

# 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 Dependents .....	923

## **Part VII Solicitor's Duties**

Chapter 23 Solicitor's Duties .....	989
-------------------------------------	-----

## **Part VIII Para-Testamentary Actions**

Chapter 24 Substitute Decisions .....	1019
---------------------------------------	------

<b>Index.....</b>	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> .....	cvi

## PART I INTRODUCTION

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

## PART II ESTATE ADMINISTRATION

<b>CHAPTER 2 PROBATE AND ADMINISTRATION.....</b>	<b>27</b>
<b>2.1 INTRODUCTORY NOTE .....</b>	<b>27</b>
<b>2.2 THE ROLE OF THE COURTS .....</b>	<b>28</b>
<b>2.3 PROBATE JURISDICTION OF THE COURT .....</b>	<b>32</b>
<b>2.4 OBTAINING GRANTS.....</b>	<b>33</b>
<b>2.4.1 Purpose of Grants.....</b>	<b>33</b>
<b>2.4.2 Time Lapse .....</b>	<b>35</b>
<b>2.4.3 Types of Executors and Administrators [Estate Trustees] .....</b>	<b>36</b>
(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
<b>2.4.4 Special Types of Grants</b> .....	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
<b>2.4.5 Ancillary Grants and Resealing</b> .....	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
<b>2.4.6 Procedure</b> .....	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
<b>2.5 COSTS</b> .....	48
Further Reading.....	52
<b>2.6 CONTESTATION OF CLAIMS</b> .....	52
Further Reading.....	53
<b>2.7 PASSING OF ACCOUNTS</b> .....	54
<b>2.7.1 Generally</b> .....	54
<b>2.7.2 Compensation of Personal Representatives</b> .....	55

## TABLE OF CONTENTS

Further Reading.....	57
<b>2.7.3 Solicitors' Fees .....</b>	58
<b>2.8 DUTIES OF PERSONAL REPRESENTATIVES.....</b>	58
<b>2.8.1 Generally.....</b>	58
<b>2.8.2 Actions by or against Estate.....</b>	59
<b>2.8.3 Disposition of the Deceased's Body.....</b>	59
Further Reading.....	60
<b>2.8.4 Income Tax .....</b>	60
Further Reading.....	60
<b>2.9 PAYMENT OF DEBTS .....</b>	60
<b>2.10 SALE OF REAL PROPERTY .....</b>	62
<b>2.10.1 Generally .....</b>	62
<b>2.10.2 Powers of Sale.....</b>	63
(a) Introduction .....	63
(b) Testamentary Powers of Sale .....	63
(c) Statutory Powers of Sale and Conveyance .....	64
(i) <i>Introduction</i> .....	64
(ii) <i>Sales to Pay Debts</i> .....	64
(iii) <i>Sales to Distribute the Proceeds among the Beneficiaries</i> .....	64
(iv) <i>Division in Specie among the Beneficiaries</i> .....	65
<b>2.10.3 Sale by Beneficiaries .....</b>	65
<b>2.10.4 Sale of Minors' Lands.....</b>	66
<b>2.11 DISTRIBUTION OF ESTATE.....</b>	67
Further Reading.....	68

## PART III INTESTATE SUCCESSION

<b>CHAPTER 3 INTESTATE SUCCESSION.....</b>	71
<b>3.1 INTRODUCTION.....</b>	71
<b>3.2 DEVOLUTION OF PROPERTY.....</b>	72
<i>Estates Administration Act, R.S.O. 1990, c. E.22, s. 2</i> .....	72
Comparable Legislation.....	72
Notes and Questions .....	73
<b>3.3 DISTRIBUTION ON INTESTACY .....</b>	73
<b>3.3.1 Introduction .....</b>	73
Notes and Questions .....	74
<b>3.3.2 Spouses and Partners .....</b>	75
(a) Spouse.....	75
(i) <i>Definition of "Spouse"</i> .....	75
<i>Succession Law Reform Act, R.S.O. 1990, c. S.26, s. 1(1)</i> .....	75
Comparable Legislation.....	75
<i>Succession Law Reform Act, R.S.O. 1990, c. S.26, s. 43.1, added</i> by S.O. 2021, c. 4, Sched. 9, s. 6 .....	76
(ii) <i>Spouse but no Descendants</i> .....	76
<i>Succession Law Reform Act, R.S.O. 1990, c. S.26, s. 44</i> .....	76
Comparable Legislation.....	76
Notes and Questions .....	77
(iii) <i>Spouse and Descendants</i> .....	77

## TABLE OF CONTENTS

<i>(A) Preferential Share</i> .....	77
<i>Succession Law Reform Act</i> , R.S.O. 1990, c. S.26, s. 45 .....	77
Comparable Legislation .....	78
Notes and Questions .....	78
<i>(B) Distributive Share</i> .....	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>(i) Definition of "Spouse"</i> .....	79
<i>Wills, Estates and Succession Act</i> , S.B.C. 2009, c. 13, s. 2 .....	80
Comparable Legislation .....	80
Notes and Questions .....	81
<i>(ii) Spouse or Partner, but no Descendants</i> .....	82
<i>Wills and Succession Act</i> , S.A. 2010, c. W-12.2, s. 60 .....	82
Comparable Legislation .....	82
Notes and Questions .....	82
<i>(iii) Spouse or Partner and Descendants</i> .....	82
<i>(A) Preferential Share</i> .....	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
<i>(B) Distributive Share</i> .....	84
<i>Intestate Succession Act</i> , 2019, S.S. 2019, c. I-13.2, s. 6 .....	84
Comparable Legislation .....	84
Notes and Questions .....	85
<i>(iv) Both Spouse and Partner</i> .....	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
<b>3.3.3 Descendants</b> .....	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
<b>3.3.4 Posthumous Conceptions</b> .....	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
<b>3.3.5 Ascendants and Collaterals</b> .....	94
(a) Introduction .....	94
Table of Consanguinity .....	94
Notes and Questions .....	95
(b) Gradual Scheme .....	95

## TABLE OF CONTENTS

<i>Succession Law Reform Act</i> , R.S.O. 1990, c. S.26, s. 47(3)-(9) .....	95
Comparable Legislation.....	96
Notes and Questions .....	96
Further Reading.....	99
(c) Parentelic Scheme.....	99
<i>Intestate Succession Act</i> , C.C.S.M. I-85, ss. 4, 5.....	100
Comparable Legislation.....	101
Notes and Questions .....	101
(d) Problems .....	101
<b>3.3.6 Illegitimacy and Adoption .....</b>	<b>102</b>
<b>3.3.7 Common Deaths .....</b>	<b>102</b>
<b>3.4 PARTIAL INTESTACY.....</b>	<b>102</b>
<b>3.5 CONTRACTING OUT OF LEGISLATION.....</b>	<b>103</b>
<i>Caron v. Rowe</i> , 2013 ONSC 836, 86 E.T.R. (3d) 243 .....	104
Notes and Questions .....	106
<b>3.6 ADVANCEMENT .....</b>	<b>106</b>
<i>Estates Administration Act</i> , R.S.O. 1990, c. E.22, s. 25.....	107
Comparable Legislation.....	107
Further Reading.....	107
Notes and Questions .....	108

## PART IV PROVING WILLS

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

## TABLE OF CONTENTS

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

## TABLE OF CONTENTS

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

## TABLE OF CONTENTS

Notes and Questions .....	268
<b>7.3 STATUTORY MODIFICATIONS.....</b>	<b>269</b>
<i>Wills, Estates and Succession Act, S.B.C. 2009, c. 13, s. 59.....</i>	269
Comparable Legislation.....	269
Further Reading.....	270
Notes and Questions .....	270
<b>7.4 PATENT MISTAKES.....</b>	<b>270</b>
<b>7.5 DRAFTING ERRORS .....</b>	<b>270</b>
<i>Conner Estate v. Worthing, 2020 BCSC 150, 55 E.T.R. (4th) 193 .....</i>	274
Notes and Questions .....	278
<b>7.6 EXECUTION OF WRONG INSTRUMENT .....</b>	<b>279</b>
Further Reading.....	280
<i>Re Brander, 1952 CarswellBC 85, [1952] 4 D.L.R. 688 (S.C.).....</i>	280
Notes and Questions .....	281
<b>CHAPTER 8 RELATED MATTERS.....</b>	<b>283</b>
<b>8.1 INTRODUCTION.....</b>	<b>283</b>
<b>8.2 CONFLICT OF LAWS .....</b>	<b>283</b>
<b>8.2.1 The Issues .....</b>	<b>284</b>
<b>8.2.2 Administration of Estates .....</b>	<b>284</b>
<b>8.2.3 Succession .....</b>	<b>286</b>
(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, R.S.O. 1990, c. S.26, ss. 34-41 .....</i>	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
<b>8.3 TESTAMENTARY GUARDIANS AND CUSTODIANS .....</b>	<b>295</b>
<i>Children's Law Reform Act, R.S.O. 1990, c. C.12, s. 61.....</i>	296
Comparable Legislation.....	297
Notes and Questions .....	297
Further Reading.....	298
<b>CHAPTER 9 FORMAL VALIDITY OF WILLS .....</b>	<b>299</b>
<b>9.1 INTRODUCTION.....</b>	<b>299</b>
Further Reading.....	299
<b>9.2 ATTESTED WILLS.....</b>	<b>299</b>
<b>9.2.1 Introduction .....</b>	<b>299</b>

## 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
<b>9.2.2 Formalities While Parties Are in Each Other's Electronic</b>	
Presence .....	306
<b>9.2.3 In Writing</b> .....	
<i>Murray v. Haylow</i> , 1927 CarswellOnt 135, 60 O.L.R. 629 (C.A.) .....	307
Notes and Questions .....	307
<b>9.2.4 Signed by the Testator or an Amanuensis</b> .....	
<i>Re White</i> , 1947 CarswellNS 22, [1948] 1 D.L.R. 572 (App. Div.) .....	308
Notes and Questions .....	310
<b>9.2.5 At the End of the Will</b> .....	
<i>Yen Estate v. Yen-Zimmerman</i> , 2013 BCCA 423, 90 E.T.R. (3d)	311
184 .....	312
Notes and Questions .....	314
<b>9.2.6 Attestation</b> .....	
(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
<b>9.3 HOLOGRAPH WILLS</b> .....	
<b>9.3.1 Introduction</b> .....	
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
<b>9.3.2 A Deliberate or Fixed and Final Intention</b> .....	
<i>Bennett v. Toronto General Trusts Corp.</i> , 1958 CarswellMan 66, [1958] S.C.R. 392 .....	325
Notes and Questions .....	327
<b>9.3.3. Use of Printed Wills</b> .....	
<i>Re Forest</i> , 1981 CarswellSask 102, 121 D.L.R. (3d) 552 (C.A.) .....	329
Notes and Questions .....	330
<b>9.3.4 Formalities</b> .....	
<i>Re Clarke</i> , 1982 CarswellOnt 816, 39 O.R. (2d) 392 (Surr. Ct.) .....	331
Notes and Questions .....	332
<b>9.3.5 Holograph Codicils to Formal Wills</b> .....	
Notes and Questions .....	334
<b>9.3.6 Incorporation by Reference of Non-Holograph Documents</b> .....	
<i>Re Dixon-Marsden Estate</i> , 1985 CarswellOnt 711, 21 E.T.R. 216 (Surr. Ct.) .....	334
Notes and Questions .....	336

## TABLE OF CONTENTS

<b>9.4 VALIDATING POWERS.....</b>	<b>337</b>
Further Reading.....	338
<i>Wills Act, C.C.S.M., c. W150, s. 23</i> .....	338
Comparable Legislation.....	338
<i>Succession Law Reform Act, R.S.O. 1990, c. S.26, s. 21.1, added by S.O. 2021, c. 4, Sched. 9, s. 5</i> .....	338
Notes and Questions .....	339
<b>9.5 ELECTRONIC WILLS.....</b>	<b>344</b>
<i>Wills, Estates and Succession Act, S.B.C. 2009, c. 13, ss. 35.1ff., amended by S.B.C. 2020, c. 12</i> .....	345
Notes and Questions .....	348
<b>9.6 STATUTORY WILLS .....</b>	<b>348</b>
<i>Infirm Persons Act, 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)</i> .....	349
Notes and Questions .....	350
<b>9.7 PRIVILEGED WILLS .....</b>	<b>350</b>
<i>Succession Law Reform Act, R.S.O. 1990, c. S.26, s. 5</i> .....	350
Comparable Legislation.....	351
Notes and Questions .....	351
<b>9.8 THE INTERNATIONAL WILL .....</b>	<b>353</b>
<i>Succession Law Reform Act, R.S.O. 1990, c. S.26, s. 42</i> .....	353
<i>Schedule (Convention and Annex)</i> .....	353
Comparable Legislation.....	356
Notes and Questions .....	356
<b>CHAPTER 10 REVOCATION OF WILLS .....</b>	<b>359</b>
<b>10.1 SCOPE OF THIS CHAPTER.....</b>	<b>359</b>
Further Reading.....	359
<b>10.2 VITIATING FACTORS .....</b>	<b>359</b>
<b>10.3 REVOCATION BY OPERATION OF LAW .....</b>	<b>360</b>
<b>10.3.1 Introduction .....</b>	<b>360</b>
<b>10.3.2 By Marriage .....</b>	<b>360</b>
(a) Generally .....	360
Further Reading.....	361
<i>Wills Act, R.S.N.S. 1989, c. 505, s. 17, running head</i> .....	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, R.S.N.S. 1989, c. 505, s. 17(a)</i> .....	366
Comparable Legislation.....	366
<i>Re Ratzlaff Estate, 2002 SKCA 53, 44 E.T.R. (2d) 286.</i> .....	366
Notes and Questions .....	370
(e) Election .....	372
<i>Wills Act, R.S.N.S. 1989, c. 505, s. 17(b)</i> .....	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
<b>10.3.3 By Dissolution of Marriage</b> .....	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
<b>10.4 REVOCATION BY ACT OF THE TESTATOR</b> .....	382
<b>10.4.1 Generally</b> .....	382
<i>Wills Act</i> , R.S.N.B. 1973, c. W-9, s. 15(b), (c) .....	382
Comparable Legislation.....	382
<b>10.4.2 By Subsequent Document</b> .....	382
<i>Re Davies</i> , [1928] Ch. 24 (Ch. Div.) .....	383
Notes and Question.....	385
<b>10.4.3 By Physical Act</b> .....	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
<b>10.5 ALTERATIONS IN A WILL</b> .....	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
<b>10.6 CONDITIONAL REVOCATION</b> .....	397
<b>10.6.1 Generally</b> .....	397
<b>10.6.2 The Testator Believes the Will is Void</b> .....	397
<b>10.6.3 The Testator is Mistaken About the Facts or the Law</b> .....	398
<i>Montreal Trust Co. v. Hawley</i> , 1981 CarswellBC 559, 10 E.T.R. 282 (S.C.) .....	398
<b>10.6.4 Dependent Relative Revocation</b> .....	400
<i>Re Bolton Estate</i> , 1961 CarswellMan 31, 29 D.L.R. (2d) 173 (C.A.) .....	370
Notes and Questions .....	402
<b>10.7 REVIVAL OF REVOKED WILLS</b> .....	403
<i>Wills Act</i> , S.S. 1996, c. W-4.1, s. 20 .....	404
Comparable Legislation.....	404

## TABLE OF CONTENTS

<i>Re Ott</i> , 1972 CarswellOnt 136, 24 D.L.R. (3d) 517 (Surr. Ct.) .....	404
Notes and Questions .....	405
 <b>CHAPTER 11 OTHER PROBATE MATTERS .....</b> 409	
<b>11.1 INTRODUCTION.....</b>	<b>409</b>
<b>11.2 PROOF OF DEATH AND RELATED MATTERS.....</b>	<b>409</b>
<b>11.2.1 Generally .....</b>	<b>409</b>
<b>11.2.2 The Common Law .....</b>	<b>410</b>
(a) Inference of Death .....	410
(b) Presumption of Death.....	410
(c) Jurisdictional Issue .....	411
(d) Return from “The Dead”.....	412
Notes and Questions .....	413
<i>Re Miller</i> , 1978 CarwellOnt 1299, 22 O.R. (2d) 111 (H.C.J.).....	414
<b>11.2.3 Special Statutory Provisions .....</b>	<b>417</b>
Notes and Questions .....	418
<b>11.2.4 Absentees.....</b>	<b>418</b>
<i>Absentees Act</i> , R.S.O. 1990, c. A.3, ss. 1-8 .....	418
Comparable Legislation.....	420
Notes and Questions .....	420
<b>11.2.5 General Statutory Reform .....</b>	<b>422</b>
<i>Declarations of Death Act</i> , 2002, S.O. 2002, c. 14, Sched., ss. 1-8 .....	422
Comparable Legislation.....	425
Notes and Questions .....	425
Further Reading.....	427
<b>11.3 PROOF OF LOST WILLS .....</b>	<b>427</b>
<b>11.3.1 Presumption of Revocation .....</b>	<b>428</b>
(a) Rebutting the Presumption .....	429
<b>11.3.3 Probate in Part .....</b>	<b>429</b>
Further Reading.....	430
<i>Goold Estate v. Ashton</i> , 2016 ABQB 303, 19 E.T.R. (4th) 314 .....	430
Notes and Questions .....	434

## PART V THE CONSTRUCTION OF WILLS

<b>CHAPTER 12 CAPACITY OF BENEFICIARIES.....</b>	<b>441</b>
<b>12.1 INTRODUCTION.....</b>	<b>441</b>
<b>12.2 ILLEGITIMACY AND EVOLVING CONCEPTS OF PARENTHOOD .....</b>	<b>441</b>
<i>Succession Law Reform Act</i> , 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
<b>12.3 ADOPTION .....</b>	<b>450</b>
<i>Child, Youth and Family Services Act</i> , 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
<b>12.4 HOMICIDE .....</b>	<b>454</b>
<b>12.4.1 Generally .....</b>	<b>454</b>
<b>12.4.2 Problems of Proof.....</b>	<b>456</b>
Notes and Questions .....	458
<b>12.4.3 Nature of the Crime.....</b>	<b>459</b>
Notes and Questions .....	460
<b>12.4.4 The Limits of Disentitlement .....</b>	<b>460</b>
<i>Re Gore</i> , 1971 CarswellOnt 246, [1972] 1 O.R. 550 (H.C.J.).....	461
Notes and Questions .....	463
Further Reading.....	468
<b>12.5 FOREIGN BENEFICIARIES .....</b>	<b>469</b>
Notes and Questions .....	469
<b>12.6 WITNESSES .....</b>	<b>470</b>
<b>12.6.1 Generally .....</b>	<b>470</b>
<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
<b>12.6.2 Gift to Witness in Representative Capacity .....</b>	<b>474</b>
<i>Re Ray's Will Trusts</i> , [1936] Ch. 520 (Ch. Div.).....	474
Notes and Questions .....	476
<b>12.6.3 Supernumerary Witnesses .....</b>	<b>476</b>
Notes and Questions .....	476
<b>CHAPTER 13 GENERAL PRINCIPLES OF CONSTRUCTION .....</b>	<b>479</b>
<b>13.1 SCOPE OF THIS CHAPTER .....</b>	<b>479</b>
Further Reading.....	479
<b>13.2 JURISDICTION OF COURTS .....</b>	<b>479</b>
<b>13.2.1 Generally .....</b>	<b>479</b>
<b>13.2.2 Function of the Court of Construction.....</b>	<b>481</b>
<b>13.3 PRINCIPLES AND RULES OF CONSTRUCTION .....</b>	<b>483</b>
<b>13.3.1 General Principles .....</b>	<b>483</b>
(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>Eiusdem 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
<b>13.3.2 Specific Rules of Construction .....</b>	<b>490</b>
(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
<b>13.3.3 Statutory Rules</b> .....	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
<b>13.4 THE MEANING OF PARTICULAR EXPRESSIONS</b> .....	507
<b>13.4.1 Generally</b> .....	507
<b>13.4.2 Prima Facie Meaning</b> .....	507
<i>Perrin v. Morgan</i> , [1943] A.C. 399 (H.L.).....	508
Notes and Questions .....	512
<b>13.4.3 Words Defined by the Testator</b> .....	513
<i>Re Helliwell</i> , [1916] 2 Ch. 580 (Ch. Div.) .....	513
Notes and Questions .....	514
<b>13.4.4 Terms of Art</b> .....	515
<i>Re Cook</i> , [1948] Ch. 212 (Ch. Div.) .....	515
Notes and Questions .....	517
<b>13.5 PARTIAL INTESTACIES</b> .....	517
<i>National Trust Co. v. Fleury</i> , 1965 CarswellOnt 74, [1965] S.C.R. 817 .....	518
Notes and Questions .....	520
<b>13.6 ADMISSIBILITY OF EVIDENCE</b> .....	521
<b>13.6.1 Introduction</b> .....	521
<b>13.6.2 Common Law</b> .....	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
<b>13.6.3 Evidence of the Testator's Intention .....</b>	<b>532</b>
<i>Re Carrick</i> , [1929] 3 D.L.R. 373, 64 O.L.R. 39 (H.C.) .....	533
Notes and Questions .....	535
<b>13.6.4 Legislative Changes.....</b>	<b>537</b>
<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
<b>13.7 DRAFTING ERRORS AND OMISSIONS .....</b>	<b>539</b>
<b>13.7.1 Generally .....</b>	<b>539</b>
<b>13.7.2 Drafting Omissions .....</b>	<b>539</b>
<i>Re Freeman Estate</i> , 1975 CarswellNS 264, 58 D.L.R. (3d)	541
541 (N.S.S.C., T.D.).....	541
Notes and Questions .....	543
Further Reading.....	545
<b>13.7.3 Drafting Errors.....</b>	<b>545</b>
<i>Re MacDonnell</i> , 1982 CarswellOnt 606, 133 D.L.R. (3d) 128	546
(C.A.).....	546
Notes and Questions .....	548
<b>13.7.4 Rejection of Inaccurate Description.....</b>	<b>549</b>
<i>Re Beauchamp</i> , 1975 CarswellOnt 538, 56 D.L.R. (3d) 644 (H.C.) .....	549
Notes and Questions .....	551
<b>13.7.5 Legislative Changes.....</b>	<b>553</b>
<i>Wills and Succession Act</i> , S.A. 2010, c. W-12.2, s. 39 .....	553
Comparable Legislation.....	553
Notes and Questions .....	554
<b>CHAPTER 14 TESTAMENTARY GIFTS.....</b>	<b>555</b>
<b>14.1 SCOPE.....</b>	<b>555</b>
<b>14.2 SUBJECT MATTER.....</b>	<b>555</b>
Notes and Question.....	558
<b>14.3 TYPES .....</b>	<b>559</b>
<b>14.3.1 Generally .....</b>	<b>559</b>
<b>14.3.2 General and Pecuniary Gifts.....</b>	<b>561</b>
<i>Re Millar</i> , [1927] 3 D.L.R. 270, 60 O.L.R. 434 (S.C.) .....	561
Notes and Question.....	562
<b>14.3.3 Demonstrative Gifts .....</b>	<b>564</b>
<i>Celentano Estate v. Ross</i> , 2014 BCSC 27, 96 E.T.R. (3d) 265 .....	565
Notes and Questions .....	567
<b>14.3.4 Specific Gifts .....</b>	<b>567</b>
Further Reading.....	568
<i>Culbertson v. Culbertson</i> , 1967 CarswellSask 36, 62 D.L.R. (2d)	568
134 (C.A.).....	568
Notes and Questions .....	569
<b>14.3.5 Payment of Interest on Testamentary Gifts.....</b>	<b>571</b>
Notes and Questions .....	572
<b>14.3.6 Residuary Gifts.....</b>	<b>572</b>
Notes and Questions .....	573
<b>14.4 ABATEMENT .....</b>	<b>575</b>

## TABLE OF CONTENTS

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

## TABLE OF CONTENTS

Notes and Questions .....	617
<b>14.10 PRESUMPTIONS.....</b>	<b>617</b>
<b>14.10.1 Introduction .....</b>	<b>617</b>
<b>14.10.2 Election .....</b>	<b>617</b>
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
<b>14.10.3 Satisfaction .....</b>	<b>622</b>
<i>Re Trider</i> , 1978 CarswellNS 76, 84 D.L.R. (3d) 336 (Prob. Ct.).....	622
Notes and Questions .....	623
<b>14.10.4 Rule against Double Portions.....</b>	<b>624</b>
<i>Re George's Will Trusts</i> , [1949] Ch. 154 (Ch. Div.) .....	624
Notes and Questions .....	627
<b>14.10.5 Abolition.....</b>	<b>628</b>
<i>Wills and Succession Act</i> , S.A. 2010, c. W-12.2, s. 110 .....	628
Comparable Legislation.....	629
Notes and Questions .....	629
<b>14.11 DISCLAIMER.....</b>	<b>630</b>
<b>14.11.1 Introduction .....</b>	<b>630</b>
Further Reading.....	632
<b>14.11.2 Acceleration .....</b>	<b>632</b>
<i>Brannon v. British Columbia (Public Trustee)</i> , 1991 CarswellBC 103, 41 E.T.R. 210 (C.A.) .....	632
Notes and Questions .....	636
<b>14.11.3 Disclaimer and Variation of Trusts .....</b>	<b>640</b>
Notes and Questions .....	641
<b>CHAPTER 15 LAPSE AND SURVIVORSHIP .....</b>	<b>643</b>
<b>15.1 INTRODUCTION.....</b>	<b>643</b>
Further Reading.....	643
<b>15.2 DISPOSITION OF LAPSED GIFT .....</b>	<b>643</b>
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
<b>15.3 ANTI-LAPSE LEGISLATION.....</b>	<b>648</b>
<b>15.3.1 Generally .....</b>	<b>648</b>
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
<b>15.3.2 Contrary Intention .....</b>	<b>653</b>
<i>Moore v. Moore</i> , 1982 CarswellAlta 204, 13 E.T.R. 25 (Q.B.) .....	654
Notes and Questions .....	656

## TABLE OF CONTENTS

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

## TABLE OF CONTENTS

<b>16.3 IDENTIFYING CLASS GIFTS .....</b>	<b>686</b>
<b>16.3.1 Class Gift or Gift <i>Nominatum</i>?.....</b>	<b>686</b>
<i>Re Snyder</i> , 1960 CarwellOnt 88, [1960] O.R. 107 (H.C.) .....	688
Notes and Questions .....	690
<b>16.3.2 Artificial Classes.....</b>	<b>691</b>
<i>Kingsbury v. Walter</i> , [1901] A.C. 187 (H.L.).....	692
Notes and Questions .....	694
<b>16.3.3. Description by Number.....</b>	<b>695</b>
<i>Re Burgess</i> , 1968 CarswellBC 58, 67 D.L.R. (2d) 526 (S.C.) .....	695
Notes and Questions .....	696
<b>16.4 COMPOSITION OF THE CLASS .....</b>	<b>697</b>
<b>16.4.1 Generally.....</b>	<b>697</b>
<i>Re Hyslop</i> , 1978 CarswellOnt 523, 3 E.T.R. 216 (H.C.) .....	698
Notes and Questions .....	700
<b>16.4.2 Class Closing Rules.....</b>	<b>701</b>
(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
<b>CHAPTER 17 VESTED AND CONTINGENT GIFTS .....</b>	<b>715</b>
<b>17.1 SCOPE OF THIS CHAPTER .....</b>	<b>715</b>
Further Reading.....	715
<b>17.2 VESTED AND CONTINGENT GIFTS.....</b>	<b>716</b>
<b>17.2.1 Background .....</b>	<b>716</b>
<b>17.2.2 Meanings and Distinctions.....</b>	<b>717</b>
(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
<b>17.3 GENERAL PRINCIPLES OF VESTING.....</b>	<b>722</b>
<b>17.3.1 Introduction .....</b>	<b>722</b>
<b>17.3.2 Presumption in Favour of Early Vesting.....</b>	<b>722</b>
<b>17.3.3 Presumption in Favour of Condition Subsequent .....</b>	<b>724</b>
<b>17.3.4 Presumption in Favour of Postponement of Enjoyment .....</b>	<b>725</b>
<b>17.3.5 Presumption in Favour of Indefeasible Interests.....</b>	<b>725</b>

## TABLE OF CONTENTS

<b>17.4 SPECIFIC PRINCIPLES OF VESTING .....</b>	<b>726</b>
<b>17.4.1 Introduction .....</b>	<b>726</b>
<b>17.4.2 Gifts Over on Death Generally .....</b>	<b>726</b>
(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
<b>17.4.3 Gifts Over on Death Under Specified Age.....</b>	<b>732</b>
<i>White v. Barton</i> , 1941 CarswellOnt 76, [1941] S.C.R. 426.....	733
Notes and Questions .....	734
<b>17.4.4 Gifts Over on Death Before Receipt .....</b>	<b>735</b>
<i>Royal Trust Co. v. East</i> , 1978 CarswellBC 468), 3 E.T.R. 55 (S.C.).....	735
Notes and Questions .....	737
<b>17.4.5 Convenience of the Estate Rule.....</b>	<b>739</b>
<i>Re Taylor</i> , 1972 CarswellOnt 370, [1972] 3 O.R. 349 (H.C.J.) .....	740
Notes and Questions .....	745
<b>17.4.6 Postponed Payment.....</b>	<b>746</b>
<i>Re Squire</i> , 1962 CarswellOnt 199, [1962] O.R. 863 (H.C.J.).....	747
Notes and Questions .....	749
<b>17.4.7 Survivorship .....</b>	<b>752</b>
(a) Survivorship Generally .....	752
<i>Strohschein 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
<b>17.4.8 The Rule in <i>Boraston's Case</i>.....</b>	<b>758</b>
Notes and Questions .....	759
 <b>CHAPTER 18 VOID CONDITIONS.....</b>	<b>761</b>
 <b>18.1 INTRODUCTION.....</b>	<b>761</b>
 <b>18.2 CONSEQUENCES OF VOID CONDITIONS .....</b>	<b>762</b>
Notes and Questions .....	764
 <b>18.3 CONDITIONS CONTRARY TO PUBLIC POLICY .....</b>	<b>765</b>
<b>18.3.1 Generally .....</b>	<b>765</b>
<b>18.3.2 Guiding Principles .....</b>	<b>766</b>
<b>18.3.3 Conditions Requiring Divorce and Abandonment .....</b>	<b>768</b>
Notes and Questions .....	769
<b>18.3.4 Restraints on Marriage .....</b>	<b>770</b>
<i>Re Goodwin</i> , 1969 CarswellAlta 114, 3 D.L.R. (3d) 281 (S.C., T.D.).....	771
Notes and Questions .....	772
<b>18.3.5 Discriminatory Conditions .....</b>	<b>773</b>
Notes and Questions .....	780
Further Reading.....	782
<b>18.3.6 <i>In Terrorem</i> Conditions .....</b>	<b>782</b>
<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
<b>18.3.7 Conditions <i>Malum Prohibitum</i> and <i>Malum in Se</i> .....</b>	<b>788</b>
<i>Re McBride</i> , 1980 CarswellOnt 523, 27 O.R. (2d) 513 (H.C.J.) .....	789
Notes and Questions .....	790
<b>18.3.8 Repugnant Conditions .....</b>	<b>791</b>
<i>Carter v. May</i> , 1966 CarswellNfld 7, 60 D.L.R. (2d) 70	
(S.C., T.D.).....	792
Notes and Questions .....	793
<b>18.4 CONDITIONS IMPOSSIBLE OF PERFORMANCE.....</b>	<b>795</b>
<i>Re MacDonald</i> , 1971 CarswellOnt 652, [1971] 2 O.R. 577 (H.C.J.)...	797
Notes and Questions .....	799
<b>18.5 UNCERTAIN CONDITIONS .....</b>	<b>800</b>
<i>Re Tuck's Settlement Trusts; Public Trustee v. Tuck</i> , [1978] Ch.	
49 (C.A.).....	801
Notes and Questions .....	805
 <b>CHAPTER 19 PERPETUITIES .....</b>	 <b>807</b>
 <b>19.1 SCOPE OF THIS CHAPTER .....</b>	 807
Further Reading.....	807
<b>19.2 HISTORY OF PERPETUITIES .....</b>	<b>808</b>
<b>19.3 RULE IN <i>WHITBY v. MITCHELL</i> .....</b>	<b>809</b>
<b>19.4 RULE AGAINST INDEFINITE DURATION .....</b>	<b>810</b>
<b>19.5 RULE AGAINST PERPETUITIES AT COMMON LAW .....</b>	<b>811</b>
<b>19.5.1 Introduction .....</b>	<b>811</b>
<b>19.5.2 Perpetuity Period .....</b>	<b>811</b>
(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
<b>19.5.3 Application of the Rule to Various Interests .....</b>	<b>817</b>
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
<b>19.6 RULE AGAINST PERPETUITIES UNDER STATUTE.....</b>	<b>824</b>
<b>19.6.1 Introduction .....</b>	<b>824</b>
<b>19.6.2 Wait and See Principle .....</b>	<b>825</b>
<b>19.6.3 Perpetuity Period .....</b>	<b>826</b>
<b>19.6.4 Measuring Lives.....</b>	<b>827</b>
(a) Generally.....	827
(b) Statutory List Model .....	827
(c) Statutory Formula Model.....	828
<b>19.6.5 Specific Reforms .....</b>	<b>830</b>
(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
<b>19.6.6 Application of the Statutory Rule to Various Interests.....</b>	<b>834</b>
(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
<b>19.6.7 Modification of the Rule against Indefinite Duration .....</b>	<b>837</b>
Further Reading.....	838
<b>19.7 APPLICATION OF THE RULE IN COMMERCIAL CONTEXTS .....</b>	<b>838</b>
<b>19.8 ABOLITION OF THE RULES AGAINST PERPETUITIES.....</b>	<b>842</b>
Notes and Questions .....	845
 <b>CHAPTER 20 ACCUMULATIONS .....</b>	<b>847</b>
 <b>20.1 INTRODUCTION.....</b>	<b>847</b>
Further Reading.....	849
Notes and Questions .....	849
<b>20.2 THE STATUTE .....</b>	<b>849</b>
<i>Accumulations Act</i> , R.S.O. 1990, c. A.5, ss. 1-5.....	849
Comparable Legislation.....	851
Notes and Questions .....	851
<b>20.3 THE ACCUMULATION PERIODS .....</b>	<b>851</b>
<b>20.3.1 Generally .....</b>	<b>851</b>
<b>20.3.2 Twenty-one Years from Testator's Death .....</b>	<b>851</b>
<i>Re Arnold</i> , 1955 CarswellBC 81, [1955] 4 D.L.R. 535 (S.C.).....	852
<b>20.3.3 Duration of Minorities of Persons Living at Testator's Death .....</b>	<b>853</b>
Notes and Questions .....	854
<b>20.3.4 Duration of Minorities of Persons Entitled to Income if         of Full Age .....</b>	<b>854</b>
<b>20.3.5 Conclusion .....</b>	<b>855</b>
Problems .....	855

## TABLE OF CONTENTS

<b>20.4 TERMINATING THE ACCUMULATION .....</b>	855
Notes and Questions .....	856
<b>20.5 DESTINATION OF EXCESS INCOME.....</b>	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
<b>20.6 EXCEEDING THE ACCUMULATION PERIOD .....</b>	859
<i>Re Struthers</i> (1980), 29 O.R. (2d) 616 (C.A.) .....	860
Notes and Questions .....	864

## PART VI FAMILY PROTECTION

<b>CHAPTER 21 SPOUSAL RIGHTS.....</b>	867
<b>21.1 INTRODUCTION.....</b>	867
Further Reading.....	868
<b>21.2 MATRIMONIAL PROPERTY .....</b>	868
<b>21.3 FAMILY LAW ACT (ONTARIO).....</b>	869
<b>21.3.1 Introduction .....</b>	869
Further Reading.....	869
<b>21.3.2 The Statute.....</b>	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
<b>21.3.3 Overview of Statutory Scheme.....</b>	876
Notes and Questions .....	878
<b>21.3.4 Meaning of the Statute.....</b>	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
<b>21.4 LEGISLATION IN OTHER PROVINCES.....</b>	917
Further Reading.....	919
<b>21.5 ADDITIONAL SPOUSAL RIGHTS .....</b>	919
<b>21.5.1 Generally .....</b>	919
<b>21.5.2 The Matrimonial Home.....</b>	920
<b>21.5.3 Dower, Curtesy and Homestead Rights .....</b>	920
<b>CHAPTER 22 SUPPORT OF DEPENDANTS .....</b>	923
<b>22.1 INTRODUCTION.....</b>	923
<b>22.1.1 “Testamentary Freedom” .....</b>	923
<b>22.1.2 Family Provision .....</b>	926
<b>22.1.3 Genesis of the Current Model of Law .....</b>	926
<b>22.1.4 Principles Rationalizing the Support Obligation .....</b>	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
<b>22.2 PRACTICE AND PROCEDURE .....</b>	940
<b>22.2.1 Forum .....</b>	940
<b>22.2.2 Parties.....</b>	940
<b>22.2.3 Pleadings and Notice.....</b>	941
<i>Succession Law Reform Act</i> , R.S.O. 1990, c. S.26, s. 63(5) .....	941
<b>22.2.4 Limitation Periods .....</b>	943
<i>Succession Law Reform Act</i> , R.S.O. 1990, c. S.26, s. 61 .....	943
<b>22.2.5 Preservation of the Estate during Litigation .....</b>	944
<i>Succession Law Reform Act</i> , R.S.O. 1990, c. S.26, s. 67 .....	944
Notes and Questions .....	944
<b>22.3 SATISFACTION OF SUPPORT OBLIGATIONS .....</b>	946
<b>22.3.1 Generally .....</b>	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
<b>22.3.3 “Inadequate Provision for Proper Support”.....</b>	950
<i>Succession Law Reform Act</i> , R.S.O. 1990, c. S.26, s. 62 .....	950
Notes and Questions .....	953
<b>22.3.4 Waiver.....</b>	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
<b>22.3.5 Spouses.....</b>	<b>958</b>
Notes and Questions .....	961
<b>22.3.6 Children.....</b>	<b>963</b>
Notes and Questions .....	964
<b>22.3.7 Parents.....</b>	<b>966</b>
<b>22.4 PROPERTY SUBJECT TO AN ORDER .....</b>	<b>967</b>
<b>    22.4.1 Contracts to Leave Property by Will .....</b>	<b>967</b>
<i>Succession Law Reform Act, R.S.O. 1990, c. S.26, s. 71</i> .....	967
Comparable Legislation.....	967
<i>Cowderoy v. Sorkos Estate, 2014 ONCA 618, 99 E.T.R. (3d) 55</i> .....	968
Further Reading.....	971
Notes and Questions .....	971
<b>    22.4.2 Property Falling into the Estate for the Support of         Defendants.....</b>	<b>972</b>
<i>Succession Law Reform Act, R.S.O. 1990, c. S.26, s. 72</i> .....	972
Comparable Legislation.....	973
Further Reading.....	974
<i>Moores v. Hughes, 1981 CarswellOnt 493, 37 O.R. (2d) 785             (H.C.J.)</i> .....	974
Notes and Questions .....	977
<b>22.5 ORDERS.....</b>	<b>980</b>
<b>    22.5.1 Introduction .....</b>	<b>980</b>
<b>    22.5.2 Suspensory Orders .....</b>	<b>980</b>
<i>Succession Law Reform Act, R.S.O. 1990, c. S.26, s. 59</i> .....	981
Comparable Legislation.....	981
Notes and Questions .....	981
<b>    22.5.3 Interim Orders.....</b>	<b>981</b>
<i>Succession Law Reform Act, R.S.O. 1990, c. S.26, s. 64</i> .....	981
Comparable Legislation.....	981
Notes and Questions .....	982
<b>    22.5.4 The Contents of Orders.....</b>	<b>982</b>
<i>Succession Law Reform Act, R.S.O. 1990, c. S.26, ss. 63, 66, 68</i> .....	982
Comparable Legislation.....	984
<b>    22.5.5 Change in Circumstances.....</b>	<b>985</b>
<i>Succession Law Reform Act, R.S.O. 1990, c. S.26, s. 65</i> .....	985
Comparable Legislation.....	986
Notes and Questions .....	986
<b>PART VII</b>	
<b>SOLICITOR'S DUTIES</b>	
<b>CHAPTER 23 SOLICITOR'S DUTIES.....</b>	<b>989</b>
<b>23.1 INTRODUCTION.....</b>	<b>989</b>
<b>23.2 TAKING INSTRUCTIONS FOR A WILL.....</b>	<b>989</b>
<b>23.2.1 Introduction .....</b>	<b>989</b>
<b>23.2.2 The Case Law.....</b>	<b>989</b>
<i>Re Worrell, 1969 CarswellOnt 248, [1970] 1 O.R. 184 (Surr. Ct.)</i> .....	990

## TABLE OF CONTENTS

Notes and Questions .....	993
Further Reading.....	995
<b>23.3 DUTY OF CARE TOWARDS BENEFICIARIES .....</b>	<b>996</b>
<b>23.3.1 Introduction .....</b>	<b>996</b>
<b>23.3.2 The Case Law.....</b>	<b>996</b>
<i>White v. Jones, [1995] 2 A.C. 207 (H.L.).....</i>	<i>998</i>
Notes and Questions .....	1009
Further Reading.....	1015
<b>PART VIII</b>	
<b>PARA-TESTAMENTARY ACTIONS</b>	
<b>CHAPTER 24 SUBSTITUTE DECISIONS.....</b>	<b>1019</b>
<b>24.1 INTRODUCTION.....</b>	<b>1019</b>
<b>24.1.1 Historical Development .....</b>	<b>1020</b>
(a) “Power of Attorney” .....	1020
(b) “Substitute Decision-Making” .....	1023
<b>24.1.2 Sources of Law .....</b>	<b>1024</b>
<b>24.1.3 Terminology and Scheme of the Ontario Statute .....</b>	<b>1028</b>
<b>24.2 CAPACITY AND INCAPACITY .....</b>	<b>1030</b>
<b>24.2.1 Generally .....</b>	<b>1030</b>
<i>Substitute Decisions Act, 1992, S.O. 1992, c. 30, ss. 1(1), 2, 6, 45 ...</i>	<i>1030</i>
<i>Calvert (Litigation Guardian of) v. Calvert, 1997 CarswellOnt 581, 32 O.R. (3d) 281 (S.C.J.) .....</i>	<i>1031</i>
Notes and Questions .....	1035
Further Reading.....	1036
<b>24.2.2 Capacity to Grant a Continuing Power of Attorney .....</b>	<b>1036</b>
<i>Substitute Decisions Act, 1992, S.O. 1992, c. 30, ss. 8(1), 47(1).....</i>	<i>1036</i>
<b>24.2.3 Assessment of Capacity .....</b>	<b>1037</b>
<i>Substitute Decisions Act, 1992, S.O. 1992, c. 30, ss. 3(1), 79 .....</i>	<i>1037</i>
<i>Abrams v. Abrams, 2008 CarswellOnt 7788 (S.C.J.).....</i>	<i>1039</i>
Notes and Questions .....	1045
<b>24.2.4 Challenging a Finding of Incapacity .....</b>	<b>1046</b>
<b>24.3 APPOINTMENT OF ATTORNEYS AND GUARDIANS .....</b>	<b>1047</b>
<b>24.3.1 Continuing Powers of Attorney .....</b>	<b>1047</b>
(a) Formalities .....	1047
<i>Substitute Decisions Act, 1992, S.O. 1992, c. 30, ss. 7(1), (7)-(8), 10(1)-(2), (4).....</i>	<i>1047</i>
Notes and Questions .....	1048
(b) Conditions and Restrictions.....	1048
<i>Substitute Decisions Act, 1992, S.O. 1992, c. 30, s. 7(2), (6)-(7).....</i>	<i>1048</i>
(c) Termination or Revocation of the Power of Attorney.....	1048
<i>Substitute Decisions Act, 1992, S.O. 1992, c. 30, ss. 8(2), 12 .....</i>	<i>1048</i>
Notes and Questions .....	1049
<b>24.3.2 Guardians .....</b>	<b>1049</b>
(a) Statutory Guardian .....	1049
(b) Court-Appointed Guardian .....	1050
<i>Substitute Decisions Act, 1992, S.O. 1992, c. 30, s. 22(1)-(3), (5)....</i>	<i>1050</i>
<i>Chu v. Chang, 2010 ONSC 294 .....</i>	<i>1051</i>

TABLE OF CONTENTS

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

