challenging Testamentary Capacity, by Heather Babcock-Cormier
- Appendix 17I. Ontario Succession Law Reform Act

APPENDIX

- Appendix WP. Words and Phrases

Table of Added Cases

Table of Cases

Index