

SUMMARY OF CHAPTERS

(For a detailed Table of Contents see page ix)

Part I Introduction	
Chapter 1 History and Terminology	3
Part II Estate Administration	
Chapter 2 Probate and Administration	27
Part III Intestate Succession	
Chapter 3 Intestate Succession.....	71
Part IV Proving Wills	
Chapter 4 Nature of Testamentary Dispositions	113
Chapter 5 Will Substitutes	173
Chapter 6 Testamentary Capacity, Undue Influence, and Fraud	205
Chapter 7 Mistake and Rectification of Wills	263
Chapter 8 Related Matters	283
Chapter 9 Formal Validity of Wills	299
Chapter 10 Revocation of Wills.....	359
Chapter 11 Other Probate Matters	409
Part V The Construction of Wills	
Chapter 12 Capacity of Beneficiaries	441
Chapter 13 General Principles of Construction	479
Chapter 14 Testamentary Gifts.....	555
Chapter 15 Lapse and Survivorship.....	643
Chapter 16 Class Gifts	685
Chapter 17 Vested and Contingent Gifts	715
Chapter 18 Void Conditions.....	761
Chapter 19 Perpetuities.....	807
Chapter 20 Accumulations.....	847
Part VI Family Protection	
Chapter 21 Spousal Rights	867
Chapter 22 Support of Dependants	923
Part VII Solicitor's Duties	
Chapter 23 Solicitor's Duties	989
Part VIII Para-Testamentary Actions	
Chapter 24 Substitute Decisions	1019
Index.....	1083

CONTENTS

<i>Preface</i>	v
<i>Summary of Chapters</i>	vii
<i>Table of Contents</i>	ix
<i>Table of Cases</i>	xxxvii
<i>Table of Statutes</i>	cv

PART I INTRODUCTION

CHAPTER 1 HISTORY AND TERMINOLOGY	3
1.1 OUTLINE OF THE HISTORY OF SUCCESSION	3
1.1.1 Introduction	3
1.1.2 The English Background	3
(a) Personal Property	3
(b) Intestate Distribution of Personal Property.....	5
(c) Succession to Land.....	6
(d) Wills of Real Property.....	7
(e) Probate and Administration	8
1.1.3 The Law of Succession in Canada	8
1.1.4 The Law of Succession in Ontario	9
(a) Early History	9
(b) Succession Law Reform.....	13
(c) Court Reform.....	15
(d) Estate Administration Law Reform	16
1.2 CONSTITUTIONAL ISSUES IN SUCCESSION	16
Further Reading.....	20
1.3 SUCCESSION UNDER THE <i>INDIAN ACT</i>	20
Further Reading.....	21
1.4 TERMINOLOGY	22

PART II ESTATE ADMINISTRATION

CHAPTER 2 PROBATE AND ADMINISTRATION	27
2.1 INTRODUCTORY NOTE	27
2.2 THE ROLE OF THE COURTS	28
2.3 PROBATE JURISDICTION OF THE COURT	32
2.4 OBTAINING GRANTS	33
2.4.1 Purpose of Grants	33
2.4.2 Time Lapse	35
2.4.3 Types of Executors and Administrators [Estate Trustees]	36
(a) Executor [Estate Trustee with a Will]	36
(b) Administrator [Estate Trustee without a Will]	37
(c) Administrator with Will Annexed [Estate Trustee with a Will].....	39
(d) Administrator <i>de Bonis non Administratis</i> [Succeeding Estate Trustee without a Will].....	39

TABLE OF CONTENTS

(e) Administrator <i>de Bonis non Administratis</i> with Will Annexed [Succeeding Estate Trustee with a Will].....	40
(f) Administrator Appointed Pending an Action [Estate Trustee During Litigation]	40
(g) Litigation Administrator.....	40
(h) Executor <i>de Son Tort</i>	41
2.4.4 Special Types of Grants	41
(a) Introduction	41
(b) <i>Cessate</i> Grants	41
(c) Double Probate [Succeeding Estate Trustee with a Will]	41
(d) Grants Save and Except	42
(e) <i>Caetorum</i> Grants	42
(f) Grants <i>ad Colligenda Bona</i>	42
(g) Grants of Temporary Administration	42
(h) Grants Pursuant to Powers of Attorney.....	42
(i) Grants During Minority	43
(j) Grants while a Person is under a Disability	43
(k) Grants to Small Estates	43
2.4.5 Ancillary Grants and Resealing	43
(a) Ancillary Grants [Certificate of an Ancillary Appointment of Estate Trustee with a Will]	43
(b) Resealing [Confirmation by Resealing of Appointment of Estate Trustee with or without a Will].....	44
2.4.6 Procedure	44
(a) Introduction	44
(b) Application for Letters of Administration [Application for Certificate of Appointment of Estate Trustee without a Will]	44
(c) Application for Letters Probate [Application for Certificate of Appointment of Estate Trustee with a Will].....	45
(i) <i>Introduction</i>	45
(ii) <i>Common Form Probate [Non-Contentious Proceeding: Application for Certificate of Appointment of Estate Trustee with a Will]</i>	45
(iii) <i>Solemn Form Probate [Formal Proof of Testamentary Instrument (Contentious Proceeding)]</i>	46
(d) Contentious Proceedings.....	46
(e) Method of Proceeding	47
(i) <i>Generally</i>	47
(ii) <i>Caveat [Notice of Objection]</i>	47
(iii) <i>Intervention [Request for Notice]</i>	47
(iv) <i>Citation [Order for Assistance]</i>	47
(f) Summary Judgment.....	48
Further Reading.....	48
2.5 COSTS	48
Further Reading.....	52
2.6 CONTESTATION OF CLAIMS	52
Further Reading.....	53
2.7 PASSING OF ACCOUNTS	54
2.7.1 Generally	54
2.7.2 Compensation of Personal Representatives	55

TABLE OF CONTENTS

Further Reading.....57

2.7.3 Solicitors' Fees58

2.8 DUTIES OF PERSONAL REPRESENTATIVES.....58

2.8.1 Generally.....58

2.8.2 Actions by or against Estate.....59

2.8.3 Disposition of the Deceased's Body.....59

Further Reading.....60

2.8.4 Income Tax60

Further Reading.....60

2.9 PAYMENT OF DEBTS.....60

2.10 SALE OF REAL PROPERTY62

2.10.1 Generally.....62

2.10.2 Powers of Sale.....63

(a) Introduction.....63

(b) Testamentary Powers of Sale.....63

(c) Statutory Powers of Sale and Conveyance.....64

(i) Introduction.....64

(ii) Sales to Pay Debts.....64

(iii) Sales to Distribute the Proceeds among the Beneficiaries.....64

(iv) Division in Specie among the Beneficiaries.....65

2.10.3 Sale by Beneficiaries.....65

2.10.4 Sale of Minors' Lands.....66

2.11 DISTRIBUTION OF ESTATE.....67

Further Reading.....68

**PART III
INTESTATE SUCCESSION**

CHAPTER 3 INTESTATE SUCCESSION.....71

3.1 INTRODUCTION.....71

3.2 DEVOLUTION OF PROPERTY.....72

Estates Administration Act, R.S.O. 1990, c. E.22, s. 272

Comparable Legislation.....72

Notes and Questions73

3.3 DISTRIBUTION ON INTESTACY.....73

3.3.1 Introduction.....73

Notes and Questions74

3.3.2 Spouses and Partners.....75

(a) Spouse.....75

(i) Definition of "Spouse".....75

Succession Law Reform Act, R.S.O. 1990, c. S.26, s. 1(1).....75

Comparable Legislation.....75

Succession Law Reform Act, R.S.O. 1990, c. S.26, s. 43.1, added
by S.O. 2021, c. 4, Sched. 9, s. 676

(ii) Spouse but no Descendants76

Succession Law Reform Act, R.S.O. 1990, c. S.26, s. 4476

Comparable Legislation.....76

Notes and Questions77

(iii) Spouse and Descendants.....77

TABLE OF CONTENTS

(A) Preferential Share	77
<i>Succession Law Reform Act</i> , R.S.O. 1990, c. S.26, s. 45	77
Comparable Legislation	78
Notes and Questions	78
(B) Distributive Share	79
<i>Succession Law Reform Act</i> , R.S.O. 1990, c. S.26, s. 46	79
Comparable Legislation	79
Notes and Questions	79
(b) Spouse, Partner, or Both.....	79
(i) Definition of “Spouse”	79
<i>Wills, Estates and Succession Act</i> , S.B.C. 2009, c. 13, s. 2	80
Comparable Legislation	80
Notes and Questions	81
(ii) Spouse or Partner, but no Descendants.....	82
<i>Wills and Succession Act</i> , S.A. 2010, c. W-12.2, s. 60	82
Comparable Legislation	82
Notes and Questions	82
(iii) Spouse or Partner and Descendants.....	82
(A) Preferential Share	82
<i>Intestate Succession Act</i> , C.C.S.M., c. I85, s. 2(2), (3), (4)	82
Comparable Legislation	83
Notes and Questions	83
(B) Distributive Share	84
<i>Intestate Succession Act, 2019</i> , S.S. 2019, c. I-13.2, s. 6.....	84
Comparable Legislation	84
Notes and Questions	85
(iv) Both Spouse and Partner.....	85
<i>Wills, Estates and Succession Act</i> , S.B.C. 2009, c. 13, s. 22.....	85
Comparable Legislation	85
Notes and Questions	85
(c) Other Rights	86
(d) Spousal Disentitlement.....	87
Notes and Questions	87
3.3.3 Descendants	88
<i>Intestate Succession Act</i> , R.S.N.S. 1989, c. 236, s. 4(7).....	89
Comparable Legislation	89
<i>Succession Law Reform Act</i> , R.S.O. 1990, c. S.26, s. 47(1), (2).....	89
Comparable Legislation	89
Notes and Questions	92
3.3.4 Posthumous Conceptions	92
<i>Succession Law Reform Act</i> , R.S.O. 1990, c. S.26, s. 1.1, enacted	
S.O. 2016, c. 23, s. 71(6)	92
Comparable Legislation	93
Notes and Questions	93
Further Reading.....	93
3.3.5 Ascendants and Collaterals	94
(a) Introduction	94
Table of Consanguinity	94
Notes and Questions	95
(b) Gradual Scheme	95

TABLE OF CONTENTS

Succession Law Reform Act, R.S.O. 1990, c. S.26, s. 47(3)-(9)95
 Comparable Legislation96
 Notes and Questions96
 Further Reading99
 (c) Parentelic Scheme99
Intestate Succession Act, C.C.S.M. I-85, ss. 4, 5 100
 Comparable Legislation 101
 Notes and Questions 101
 (d) Problems 101
3.3.6 Illegitimacy and Adoption 102
3.3.7 Common Deaths 102
3.4 PARTIAL INTESTACY..... 102
3.5 CONTRACTING OUT OF LEGISLATION..... 103
Caron v. Rowe, 2013 ONSC 836, 86 E.T.R. (3d) 243 104
 Notes and Questions 106
3.6 ADVANCEMENT..... 106
Estates Administration Act, R.S.O. 1990, c. E.22, s. 25..... 107
 Comparable Legislation 107
 Further Reading 107
 Notes and Questions 108

**PART IV
 PROVING WILLS**

CHAPTER 4 NATURE OF TESTAMENTARY DISPOSITIONS 113
4.1 NATURE OF A WILL..... 113
4.1.1 Generally..... 113
 Notes and Questions 117
4.1.2 *Spes Successionis* 119
 Further Reading 122
4.2 CONTRACTS TO MAKE WILLS..... 122
4.2.1 Introduction..... 122
 Further Reading 123
4.2.2 Remedies for Breach 123
Synge v. Synge, [1894] 1 Q.B. 466 (C.A.) 124
 Notes and Questions 126
4.2.3 Part Performance 127
 Notes and Questions 128
4.3 EQUITABLE RELIEF 129
4.3.1 Unjust Enrichment 129
 Further Reading 131
 Notes and Questions 131
4.3.2 Proprietary Estoppel 132
 Further Reading 134
 Notes and Questions 134
4.4 MUTUAL WILLS..... 135
 Further Reading 137
University of Manitoba v. Sanderson Estate (1998), 155 D.L.R. (4th)
 40 (B.C.C.A.) 137

TABLE OF CONTENTS

Notes and Questions	141
4.5 INCORPORATION BY REFERENCE	145
<i>In the Goods of Smart</i> , [1902] P. 238 (Prob. Div.)	146
Notes and Questions	148
4.6 CONDITIONAL WILLS	151
<i>Landolfo v. Huebner</i> , 1974 CarswellMan 122, 53 D.L.R. (3d) 730 (C.A.).....	152
Notes and Questions	154
4.7 DELEGATION OF TESTAMENTARY POWER	155
<i>Re Nicholls</i> , 1987 CarswellOnt 638, 57 O.R. (2d) 763 (C.A.).....	157
Notes and Questions	160
Further Reading.....	161
4.8 LIMITS ON THE POWER OF TESTATION.....	161
<i>McCorkill v. McCorkill Estate</i> , 2014 NBQB 148, 1 E.T.R. (4th) 41	164
Notes and Questions	168
Further Reading.....	171
4.9 DISPOSITION OF PARTS OF THE BODY.....	171
Further Reading.....	171
Notes and Questions	172
 CHAPTER 5 WILL SUBSTITUTES	 173
5.1 INTRODUCTION.....	173
Further Reading.....	173
5.2 GIFTS <i>INTER VIVOS</i>.....	173
5.3 GIFTS <i>MORTIS CAUSA</i>.....	174
5.4 DEEDS AND <i>INTER VIVOS</i> TRUSTS	174
5.5 JOINT INTERESTS	176
Further Reading.....	179
Notes and Questions	179
5.6 LIFE INSURANCE.....	180
Further Reading.....	183
Notes and Questions	183
5.7 PENSIONS AND BENEFICIARY DESIGNATIONS	184
5.7.1 Generally.....	184
Further Reading.....	186
<i>Succession Law Reform Act</i> , R.S.O. 1990, c. S.26, Part III, ss. 50-54.....	186
Comparable Legislation.....	188
<i>Amherst Crane Rentals Ltd. v. Perring</i> (2003), 241 D.L.R. (4th) 176 (Ont. C.A.).....	188
Notes and Questions	192
5.7.2 Is a Beneficiary Designation Testamentary?.....	195
Notes and Questions	198
5.8 USE OF WILLS SUBSTITUTES TO AVOID PROBATE FEES	200
5.8.1 Probate Fees	200
5.8.2 <i>Inter Vivos</i> Gifts.....	201
5.8.3 Joint Tenancies.....	201
5.8.4 Multiple Wills	202

TABLE OF CONTENTS

5.8.5 Alter Ego Trusts.....	203
Further Reading.....	204
CHAPTER 6 TESTAMENTARY CAPACITY, UNDUE INFLUENCE, AND FRAUD	205
6.1 INTRODUCTION.....	205
Further Reading.....	206
6.2 AGE REQUIREMENT	206
<i>Succession Law Reform Act</i> , R.S.O. 1990, c. S.26, s. 8.....	206
Comparable Legislation.....	207
Notes and Questions	207
6.3 KNOWLEDGE AND APPROVAL	208
6.4 MENTAL CAPACITY	211
6.4.1 Introduction.....	211
6.4.2 General Lack of Capacity	216
<i>Leger v. Poirier</i> , 1944 CarswellNB 11, [1944] S.C.R. 152.....	218
Notes and Questions	220
6.4.3 Insane Delusions	224
<i>O’Neil v. Royal Trust Co.</i> , 1946 CarswellBC 127, [1964] S.C.R. 622	225
Notes and Questions	228
Further Reading.....	232
6.4.4 Onus of Proof	232
(a) Generally	232
Further Reading.....	234
Notes and Questions	234
(b) Suspicious Circumstances.....	235
Further Reading.....	237
<i>Vout v. Hay</i> , [1995] 2 S.C.R. 876, 125 D.L.R. (4th) 431.....	238
Notes and Questions	242
6.4.5 When Capacity is Required.....	247
<i>Re Bradshaw Estate</i> , 1988 CarswellNB 63, 30 E.T.R. 276 (Prob. Ct.)	248
Notes and Questions	250
6.5 UNDUE INFLUENCE	251
6.5.1 Undue Influence in Wills	251
6.5.2 Undue Influence in <i>Inter Vivos</i> Gifts.....	254
Further Reading.....	255
<i>Re Marsh Estate; Fryer v. Harris</i> , 1991 CarswellNS 95, 41 E.T.R. 225 (App. Div.).....	255
Notes and Questions	256
6.6 FRAUD	260
Notes and Questions	261
CHAPTER 7 MISTAKE AND RECTIFICATION OF WILLS.....	263
7.1 INTRODUCTION.....	263
Further Reading.....	263
7.2 JURISDICTION OF THE COURT OF PROBATE	263

TABLE OF CONTENTS

Notes and Questions	268
7.3 STATUTORY MODIFICATIONS	269
<i>Wills, Estates and Succession Act</i> , S.B.C. 2009, c. 13, s. 59.....	269
Comparable Legislation.....	269
Further Reading.....	270
Notes and Questions	270
7.4 PATENT MISTAKES	270
7.5 DRAFTING ERRORS	270
<i>Conner Estate v. Worthing</i> , 2020 BCSC 150, 55 E.T.R. (4th) 193	274
Notes and Questions	278
7.6 EXECUTION OF WRONG INSTRUMENT	279
Further Reading.....	280
<i>Re Brander</i> , 1952 CarswellBC 85, [1952] 4 D.L.R. 688 (S.C.).....	280
Notes and Questions	281
 CHAPTER 8 RELATED MATTERS	 283
8.1 INTRODUCTION	283
8.2 CONFLICT OF LAWS	283
8.2.1 The Issues	284
8.2.2 Administration of Estates	284
8.2.3 Succession	286
(a) Concepts and Categories	286
(b) Intestate Succession.....	287
(c) Testate Succession: Common Law Rules	287
(d) Statutory Reform.....	288
<i>Succession Law Reform Act</i> , R.S.O. 1990, c. S.26, ss. 34-41	288
Comparable Legislation.....	289
(i) <i>Types of Property</i>	290
(ii) <i>Choice of Law</i>	290
(iii) <i>Renvoi Abolished</i>	290
(iv) <i>Change in Domicile</i>	291
(v) <i>Change in Law</i>	291
(vi) <i>Construction</i>	292
(e) International Wills.....	292
Comparable Legislation.....	292
Notes and Questions	292
Further Reading.....	295
8.3 TESTAMENTARY GUARDIANS AND CUSTODIANS	295
<i>Children’s Law Reform Act</i> , R.S.O. 1990, c. C.12, s. 61.....	296
Comparable Legislation.....	297
Notes and Questions	297
Further Reading.....	298
 CHAPTER 9 FORMAL VALIDITY OF WILLS	 299
9.1 INTRODUCTION	299
Further Reading.....	299
9.2 ATTESTED WILLS	299
9.2.1 Introduction	299

TABLE OF CONTENTS

<i>Succession Law Reform Act</i> , R.S.O. 1990, c. S.26, ss. 3, 4, 7, as amended by S.O. 2021, c. 4, Sched. 9, s. 1(1), (2)	300
Comparable Legislation	301
Notes and Questions	301
Sample Will	302
Sample Codicil	305
9.2.2 Formalities While Parties Are in Each Other’s Electronic Presence	306
9.2.3 In Writing	306
<i>Murray v. Haylow</i> , 1927 CarswellOnt 135, 60 O.L.R. 629 (C.A.)	307
Notes and Questions	307
9.2.4 Signed by the Testator or an Amanuensis	308
<i>Re White</i> , 1947 CarswellNS 22, [1948] 1 D.L.R. 572 (App. Div.)	308
Notes and Questions	310
9.2.5 At the End of the Will	311
<i>Yen Estate v. Yen-Zimmerman</i> , 2013 BCCA 423, 90 E.T.R. (3d) 184	312
Notes and Questions	314
9.2.6 Attestation	315
(a) Generally	315
<i>Chesline v. Hermiston</i> , [1928] 4 D.L.R. 786, 62 O.L.R. 575 (H.C.) ...	315
Notes and Questions	317
(b) Acknowledgment	319
<i>Re Gunstan</i> (1872), 7 P.D. 102 (C.A.)	319
Notes and Questions	321
(c) By Beneficiaries and Others	322
<i>Wills and Succession Act</i> , S.A. 2010, c. W-12.2, ss. 20, 21	322
Comparable Legislation	323
9.3 HOLOGRAPH WILLS	324
9.3.1 Introduction	324
Further Reading	324
<i>Wills and Succession Act</i> , S.A. 2010, c. W-12.2, s. 16	324
Comparable Legislation	324
Notes and Questions	325
9.3.2 A Deliberate or Fixed and Final Intention	325
<i>Bennett v. Toronto General Trusts Corp.</i> , 1958 CarswellMan 66, [1958] S.C.R. 392	325
Notes and Questions	327
9.3.3. Use of Printed Wills	329
<i>Re Forest</i> , 1981 CarswellSask 102, 121 D.L.R. (3d) 552 (C.A.)	329
Notes and Questions	330
9.3.4 Formalities	331
<i>Re Clarke</i> , 1982 CarswellOnt 816, 39 O.R. (2d) 392 (Surr. Ct.)	331
Notes and Questions	332
9.3.5 Holograph Codicils to Formal Wills	334
Notes and Questions	334
9.3.6 Incorporation by Reference of Non-Holograph Documents	334
<i>Re Dixon-Marsden Estate</i> , 1985 CarswellOnt 711, 21 E.T.R. 216 (Surr. Ct.)	334
Notes and Questions	336

TABLE OF CONTENTS

9.4 VALIDATING POWERS	337
Further Reading.....	338
<i>Wills Act</i> , C.C.S.M., c. W150, s. 23.....	338
Comparable Legislation.....	338
<i>Succession Law Reform Act</i> , R.S.O. 1990, c. S.26, s. 21.1, added by S.O. 2021, c. 4, Sched. 9, s. 5.....	338
Notes and Questions.....	339
9.5 ELECTRONIC WILLS	344
<i>Wills, Estates and Succession Act</i> , S.B.C. 2009, c. 13, ss. 35.1ff., amended by S.B.C. 2020, c. 12.....	345
Notes and Questions.....	348
9.6 STATUTORY WILLS	348
<i>Infirm Persons Act</i> , R.S.N.B. 1973, c. I-8, ss. 3(1), (4), 11.1, 15, 15.1 (enacted S.N.B. 1994, c. 40, ss. 1, 3).....	349
Notes and Questions.....	350
9.7 PRIVILEGED WILLS	350
<i>Succession Law Reform Act</i> , R.S.O. 1990, c. S.26, s. 5.....	350
Comparable Legislation.....	351
Notes and Questions.....	351
9.8 THE INTERNATIONAL WILL	353
<i>Succession Law Reform Act</i> , R.S.O. 1990, c. S.26, s. 42.....	353
<i>Schedule</i> (Convention and Annex).....	353
Comparable Legislation.....	356
Notes and Questions.....	356
 CHAPTER 10 REVOCATION OF WILLS	 359
10.1 SCOPE OF THIS CHAPTER	359
Further Reading.....	359
10.2 VITIATING FACTORS	359
10.3 REVOCATION BY OPERATION OF LAW	360
10.3.1 Introduction	360
10.3.2 By Marriage	360
(a) Generally.....	360
Further Reading.....	361
<i>Wills Act</i> , R.S.N.S. 1989, c. 505, s. 17, running head.....	361
Comparable Legislation.....	361
Notes and Questions.....	361
(b) Repeal of the “Revocation on Marriage” Provision.....	362
(c) Validity of the Marriage — Predatory Marriages.....	362
Further Reading.....	364
Notes and Questions.....	365
(d) Will Made in Contemplation of Marriage.....	365
<i>Wills Act</i> , R.S.N.S. 1989, c. 505, s. 17(a).....	366
Comparable Legislation.....	366
<i>Re Ratzlaff Estate</i> , 2002 SKCA 53, 44 E.T.R. (2d) 286.....	366
Notes and Questions.....	370
(e) Election.....	372
<i>Wills Act</i> , R.S.N.S. 1989, c. 505, s. 17(b).....	372
Comparable Legislation.....	372

TABLE OF CONTENTS

<i>Browne v. Dobrotinic</i> , 1958 CarswellOnt 174, 13 D.L.R. (2d) 565 (H.C.)	373
Notes and Questions	374
(f) Powers of Appointment	374
<i>Wills Act</i> , R.S.N.S. 1989, c. 505, s. 17(c)	375
Comparable Legislation	375
<i>Re Gilligan</i> , [1950] P. 32, [1949] 2 All E.R. 401 (Prob. Div.)	375
Notes and Questions	377
10.3.3 By Dissolution of Marriage	378
<i>Succession Law Reform Act</i> , R.S.O. 1990, c. S.26, s. 17, as amended by S.O. 2021, c. 4, Sched. 9, s. 4	378
Comparable Legislation	379
<i>Re Billard</i> , 1986 CarswellOnt 329, 22 E.T.R. 150 (H.C.)	379
Notes and Questions	380
10.4 REVOCATION BY ACT OF THE TESTATOR	382
10.4.1 Generally	382
<i>Wills Act</i> , R.S.N.B. 1973, c. W-9, s. 15(b), (c)	382
Comparable Legislation	382
10.4.2 By Subsequent Document	382
<i>Re Davies</i> , [1928] Ch. 24 (Ch. Div.)	383
Notes and Question	385
10.4.3 By Physical Act	386
(a) Generally	386
<i>Wills Act</i> , R.S.N.B. 1973, c. W-9, s. 15(d)	387
Comparable Legislation	387
(b) By the Testator	387
<i>Leonard v. Leonard</i> , [1902] P. 243 (Prob. Div.)	387
Notes and Questions	389
(c) By Another	391
<i>DeLack v. Newton</i> , 1944 CarswellOnt 217, [1944] O.W.N. 517 (Surr. Ct.)	391
Notes and Questions	392
10.5 ALTERATIONS IN A WILL	393
<i>Wills Act</i> , C.C.S.M., c. W150, s. 19	393
Comparable Legislation	394
<i>Re Douglas Estate</i> , 1986 CarswellNfld 29, 25 E.T.R. 154 (T.D.)	394
Notes and Questions	396
10.6 CONDITIONAL REVOCATION	397
10.6.1 Generally	397
10.6.2 The Testator Believes the Will is Void	397
10.6.3 The Testator is Mistaken About the Facts or the Law	398
<i>Montreal Trust Co. v. Hawley</i> , 1981 CarswellBC 559, 10 E.T.R. 282 (S.C.)	398
10.6.4 Dependent Relative Revocation	400
<i>Re Bolton Estate</i> , 1961 CarswellMan 31, 29 D.L.R. (2d) 173 (C.A.)	370
Notes and Questions	402
10.7 REVIVAL OF REVOKED WILLS	403
<i>Wills Act</i> , S.S. 1996, c. W-4.1, s. 20	404
Comparable Legislation	404

TABLE OF CONTENTS

Re Ott, 1972 CarswellOnt 136, 24 D.L.R. (3d) 517 (Surr. Ct.) 404
 Notes and Questions 405

CHAPTER 11 OTHER PROBATE MATTERS 409

11.1 INTRODUCTION..... 409

11.2 PROOF OF DEATH AND RELATED MATTERS..... 409

11.2.1 Generally 409

11.2.2 The Common Law 410

 (a) Inference of Death 410

 (b) Presumption of Death 410

 (c) Jurisdictional Issue 411

 (d) Return from “The Dead” 412

 Notes and Questions 413

Re Miller, 1978 CarwellOnt 1299, 22 O.R. (2d) 111 (H.C.J.)..... 414

11.2.3 Special Statutory Provisions 417

 Notes and Questions 418

11.2.4 Absentees..... 418

Absentees Act, R.S.O. 1990, c. A.3, ss. 1-8 418

 Comparable Legislation 420

 Notes and Questions 420

11.2.5 General Statutory Reform 422

Declarations of Death Act, 2002, S.O. 2002, c. 14, Sched., ss. 1-8 422

 Comparable Legislation 425

 Notes and Questions 425

 Further Reading 427

11.3 PROOF OF LOST WILLS 427

11.3.1 Presumption of Revocation 428

 (a) Rebutting the Presumption..... 429

11.3.3 Probate in Part..... 429

 Further Reading 430

Goold Estate v. Ashton, 2016 ABQB 303, 19 E.T.R. (4th) 314 430

 Notes and Questions 434

**PART V
 THE CONSTRUCTION OF WILLS**

CHAPTER 12 CAPACITY OF BENEFICIARIES..... 441

12.1 INTRODUCTION..... 441

12.2 ILLEGITIMACY AND EVOLVING CONCEPTS OF PARENTHOOD 441

Succession Law Reform Act, R.S.O. 1990, c. S.26, ss. 1(1), (3), 1.1, 47(1), (9)-(11), 57(1)-(2), 59(1)-(2)..... 446

 Notes and Questions 448

 Further Reading 450

12.3 ADOPTION 450

Child, Youth and Family Services Act, 2017, S.O. 2017, c. 14, Sched. 1, ss. 217, 218 451

 Comparable Legislation 452

TABLE OF CONTENTS

Notes and Questions	452
Further Reading	454
12.4 HOMICIDE	454
12.4.1 Generally	454
12.4.2 Problems of Proof	456
Notes and Questions	458
12.4.3 Nature of the Crime	459
Notes and Questions	460
12.4.4 The Limits of Disentitlement	460
<i>Re Gore</i> , 1971 CarswellOnt 246, [1972] 1 O.R. 550 (H.C.J.)	461
Notes and Questions	463
Further Reading	468
12.5 FOREIGN BENEFICIARIES	469
Notes and Questions	469
12.6 WITNESSES	470
12.6.1 Generally	470
<i>Succession Law Reform Act</i> , R.S.O. 1990, c. S.26, s. 12	470
Comparable Legislation	471
<i>Re Trotter</i> , [1899] 1 Ch. 764 (Ch. Div.)	471
Notes and Questions	472
12.6.2 Gift to Witness in Representative Capacity	474
<i>Re Ray's Will Trusts</i> , [1936] Ch. 520 (Ch. Div.)	474
Notes and Questions	476
12.6.3 Supernumerary Witnesses	476
Notes and Questions	476
 CHAPTER 13 GENERAL PRINCIPLES OF CONSTRUCTION	 479
 13.1 SCOPE OF THIS CHAPTER	 479
Further Reading	479
13.2 JURISDICTION OF COURTS	479
13.2.1 Generally	479
13.2.2 Function of the Court of Construction	481
13.3 PRINCIPLES AND RULES OF CONSTRUCTION	483
13.3.1 General Principles	483
(a) Generally	483
(b) The Whole Will to Be Read in Context	483
(c) Identical Words are Presumed to Have the Same Meaning	484
(d) Effect to Be Given to All Words	484
(e) <i>Ejusdem Generis</i>	484
(f) General versus Particular Intention	485
(g) Presumption against Intestacy	486
(h) Presumption of Rationality	488
(i) Presumption of Legality	488
(j) Presumption against Disinheritance	488
(k) Irreconcilable Dispositions	489
13.3.2 Specific Rules of Construction	490
(a) Generally	490
(b) Spouses	490
(c) Children and Grandchildren	491

TABLE OF CONTENTS

(d) Issue.....	492
(e) Next of Kin.....	492
(f) Other Relatives.....	493
(g) Legatees	493
(h) Gifts to Two or More Persons.....	494
(i) <i>Introduction</i>	494
(ii) <i>Per Capita Distribution</i>	494
(iii) <i>Per Stirpes Distribution</i>	495
Notes and Questions	498
(iv) <i>Joint Tenancies or Tenancies in Common</i>	498
(i) Gifts to Survivors.....	499
(j) Multiple Gifts.....	500
(k) House and Contents	500
(l) Power of Selection.....	500
(m) Inability to Locate Beneficiaries.....	501
(n) Options and Rights of First Refusal	502
(o) Disinheriting a Person	502
13.3.3 Statutory Rules	503
(a) Generally.....	503
(b) Disposition of Void Gift.....	503
(c) Devise of Real Property Includes Leaseholds.....	504
(d) Gift Includes Property over Which Testator Has Power of Appointment	504
(e) Devise without Words of Limitation.....	505
(f) Meaning of “Heir”	505
(g) Meaning of “Die without Issue”	506
(h) Devise to Trustee.....	506
(i) Undisposed of Residue	507
13.4 THE MEANING OF PARTICULAR EXPRESSIONS	507
13.4.1 Generally	507
13.4.2 <i>Prima Facie</i> Meaning	507
<i>Perrin v. Morgan</i> , [1943] A.C. 399 (H.L.).....	508
Notes and Questions	512
13.4.3 Words Defined by the Testator	513
<i>Re Helliwell</i> , [1916] 2 Ch. 580 (Ch. Div.)	513
Notes and Questions	514
13.4.4 Terms of Art	515
<i>Re Cook</i> , [1948] Ch. 212 (Ch. Div.)	515
Notes and Questions	517
13.5 PARTIAL INTESTACIES	517
<i>National Trust Co. v. Fleury</i> , 1965 CarswellOnt 74, [1965] S.C.R. 817	518
Notes and Questions	520
13.6 ADMISSIBILITY OF EVIDENCE	521
13.6.1 Introduction	521
13.6.2 Common Law	521
(a) Objective Approach.....	521
(b) Evidence of Surrounding Circumstances	523
Further Reading.....	525
<i>Hicklin Estate v. Hicklin</i> , 2019 ABCA 136, 46 E.T.R. (4th) 1.....	525

TABLE OF CONTENTS

Notes and Questions	530
13.6.3 Evidence of the Testator’s Intention	532
<i>Re Carrick</i> , [1929] 3 D.L.R. 373, 64 O.L.R. 39 (H.C.)	533
Notes and Questions	535
13.6.4 Legislative Changes.....	537
<i>Wills and Succession Act</i> , S.A. 2010, c. W-12.2, s. 26	538
<i>Wills, Estates and Succession Act</i> , S.B.C. 2009, c. 13, s. 4(2)	538
Notes and Questions	538
13.7 DRAFTING ERRORS AND OMISSIONS	539
13.7.1 Generally	539
13.7.2 Drafting Omissions	539
<i>Re Freeman Estate</i> , 1975 CarswellNS 264, 58 D.L.R. (3d)	
541 (N.S.S.C., T.D.).....	541
Notes and Questions	543
Further Reading.....	545
13.7.3 Drafting Errors.....	545
<i>Re MacDonnell</i> , 1982 CarswellOnt 606, 133 D.L.R. (3d) 128	
(C.A.)	546
Notes and Questions	548
13.7.4 Rejection of Inaccurate Description.....	549
<i>Re Beauchamp</i> , 1975 CarswellOnt 538, 56 D.L.R. (3d) 644 (H.C.) ...	549
Notes and Questions	551
13.7.5 Legislative Changes.....	553
<i>Wills and Succession Act</i> , S.A. 2010, c. W-12.2, s. 39	553
Comparable Legislation.....	553
Notes and Questions	554
CHAPTER 14 TESTAMENTARY GIFTS	555
14.1 SCOPE.....	555
14.2 SUBJECT MATTER.....	555
Notes and Question.....	558
14.3 TYPES	559
14.3.1 Generally	559
14.3.2 General and Pecuniary Gifts.....	561
<i>Re Millar</i> , [1927] 3 D.L.R. 270, 60 O.L.R. 434 (S.C.)	561
Notes and Question.....	562
14.3.3 Demonstrative Gifts	564
<i>Celentano Estate v. Ross</i> , 2014 BCSC 27, 96 E.T.R. (3d) 265	565
Notes and Questions	567
14.3.4 Specific Gifts.....	567
Further Reading.....	568
<i>Culbertson v. Culbertson</i> , 1967 CarswellSask 36, 62 D.L.R. (2d)	
134 (C.A.).....	568
Notes and Questions	569
14.3.5 Payment of Interest on Testamentary Gifts.....	571
Notes and Questions	572
14.3.6 Residuary Gifts.....	572
Notes and Questions	573
14.4 ABATEMENT	575

TABLE OF CONTENTS

14.4.1 Generally	575
<i>Wills, Estates and Succession Act</i> , S.B.C. 2009, c. 13, s. 50.....	577
<i>Lindsay v. Waldbrook</i> (1897), 24 O.A.R. 604 (C.A.).....	577
Notes and Questions	579
14.4.2 Abatement and General Powers of Appointment	581
14.4.3 The Law of Assent	583
14.5 ADEMPTION	584
<i>Re Hunter</i> , 1975 CarswellOnt 341, 58 D.L.R. (3d) 175 (H.C.).....	585
Notes and Questions	586
14.6 DATE FROM WHICH WILL SPEAKS	588
14.6.1 General Rule	588
<i>Wills Act</i> , S.S. 1996, c W-14.1, s. 24	588
Comparable Legislation.....	589
<i>Re Rutherford</i> (1918), 42 O.L.R. 405 (H.C.).....	589
Notes and Questions	590
14.6.2 Contrary Intention	592
(a) Generally.....	592
<i>Re Bird</i> , 1942 CarswellOnt 34, [1942] 3 D.L.R. 439 (C.A.).....	592
Notes and Questions	594
(b) Use of Temporal Words.....	594
<i>Re Forbes</i> , 1956 CarswellOnt 265, 3 D.L.R. (2d) 653 (C.A.)	595
Notes and Questions	596
14.6.3 Change in Name and Form	596
(a) Generally.....	596
<i>Re Britt</i> , 1968 CarswellOnt 120, 68 D.L.R. (2d) 26 (C.A.)	597
Notes and Questions	599
(b) Tracing.....	600
<i>Re Cudeck</i> , 1977 CarswellOnt 387, 78 D.L.R. (3d) 250	600
Notes and Questions	602
14.7 EQUITABLE DOCTRINE OF CONVERSION	603
14.7.1 Generally	603
<i>Re Church</i> , 1923 CarswellAlta 152, [1923] S.C.R. 642	604
Notes and Questions	605
14.7.2 Options	606
Notes and Questions	607
14.7.3 Effect of Republication	607
<i>Re Reeves; Reeves v. Pawson</i> , [1928] 1 Ch. 351 (Ch. Div.).....	607
Notes and Questions	608
14.7.4 Statutory Reforms	610
<i>Succession Law Reform Act</i> , R.S.O. 1990, c. S.26, s. 20	610
Comparable Legislation.....	611
<i>DiMambro Estate v. DiMambro</i> (2002), 48 E.T.R. (2d) 22	
(Ont. S.C.J.)	611
Notes and Questions	612
14.8 APPURTENANCES	614
14.9 ENCUMBERED PROPERTY	614
<i>Succession Law Reform Act</i> , R.S.O. 1990, c. S.26, s. 32	614
Comparable Legislation.....	615
<i>Perry v. Hicknell</i> , 1981 CarswellOnt 489, 128 D.L.R (3d) 63	
(H.C.)	615

TABLE OF CONTENTS

Notes and Questions	617
14.10 PRESUMPTIONS	617
14.10.1 Introduction	617
14.10.2 Election	617
Further Reading.....	618
<i>Granot v. Hersen Estate</i> (1999), 173 D.L.R. (4th) 227, 22 E.T.R. (2d) 221 (Ont. C.A.).....	618
Notes and Questions	621
14.10.3 Satisfaction	622
<i>Re Trider</i> , 1978 CarswellNS 76, 84 D.L.R. (3d) 336 (Prob. Ct.).....	622
Notes and Questions	623
14.10.4 Rule against Double Portions	624
<i>Re George's Will Trusts</i> , [1949] Ch. 154 (Ch. Div.)	624
Notes and Questions	627
14.10.5 Abolition	628
<i>Wills and Succession Act</i> , S.A. 2010, c. W-12.2, s. 110	628
Comparable Legislation.....	629
Notes and Questions	629
14.11 DISCLAIMER	630
14.11.1 Introduction	630
Further Reading.....	632
14.11.2 Acceleration	632
<i>Brannon v. British Columbia (Public Trustee)</i> , 1991 CarswellBC 103, 41 E.T.R. 210 (C.A.)	632
Notes and Questions	636
14.11.3 Disclaimer and Variation of Trusts	640
Notes and Questions	641
CHAPTER 15 LAPSE AND SURVIVORSHIP	643
15.1 INTRODUCTION	643
Further Reading.....	643
15.2 DISPOSITION OF LAPSED GIFT	643
Further Reading.....	644
<i>Wills Act</i> , R.S.N.B. 1973, c. W-9, s. 22.....	644
Comparable Legislation.....	644
<i>Re Stuart</i> , 1964 CarwellBC 60, 47 W.W.R. 500 (S.C.)	644
Notes and Questions	645
15.3 ANTI-LAPSE LEGISLATION	648
15.3.1 Generally	648
Further Reading.....	648
<i>Wills Act</i> , R.S.N.S. 1989, c. 505, s. 31	648
Comparable Legislation.....	649
<i>Succession Law Reform Act</i> , R.S.O. 1990, c. S.26, s. 31	649
Comparable Legislation.....	649
<i>Re Wolson; Wolson v. Jackson</i> , [1939] Ch. 780 (Ch. Div.)	649
Notes and Questions	650
15.3.2 Contrary Intention	653
<i>Moore v. Moore</i> , 1982 CarswellAlta 204, 13 E.T.R. 25 (Q.B.).....	654
Notes and Questions	656

TABLE OF CONTENTS

15.4 EXCEPTIONS TO LAPSE	657
15.4.1 Joint Tenancy	657
<i>Law of Property Act</i> , C.C.S.M., c. L90, s. 15	658
Comparable Legislation	658
<i>Re Coughlin</i> , 1982 CarswellOnt 619, 12 E.T.R. (H.C.)	658
Notes and Questions	659
15.4.2 Fulfilment of Moral Obligation	660
<i>Mackie Estate v. Harris</i> , 1986 CarswellOnt 654, 54 O.R. (2d)	
784 (H.C.).....	660
Notes and Questions	662
Further Reading.....	663
15.4.3 Class Gifts	663
15.5 SPECIAL SITUATIONS	663
15.5.1 Powers of Appointment	663
15.5.2 Dissolved Corporations	664
15.5.3 Charities	665
15.5.4 Secret Trusts	665
15.6 SUBSTITUTIONARY GIFTS	666
15.6.1 Generally	666
<i>Re Cousen's Will Trusts</i> , [1937] Ch. 381 (Ch. Div.)	666
Notes and Questions	668
15.6.2 Words of Limitation or Substitution	669
<i>Cochrane v. Royal Trust Co.</i> , 1980 CarwellBC 152, 7 E.T.R. 176	
(C.A.)	669
Notes and Questions	671
15.6.3 Class Gifts	672
<i>Re Grasett</i> , 1969 CarswellOnt 401, 31 D.L.R. (3d) 153 (C.A.).....	672
Notes and Questions	675
15.7 SURVIVORSHIP	675
15.7.1 Introduction	675
15.7.2 Common Law Rules	675
15.7.3 Statutory Rules	676
Further Reading.....	678
<i>Survivorship Act</i> , R.S.N.S. 1989, c. 454, s. 3.....	678
Comparable Legislation	679
<i>Succession Law Reform Act</i> , R.S.O. 1990, c. S.26, s. 55	679
Comparable Legislation	679
<i>Insurance Act</i> , R.S.O. 1990, c. I.8, ss. 194, 215.....	680
Comparable Legislation	680
Notes and Questions	680
Problems	681
15.7.4 Specific Rules	682
<i>Wills, Estates and Succession Act</i> , S.B.C. 2009, c. 13, ss. 8-10	682
Notes and Questions	683
CHAPTER 16 CLASS GIFTS	685
16.1 INTRODUCTION	685
Further Reading.....	685
16.2 NATURE AND EFFECT OF A CLASS GIFT	685

TABLE OF CONTENTS

16.3 IDENTIFYING CLASS GIFTS	686
16.3.1 Class Gift or Gift <i>Nominatim</i>?	686
<i>Re Snyder</i> , 1960 CarswellOnt 88, [1960] O.R. 107 (H.C.)	688
Notes and Questions	690
16.3.2 Artificial Classes	691
<i>Kingsbury v. Walter</i> , [1901] A.C. 187 (H.L.).....	692
Notes and Questions	694
16.3.3. Description by Number	695
<i>Re Burgess</i> , 1968 CarswellBC 58, 67 D.L.R. (2d) 526 (S.C.)	695
Notes and Questions	696
16.4 COMPOSITION OF THE CLASS	697
16.4.1 Generally	697
<i>Re Hyslop</i> , 1978 CarswellOnt 523, 3 E.T.R. 216 (H.C.)	698
Notes and Questions	700
16.4.2 Class Closing Rules	701
(a) Immediate Gift to a Class	701
<i>Re Charlesworth Estate</i> , 1996 CarswellMan 143, 12 E.T.R. (2d)	
257 (Q.B.).....	701
Notes and Questions	703
(b) Postponed Gift to a Class.....	703
<i>Latta v. Lowry</i> (1886), 11 O.R. 517 (Ch. Div.).....	704
Notes and Questions	705
(c) Class Gift Postponed by Condition	706
<i>Re Edmonson's Will Trusts; Baron Sandford of Banbury v.</i>	
<i>Edmondson</i> , [1972 1 W.L.R. 183 (C.A.)].....	707
Notes and Questions	710
(d) Gifts to Each Member of a Class	711
<i>Re Bellville; Westminster Bank Ltd. v. Walton</i> , [1941] 1 Ch.	
414 (Ch. Div.).....	712
Notes and Questions	713
CHAPTER 17 VESTED AND CONTINGENT GIFTS	715
17.1 SCOPE OF THIS CHAPTER	715
Further Reading.....	715
17.2 VESTED AND CONTINGENT GIFTS	716
17.2.1 Background	716
17.2.2 Meanings and Distinctions	717
(a) Generally.....	717
(b) Two Senses of the Term Vested.....	718
(c) Relevance of Vesting	718
(d) Conditions of Acquisition (Precedent) versus Conditions of	
Retention (Subsequent).....	720
(e) Vested versus Divested	721
17.3 GENERAL PRINCIPLES OF VESTING	722
17.3.1 Introduction	722
17.3.2 Presumption in Favour of Early Vesting	722
17.3.3 Presumption in Favour of Condition Subsequent	724
17.3.4 Presumption in Favour of Postponement of Enjoyment	725
17.3.5 Presumption in Favour of Indefeasible Interests	725

TABLE OF CONTENTS

17.4 SPECIFIC PRINCIPLES OF VESTING	726
17.4.1 Introduction	726
17.4.2 Gifts Over on Death Generally	726
(a) The Rules in <i>Edwards v. Edwards</i>	726
<i>Re Brailsford</i> , [1916] 2 Ch. 536 (Ch. Div.).....	727
Notes and Questions	729
(b) The Rule in <i>Doe d. Blomfield v. Eyre</i>	730
<i>Re Archer</i> (1907), 14 O.L.R. 374 (H.C.J.)	730
Notes and Questions	732
17.4.3 Gifts Over on Death Under Specified Age	732
<i>White v. Barton</i> , 1941 CarswellOnt 76, [1941] S.C.R. 426.....	733
Notes and Questions	734
17.4.4 Gifts Over on Death Before Receipt	735
<i>Royal Trust Co. v. East</i> , 1978 CarswellBC 468), 3 E.T.R. 55	
(S.C.).....	735
Notes and Questions	737
17.4.5 Convenience of the Estate Rule	739
<i>Re Taylor</i> , 1972 CarswellOnt 370, [1972] 3 O.R. 349 (H.C.J.)	740
Notes and Questions	745
17.4.6 Postponed Payment	746
<i>Re Squire</i> , 1962 CarswellOnt 199, [1962] O.R. 863 (H.C.J.).....	747
Notes and Questions	749
17.4.7 Survivorship	752
(a) Survivorship Generally	752
<i>Strochschein v. Hill</i> , 1985 CarswellAlta 674, 19 E.T.R. 9 (C.A.).....	753
(b) Survivorship in the Context of Successive Interests	755
Notes and Questions	756
17.4.8 The Rule in <i>Boraston's Case</i>	758
Notes and Questions	759
 CHAPTER 18 VOID CONDITIONS	 761
18.1 INTRODUCTION	761
18.2 CONSEQUENCES OF VOID CONDITIONS	762
Notes and Questions	764
18.3 CONDITIONS CONTRARY TO PUBLIC POLICY	765
18.3.1 Generally	765
18.3.2 Guiding Principles	766
18.3.3 Conditions Requiring Divorce and Abandonment	768
Notes and Questions	769
18.3.4 Restraints on Marriage	770
<i>Re Goodwin</i> , 1969 CarswellAlta 114, 3 D.L.R. (3d) 281	
(S.C., T.D.).....	771
Notes and Questions	772
18.3.5 Discriminatory Conditions	773
Notes and Questions	780
Further Reading.....	782
18.3.6 In Terrorem Conditions	782
<i>Kent v. McKay</i> , 1982 CarswellBC 187, 13 E.T.R. 53 (S.C.)	784
Notes and Questions	787

TABLE OF CONTENTS

Further Reading.....	788
18.3.7 Conditions <i>Malum Prohibitum</i> and <i>Malum in Se</i>.....	788
<i>Re McBride</i> , 1980 CarswellOnt 523, 27 O.R. (2d) 513 (H.C.J.).....	789
Notes and Questions	790
18.3.8 Repugnant Conditions	791
<i>Carter v. May</i> , 1966 CarswellNfld 7, 60 D.L.R. (2d) 70 (S.C., T.D.).....	792
Notes and Questions	793
18.4 CONDITIONS IMPOSSIBLE OF PERFORMANCE.....	795
<i>Re MacDonald</i> , 1971 CarswellOnt 652, [1971] 2 O.R. 577 (H.C.J.)...	797
Notes and Questions	799
18.5 UNCERTAIN CONDITIONS	800
<i>Re Tuck's Settlement Trusts; Public Trustee v. Tuck</i> , [1978] Ch. 49 (C.A.).....	801
Notes and Questions	805
 CHAPTER 19 PERPETUITIES	 807
19.1 SCOPE OF THIS CHAPTER.....	807
Further Reading.....	807
19.2 HISTORY OF PERPETUITIES	808
19.3 RULE IN <i>WHITBY v. MITCHELL</i>	809
19.4 RULE AGAINST INDEFINITE DURATION	810
19.5 RULE AGAINST PERPETUITIES AT COMMON LAW	811
19.5.1 Introduction	811
19.5.2 Perpetuity Period	811
(a) Generally.....	811
(b) Lives in Being.....	812
(c) Period in Gross	813
(d) Operation of the Rule.....	814
(e) Some Examples	815
(i) <i>The "Fertile Octogenarian"</i>	815
(ii) <i>The "Precocious Toddler"</i>	816
(iii) <i>The "Unborn Widow"</i>	816
(iv) <i>The "Magic Gravel Pit"</i>	816
19.5.3 Application of the Rule to Various Interests	817
Further Reading.....	817
(a) Class Gifts.....	817
(b) Powers of Appointment.....	819
(i) <i>Generally</i>	819
(ii) <i>Validity of Power</i>	819
(iii) <i>Validity of Appointment</i>	820
(iv) <i>Validity of Gifts in Default of Appointment</i>	820
(c) Contingent Remainders	821
(d) Legal Executory Interests	821
(e) Equitable Executory Interests	822
(f) Rights of Entry for Condition Broken.....	822
(g) Possibilities of Reverter	823
(h) Gifts to Charity.....	823
(i) Administrative Powers and Trusts	824

TABLE OF CONTENTS

(j) Ulterior Limitations	824
19.6 RULE AGAINST PERPETUITIES UNDER STATUTE	824
19.6.1 Introduction	824
19.6.2 Wait and See Principle	825
19.6.3 Perpetuity Period	826
19.6.4 Measuring Lives	827
(a) Generally.....	827
(b) Statutory List Model	827
(c) Statutory Formula Model.....	828
19.6.5 Specific Reforms	830
(a) Generally.....	830
(b) Capacity to Have Children	830
(c) Age Reduction	830
(d) Class Splitting	832
(e) The Unborn Spouse	832
(f) <i>Cy-Près</i>	833
(g) Order of Remedies	834
19.6.6 Application of the Statutory Rule to Various Interests	834
(a) Powers of Appointment.....	834
(b) Possibilities of Reverter and Rights of Entry for Condition Broken.....	835
(c) Interim Income.....	837
(d) Ulterior Limitations	837
(e) Administrative Powers.....	837
19.6.7 Modification of the Rule against Indefinite Duration	837
Further Reading.....	838
19.7 APPLICATION OF THE RULE IN COMMERCIAL CONTEXTS	838
19.8 ABOLITION OF THE RULES AGAINST PERPETUITIES	842
Notes and Questions	845
 CHAPTER 20 ACCUMULATIONS	847
 20.1 INTRODUCTION	847
Further Reading.....	849
Notes and Questions	849
20.2 THE STATUTE	849
<i>Accumulations Act</i> , R.S.O. 1990, c. A.5, ss. 1-5.....	849
Comparable Legislation.....	851
Notes and Questions	851
20.3 THE ACCUMULATION PERIODS	851
20.3.1 Generally	851
20.3.2 Twenty-one Years from Testator's Death	851
<i>Re Arnold</i> , 1955 CarswellBC 81, [1955] 4 D.L.R. 535 (S.C.).....	852
20.3.3 Duration of Minorities of Persons Living at Testator's Death	853
Notes and Questions	854
20.3.4 Duration of Minorities of Persons Entitled to Income if of Full Age	854
20.3.5 Conclusion	855
Problems	855

TABLE OF CONTENTS

20.4 TERMINATING THE ACCUMULATION	855
Notes and Questions	856
20.5 DESTINATION OF EXCESS INCOME	857
<i>Re Ellis; Canada Permanent Trust Co. v. Ellis</i> , 1982 CarswellSask 201, 12 E.T.R. 205 (Q.B.)	857
Notes and Questions	859
20.6 EXCEEDING THE ACCUMULATION PERIOD	859
<i>Re Struthers</i> (1980), 29 O.R. (2d) 616 (C.A.)	860
Notes and Questions	864

**PART VI
FAMILY PROTECTION**

CHAPTER 21 SPOUSAL RIGHTS	867
21.1 INTRODUCTION	867
Further Reading.....	868
21.2 MATRIMONIAL PROPERTY	868
21.3 FAMILY LAW ACT (ONTARIO)	869
21.3.1 Introduction	869
Further Reading.....	869
21.3.2 The Statute	870
<i>Family Law Act</i> , R.S.O. 1990, c. F.3, ss. 1(1), 4, 5(2), (6), (7), 6, 7, 10.1, 14.....	870
Comparable Legislation.....	876
21.3.3 Overview of Statutory Scheme	876
Notes and Questions	878
21.3.4 Meaning of the Statute	879
(a) Entitlement.....	879
Notes and Questions	879
(b) Unequal Division	880
Notes and Questions	880
(c) Spouse.....	883
(d) Property	885
<i>Borges v. Santos</i> , 2017 ONSC 651.....	886
Notes and Questions	892
(e) Net Family Property — Financial Statements.....	893
(f) Deductions from NFP.....	894
Notes and Questions	895
(g) Excluded Property.....	895
<i>Testani v. Haughton</i> , 2019 ONSC 174	897
Notes and Question.....	901
(h) Valuation Date.....	902
Notes and Questions	905
(i) Impact of Equalization on Additional Rights	905
Notes and Questions	906
(j) Election.....	907
Notes and Questions	908
(k) Priorities.....	911
(l) Burden of the Equalization Payment	911

TABLE OF CONTENTS

Notes and Questions	912
(m) Payment of Entitlement	912
Notes and Questions	912
(n) Duties of Personal Representatives	912
Notes and Questions	912
(o) Property Excluded Under Domestic Contracts.....	913
Notes and Questions	913
(p) Equalization and the Matrimonial Home.....	913
Notes and Questions	915
Problems	916
21.4 LEGISLATION IN OTHER PROVINCES	917
Further Reading	919
21.5 ADDITIONAL SPOUSAL RIGHTS	919
21.5.1 Generally	919
21.5.2 The Matrimonial Home.....	920
21.5.3 Dower, Curtesy and Homestead Rights	920
 CHAPTER 22 SUPPORT OF DEPENDANTS	 923
22.1 INTRODUCTION.....	923
22.1.1 “Testamentary Freedom”	923
22.1.2 Family Provision	926
22.1.3 Genesis of the Current Model of Law	926
22.1.4 Principles Rationalizing the Support Obligation	927
<i>Tataryn v. Tataryn Estate</i> , 1994 CarswellBC 283, [1994] 2 S.C.R. 807	928
<i>Cummings v. Cummings</i> , 2004 CarswellOnt 99, 69 O.R. (3d) 397 (C.A.)	931
Notes and Questions	939
Further Reading	940
22.2 PRACTICE AND PROCEDURE	940
22.2.1 Forum	940
22.2.2 Parties.....	940
22.2.3 Pleadings and Notice.....	941
<i>Succession Law Reform Act</i> , R.S.O. 1990, c. S.26, s. 63(5)	941
22.2.4 Limitation Periods	943
<i>Succession Law Reform Act</i> , R.S.O. 1990, c. S.26, s. 61	943
22.2.5 Preservation of the Estate during Litigation	944
<i>Succession Law Reform Act</i> , R.S.O. 1990, c. S.26, s. 67	944
Notes and Questions	944
22.3 SATISFACTION OF SUPPORT OBLIGATIONS	946
22.3.1 Generally	946
<i>Succession Law Reform Act</i> , R.S.O. 1990, c. S.26, s. 57	946
<i>Re Cooper</i> , 1980 CarswellOnt 528, 30 O.R. (2d) 113 (S.C. (Div. Ct.))	947
22.3.3 “Inadequate Provision for Proper Support”	950
<i>Succession Law Reform Act</i> , R.S.O. 1990, c. S.26, s. 62	950
Notes and Questions	953
22.3.4 Waiver.....	956
<i>Succession Law Reform Act</i> , R.S.O. 1990, c. S.26, s. 63(4)	956

TABLE OF CONTENTS

Comparable Legislation	956
Notes and Questions	957
22.3.5 Spouses	958
Notes and Questions	961
22.3.6 Children	963
Notes and Questions	964
22.3.7 Parents	966
22.4 PROPERTY SUBJECT TO AN ORDER	967
22.4.1 Contracts to Leave Property by Will	967
<i>Succession Law Reform Act</i> , R.S.O. 1990, c. S.26, s. 71	967
Comparable Legislation	967
<i>Cowderoy v. Sorkos Estate</i> , 2014 ONCA 618, 99 E.T.R. (3d) 55	968
Further Reading	971
Notes and Questions	971
22.4.2 Property Falling into the Estate for the Support of	
Dependants	972
<i>Succession Law Reform Act</i> , R.S.O. 1990, c. S.26, s. 72	972
Comparable Legislation	973
Further Reading	974
<i>Moore v. Hughes</i> , 1981 CarswellOnt 493, 37 O.R. (2d) 785	
(H.C.J.).....	974
Notes and Questions	977
22.5 ORDERS	980
22.5.1 Introduction	980
22.5.2 Suspensory Orders	980
<i>Succession Law Reform Act</i> , R.S.O. 1990, c. S.26, s. 59	981
Comparable Legislation	981
Notes and Questions	981
22.5.3 Interim Orders	981
<i>Succession Law Reform Act</i> , R.S.O. 1990, c. S.26, s. 64	981
Comparable Legislation	981
Notes and Questions	982
22.5.4 The Contents of Orders	982
<i>Succession Law Reform Act</i> , R.S.O. 1990, c. S.26, ss. 63, 66, 68.....	982
Comparable Legislation	984
22.5.5 Change in Circumstances	985
<i>Succession Law Reform Act</i> , R.S.O. 1990, c. S.26, s. 65	985
Comparable Legislation	986
Notes and Questions	986

**PART VII
SOLICITOR'S DUTIES**

CHAPTER 23 SOLICITOR'S DUTIES	989
23.1 INTRODUCTION	989
23.2 TAKING INSTRUCTIONS FOR A WILL	989
23.2.1 Introduction	989
23.2.2 The Case Law	989
<i>Re Worrell</i> , 1969 CarswellOnt 248, [1970] 1 O.R. 184 (Surr. Ct.)	990

TABLE OF CONTENTS

Notes and Questions	993
Further Reading	995
23.3 DUTY OF CARE TOWARDS BENEFICIARIES	996
23.3.1 Introduction	996
23.3.2 The Case Law	996
<i>White v. Jones</i> , [1995] 2 A.C. 207 (H.L.)	998
Notes and Questions	1009
Further Reading	1015

**PART VIII
PARA-TESTAMENTARY ACTIONS**

CHAPTER 24 SUBSTITUTE DECISIONS	1019
24.1 INTRODUCTION	1019
24.1.1 Historical Development	1020
(a) “Power of Attorney”	1020
(b) “Substitute Decision-Making”	1023
24.1.2 Sources of Law	1024
24.1.3 Terminology and Scheme of the Ontario Statute	1028
24.2 CAPACITY AND INCAPACITY	1030
24.2.1 Generally	1030
<i>Substitute Decisions Act, 1992</i> , S.O. 1992, c. 30, ss. 1(1), 2, 6, 45 ...	1030
<i>Calvert (Litigation Guardian of) v. Calvert</i> , 1997 CarswellOnt	
581, 32 O.R. (3d) 281 (S.C.J.)	1031
Notes and Questions	1035
Further Reading	1036
24.2.2 Capacity to Grant a Continuing Power of Attorney	1036
<i>Substitute Decisions Act, 1992</i> , S.O. 1992, c. 30, ss. 8(1), 47(1)	1036
24.2.3 Assessment of Capacity	1037
<i>Substitute Decisions Act, 1992</i> , S.O. 1992, c. 30, ss. 3(1), 79	1037
<i>Abrams v. Abrams</i> , 2008 CarswellOnt 7788 (S.C.J.)	1039
Notes and Questions	1045
24.2.4 Challenging a Finding of Incapacity	1046
24.3 APPOINTMENT OF ATTORNEYS AND GUARDIANS	1047
24.3.1 Continuing Powers of Attorney	1047
(a) Formalities	1047
<i>Substitute Decisions Act, 1992</i> , S.O. 1992, c. 30, ss. 7(1), (7)-(8),	
10(1)-(2), (4)	1047
Notes and Questions	1048
(b) Conditions and Restrictions	1048
<i>Substitute Decisions Act, 1992</i> , S.O. 1992, c. 30, s. 7(2), (6)-(7)	1048
(c) Termination or Revocation of the Power of Attorney	1048
<i>Substitute Decisions Act, 1992</i> , S.O. 1992, c. 30, ss. 8(2), 12	1048
Notes and Questions	1049
24.3.2 Guardians	1049
(a) Statutory Guardian	1049
(b) Court-Appointed Guardian	1050
<i>Substitute Decisions Act, 1992</i> , S.O. 1992, c. 30, s. 22(1)-(3), (5)	1050
<i>Chu v. Chang</i> , 2010 ONSC 294	1051

TABLE OF CONTENTS

Notes and Questions	1057
24.4 POWERS AND OBLIGATIONS OF ATTORNEYS AND GUARDIANS	1058
24.4.1 Duty of Care and Fiduciary Duties Generally.....	1058
<i>Substitute Decisions Act, 1992</i> , S.O. 1992, c. 30, ss. 32(1), (7)-(8), 66(1)	1058
24.4.2 Personal Care	1059
<i>Substitute Decisions Act, 1992</i> , S.O. 1992, c. 30, ss. 59, 66	1059
<i>Cuthbertson v. Rasouli</i> , 2013 SCC 53	1062
Further Reading	1076
Notes and Questions	1076
24.4.3 Property Management.....	1077
(a) Generally.....	1077
<i>Substitute Decisions Act, 1992</i> , S.O. 1992, c. 30, ss. 31(1), 32	1077
<i>McDougald Estate v. Gooderham</i> , 2005 CarswellOnt 2407, 255 D.L.R. (4th) 435 (C.A.)	1078
Notes and Questions	1079
(b) Maintain Records.....	1080
Ontario Regulation 100/96 (under the <i>Substitute Decisions Act, 1992</i>).....	1080
(c) Duty to Account	1081
(d) Compensation	1081
<i>Substitute Decisions Act, 1992</i> , S.O. 1992, c. 30, s. 40.....	1081
Further Reading.....	1082
Notes and Questions	1082
INDEX.....	1083

