

Table of Contents

Volume D

CHAPTER 1. PRE-DEATH CONSIDERATIONS

I. ETHICAL ISSUES

- § 1:1 In general
- § 1:2 Who is the client?
- § 1:3 —Joint spousal representations and joint representation generally
- § 1:4 —Consent prior to joint representation
- § 1:5 —Confidentiality of information in a joint representation
- § 1:6 —Multi-generational representation
- § 1:7 —Representation of executor in estate administration
- § 1:8 — —Conduct required if lawyer has not represented any beneficiaries
- § 1:9 — —Conduct required if lawyer has represented in the past or currently represents the fiduciary and beneficiaries or other interested parties
- § 1:10 —Privity rule for malpractice purposes
- § 1:11 Attorney as fiduciary
- § 1:12 Attorney as beneficiary of client's estate
- § 1:13 —Ethics considerations
- § 1:14 —“Putnam” rule

II. INFORMATION REQUIRED TO DEVELOP ESTATE PLAN

- § 1:15 In general
- § 1:16 Personal information
- § 1:17 —Name and address
- § 1:18 —Dates of birth
- § 1:19 —Citizenship
- § 1:20 —Domicile and other residences
- § 1:21 —Family relationships
- § 1:22 —Special situations
- § 1:23 —Family history
- § 1:24 Assets and liabilities
- § 1:25 —Categories of assets

TRUSTS AND ESTATES PRACTICE IN NEW YORK

- § 1:26 — —Real property and cooperative apartments
- § 1:27 — —Valuation considerations
- § 1:28 — —Location of property
- § 1:29 — —Tangible personal property
- § 1:30 — —Valuation considerations
- § 1:31 — —Location of property
- § 1:32 — —Business interests
- § 1:33 — —Valuation considerations
- § 1:34 — —Other information
- § 1:35 — —Publicly listed stocks and bonds
- § 1:36 — —Location of property
- § 1:37 — —Ownership
- § 1:38 — —Basis information
- § 1:39 — —Bank accounts
- § 1:40 — —Beneficiary
- § 1:41 — —Uniform Transfers to Minors Act (“UTMA”) accounts
- § 1:42 — —Additional information
- § 1:43 — —Pension and retirement accounts
- § 1:44 — —Life insurance
- § 1:45 — —Other types of assets
- § 1:46 — —Categories of liabilities
- § 1:47 Client’s annual income
- § 1:48 Other matters affecting disposition at death
- § 1:49 — —Legal documents that may affect disposition of estate
- § 1:50 — —Contracts to make a will
- § 1:51 — —Identity of probate and non-probate assets
- § 1:52 — —Asset liquidity
- § 1:53 Lifetime transfers
- § 1:54 — —Spousal gifts
- § 1:55 — —Annual exclusion gifts
- § 1:56 — —Outright gifts in excess of the annual exclusion amount
- § 1:57 — —Gifts in trust
- § 1:58 — —Direct payment of tuition and medical expenses
- § 1:59 — —Indirect gifts
- § 1:60 Documentation
- § 1:61 — —Financial information
- § 1:62 — —Tax returns
- § 1:63 — —Prior wills and family trust agreements
- § 1:64 Development of the estate plan
- § 1:65 — —Ascertain the client’s intentions
- § 1:66 — —Considerations regarding estate distributions
- § 1:67 — —Identify intended beneficiaries

TABLE OF CONTENTS

§ 1:68	— —Spouse
§ 1:69	— —Children
§ 1:70	— —Parents
§ 1:71	— —Other individuals
§ 1:72	— —Charity
§ 1:73	— —Identify amount and type of disposition
§ 1:74	— — <i>In terrorem</i> clause
§ 1:75	— —Tax provisions
§ 1:76	Fiduciaries
§ 1:77	—Duties of an executor
§ 1:78	—Duties of a trustee
§ 1:79	—Statutory powers
§ 1:80	—Who will act as an executor or a trustee?
§ 1:81	—Guardians
§ 1:82	— —Standby guardian
§ 1:83	—Side letters to fiduciaries
§ 1:84	Capacity of client
§ 1:85	—Who can make a will
§ 1:86	— —Definition of testamentary capacity
§ 1:87	— —Time capacity is determined
§ 1:88	— —Language disabilities
§ 1:89	— —Capacity required for revocable trusts
§ 1:90	—Undue influence
§ 1:91	—Presumption of competency
§ 1:92	—Record of testator’s mental and physical state

III. LIFETIME PLANNING

§ 1:93	Non-probate assets
§ 1:94	—Categories of non-probate assets
§ 1:95	— —Employer provided pension plans
§ 1:96	— —Individual retirement accounts and 401(k) (“IRA”) accounts
§ 1:97	— —Life insurance
§ 1:98	— —Totten trust account
§ 1:99	— —Jointly held property
§ 1:100	— —Gifts to minors (UTMA accounts)
§ 1:101	—Advantages of effecting estate plans through non- probate assets
§ 1:102	—Disadvantages of effecting estate plans through non-probate assets
§ 1:103	Lifetime gifts and other transfers
§ 1:104	—Definition of gift
§ 1:105	—Completion of gift
§ 1:106	—Benefits of making a gift

TRUSTS AND ESTATES PRACTICE IN NEW YORK

- § 1:107 —Imposition of gift tax
- § 1:108 — —Liability for tax
- § 1:109 — —Reporting of gift and paying of gift tax
- § 1:110 — —Effect of prior lifetime taxable gifts
- § 1:111 — —Annual gift tax exclusion
- § 1:112 — —Crummey powers
- § 1:113 — —Section 2503(c) trusts
- § 1:114 —Spousal gift splitting
- § 1:115 — —Marriage requirement
- § 1:116 — —Non-citizen or non-resident spouse for part of
year
- § 1:117 — —Deceased spouse
- § 1:118 — —Liability for split gifts
- § 1:119 —Exception for certain payments for tuition and
medical expenses
- § 1:120 —Applicable exclusion amount
- § 1:121 —Generation-skipping transfer tax exemption
- § 1:122 — —Use of GST exemption during life
- § 1:123 — —Spousal splitting of GST transfers for gift tax
purposes
- § 1:124 — —Reverse QTIP election
- § 1:125 — —GST inflation adjustment
- § 1:126 —Transfers within three years of death
- § 1:127 —Gifts in trust
- § 1:128 —Sales in contemplation of death
- § 1:129 — —Bargain sales
- § 1:130 — —Sale of depreciated assets to recognize loss
- § 1:131 —Basis of transferred property
- § 1:132 — —Property received by gift
- § 1:133 — —Property received at death
- § 1:134 — —Income in respect of decedent
- § 1:135 — —Certain joint property
- § 1:136 —Valuation issues
- § 1:137 — —Appraisals
- § 1:138 — —Discounts
- § 1:139 — —Premiums
- § 1:140 —Loan guarantee as gift
- § 1:141 —Interest-free or below market interest loans
- § 1:142 —Private annuity
- § 1:143 — —Advantages of a private annuity
- § 1:144 — —Special considerations
- § 1:145 —Net gifts
- § 1:146 —“Kiddie tax” issues
- § 1:147 —Noncitizen spouse
- § 1:148 —Nonresident alien donor

TABLE OF CONTENTS

- § 1:149 —Divestment of assets for Medicaid qualifying purposes
- § 1:150 — —Medicaid nursing home eligibility rules
- § 1:151 — —Medicaid transfer rules
- § 1:152 — —Look-back period
- § 1:153 — —Ineligibility period
- § 1:154 — —Exceptions to ineligibility and criminal offense
- § 1:155 — —Medicaid estate recovery rules: federal law
- § 1:156 — —Medicaid estate recovery rules: New York law
- § 1:157 — —Estate recovery
- § 1:158 — —Liens
- § 1:159 — —Timing and amount of divestment
- § 1:160 — —Divestment alternatives
- § 1:161 — —Outright transfers to third parties (*e.g.*, children)
- § 1:162 — —Trusts
- § 1:163 — —Self-cancelling installment sale of assets to third party
- § 1:164 — —Family limited partnerships
- § 1:165 — —Annuities

IV. PLANNING FOR INCAPACITY

- § 1:166 Power of attorney
- § 1:167 —New York law
- § 1:168 — —Principal
- § 1:169 — —Capacity of principal
- § 1:170 — —Agent
- § 1:171 — —Capacity of agent
- § 1:172 — —Multiple agents
- § 1:173 — —Effective date
- § 1:174 — —Duration
- § 1:175 — —Construction and interpretation
- § 1:176 —Types of powers of attorney
- § 1:177 Statutory short form power of attorney
- § 1:178 —Acceptance of statutory form [GOL § 5-1504]
- § 1:179 —Durable power of attorney
- § 1:180 —Springing power of attorney
- § 1:181 —Form
- § 1:182 Powers encompassed by New York statute
- § 1:183 —Real estate transactions [GOL § 5-1502A]
- § 1:184 —Chattel and goods transactions [GOL § 5-1502B]
- § 1:185 —Bond, share and commodity transactions [GOL § 5-1502C]
- § 1:186 —Banking transactions [GOL § 5-1502D]
- § 1:187 —Business operating transactions [GOL § 5-1502E]

TRUSTS AND ESTATES PRACTICE IN NEW YORK

- § 1:188 —Insurance transactions [GOL § 5-1502F]
- § 1:189 —Estate transactions [GOL § 5-1502G]
- § 1:190 —Claims and litigation [GOL § 5-1502H]
- § 1:191 —Personal and family maintenance [GOL § 5-1502I]
- § 1:192 —Benefits from governmental programs or civil or military service [GOL § 5-1502J]
- § 1:193 —Matters related to health care [GOL § 5-1502K]
- § 1:194 —Retirement benefit transactions [GOL § 5-1502L]
- § 1:195 —Gift transactions
- § 1:196 —Tax matters [GOL § 5-1502M]
- § 1:197 —All other matters [GOL § 5-1502N]
- § 1:198 —Additional authority given to agent
- § 1:199 —Powers not specifically covered by New York statute
- § 1:200 — —Additional powers and authority
- § 1:201 — —More expansive power to make gifts
- § 1:202 — —Power to act with respect to revocable trusts
- § 1:203 — —Power to make statutory disclaimers and elections
- § 1:204 — —Power with respect to buy-sell agreements
- § 1:205 — —Power to nominate a guardian
- § 1:206 — —Power with respect to government benefits
- § 1:207 — —Power concerning the personal care of principal
- § 1:208 —Powers that cannot be delegated to an agent under a power of attorney
- § 1:209 —General principles
- § 1:210 —Execution of statutory short form general power of attorney
- § 1:211 —Revocation
- § 1:212 — —Death
- § 1:213 — —Military
- § 1:214 — —Power coupled with interest
- § 1:215 — —Non-durable power
- § 1:216 — —Marital status
- § 1:217 — —Appointment of adult guardian
- § 1:218 —Use of power by attorney-in-fact
- § 1:219 —Effectiveness of powers of attorney executed prior to changes in the law: September 12, 2010 & June 13, 2021
- § 1:220 Health care decision-making
- § 1:221 —Law
- § 1:222 — —State laws differ
- § 1:223 — —Federal law
- § 1:224 — —New York law
- § 1:225 — —Common law
- § 1:226 — —Statute

TABLE OF CONTENTS

§ 1:227	— —New York case law
§ 1:228	—Living wills
§ 1:229	— —Statute
§ 1:230	— —Contents of living will
§ 1:231	— —Execution
§ 1:232	— —Periodic review
§ 1:233	— —Revocation
§ 1:234	— —Limitations of living wills
§ 1:235	— —Practical considerations
§ 1:236	—Health care proxy
§ 1:237	— —Statute
§ 1:238	— —Who can appoint a health care agent
§ 1:239	— —Who can act as a health care agent
§ 1:240	— —Contents of health care proxy
§ 1:241	— —Form of health care proxy
§ 1:242	— —Execution
§ 1:243	— —Commencement of agent’s authority
§ 1:244	— —Duration of agent’s authority
§ 1:245	— —Revocation of a health care proxy
§ 1:246	— —Health care proxy executed in other states
§ 1:247	— —Relationship between a living will and a health care proxy
§ 1:248	Do Not Resuscitate (“DNR”) Orders and withholding and withdrawal of life-sustaining treatment
§ 1:249	Scope and applicability of Family Health Care Decisions Act
§ 1:250	Health care decision-making—Do Not Resuscitate (“DNR”) Orders—Definitions
§ 1:251	Determining whether a person lacks capacity
§ 1:252	Obligations of the attending physician
§ 1:253	Health care decisions for adult patients by surrogates
§ 1:254	Health care decision-making—Do Not Resuscitate (“DNR”) Orders—Decision-making on behalf of a minor patient
§ 1:255	Revocation of consent to withhold or withdraw life-sustaining treatment
§ 1:256	Physician review of decision to withhold or withdraw life-sustaining treatment
§ 1:257	Ethics review committee
§ 1:258	Conscience objections
§ 1:259	Health care decision-making—Nonhospital orders not to resuscitate
§ 1:260	— —Statute
§ 1:261	— —Ways in which provisions for nonhospital DNR Orders differ from DNR Orders

TRUSTS AND ESTATES PRACTICE IN NEW YORK

- § 1:262 — —Physician review
- § 1:263 — —Written record of nonhospital DNR Order
- § 1:264 — —Refusal to comply with the nonhospital DNR Order
- § 1:265 — —Conversion to DNR Order on admission to hospital
- § 1:266 — —Revocation of nonhospital DNR Order
- § 1:267 — —Liability
- § 1:268 — —Organ donation
- § 1:269 — —Statute
- § 1:270 — —Definitions
- § 1:271 — —Persons who can execute an anatomical gift (Section 4301)
- § 1:272 — —Permissible donees and purposes
- § 1:273 — —Manner of executing anatomical gifts
- § 1:274 — —Delivery of document
- § 1:275 — —Revocation of gift
- § 1:276 — —Other statutory provisions relating to organ donation
- § 1:277 — —Organ donation forms
- § 1:278 Adult guardian
- § 1:279 — —Statute
- § 1:280 — —Definitions
- § 1:281 — —Jurisdiction and venue
- § 1:282 — —Standard for appointment of adult guardians
- § 1:283 — —General authority of adult guardians
- § 1:284 — —Powers of adult guardian for personal needs
- § 1:285 — —Powers of adult guardian for property management
- § 1:286 — —Proceeding for appointment of adult guardian
- § 1:287 — —Who may commence a proceeding for the appointment of an adult guardian?
- § 1:288 — —Documents that must be filed
- § 1:289 — —Order to show cause
- § 1:290 — —Petition
- § 1:291 — —Service
- § 1:292 — —Court evaluator
- § 1:293 — —Who can act as the court evaluator
- § 1:294 — —Duties of the court evaluator
- § 1:295 — —Fees payable to court evaluator
- § 1:296 — —Counsel in lieu of court evaluator
- § 1:297 — —Counsel
- § 1:298 — —Hearing
- § 1:299 — —Burden of proof
- § 1:300 — —Record of the proceedings

TABLE OF CONTENTS

§ 1:301	— —Timing
§ 1:302	— —Findings
§ 1:303	— —Commission
§ 1:304	—Eligibility to act as guardian
§ 1:305	— —Factors to be considered by the court in selecting a guardian
§ 1:306	— —Who may not serve as guardian
§ 1:307	Requirements before acting
§ 1:308	—Duties of the guardian
§ 1:309	—Court approval for transfers to benefit others
§ 1:310	— —Application
§ 1:311	— —Notice
§ 1:312	— —Factors considered
§ 1:313	— —Findings
§ 1:314	—Provisional remedies
§ 1:315	—Effect of the appointment on the incapacitated person
§ 1:316	—Compensation of the guardian
§ 1:317	—Reports required to be filed by the guardian
§ 1:318	— —Initial report
§ 1:319	— —Annual report
§ 1:320	— —Intermediate report
§ 1:321	— —Final report
§ 1:322	— —Examination of the reports
§ 1:323	—Change in guardian’s status

V. FORMS

§ 1:324	Deed appointing guardian
§ 1:325	Designation of standby guardian
§ 1:326	Durable general power of attorney New York statutory short form
§ 1:327	Living will
§ 1:328	Health care proxy
§ 1:329	DNR order
§ 1:330	Organ donor information
§ 1:331	Uniform donor card
§ 1:332	Anatomical gift: general form
§ 1:333	Anatomical gift: by next of kin or other authorized person
§ 1:334	Nomination of adult guardian

Appendix 1-1. State statutes regarding health care and medical treatment decisions

CHAPTER 2. ALTERNATIVES TO PROBATE

I. SMALL ESTATES

- § 2:1 Introduction
- § 2:2 Procedure
- § 2:3 —No waiting period
- § 2:4 —Appointment or renunciation of a voluntary administrator
- § 2:5 —Requirements and duties of the voluntary administrator
- § 2:6 —Powers of the voluntary administrator
- § 2:7 Small estate affidavit program

II. TOTTEN TRUST ACCOUNTS

- § 2:8 Introduction
- § 2:9 Subsequent litigation
- § 2:10 Statutory scheme
- § 2:11 —Definition
- § 2:12 —Interest of the beneficiary
- § 2:13 —Revocation
- § 2:14 —Vesting in beneficiary
- § 2:15 —Death of beneficiary prior to death of depositor
- § 2:16 Distinguished from joint and survivor accounts
- § 2:17 Importance of signature/ledger cards
- § 2:18 —Evidence of change
- § 2:19 Federal income tax consequences
- § 2:20 Estate tax consequences
- § 2:21 The tax waiver dilemma
- § 2:22 Effect on elective share
- § 2:23 Creditors' rights
- § 2:24 —Exceptions
- § 2:25 —Summary

III. SURVIVORSHIP ESTATES

- § 2:26 Introduction
- § 2:27 Creation of joint tenancies requires specific wording
- § 2:28 —Joint fiduciaries are exception
- § 2:29 —No straw man rule
- § 2:30 —Severance
- § 2:31 —For descent and distribution, will inoperative
- § 2:32 —Insolvency as exception

TABLE OF CONTENTS

- § 2:33 Tenancies by the entirety
- § 2:34 —Limitation: real property
- § 2:35 —Exception: shares in cooperative apartment
- § 2:36 Severance of joint tenancies during marriage requires mutual consent
- § 2:37 —Examples
- § 2:38 —End of marriage
- § 2:39 —Conveyance to third party
- § 2:40 —Encumbrance
- § 2:41 —Descent and distribution
- § 2:42 —Creditors' rights at death
- § 2:43 Joint bank accounts
- § 2:44 —Accounts in statutory form; general presumption of joint tenancy
- § 2:45 —Rebutting the presumption
- § 2:46 —Effect of fiduciary relationship on the burden of proof
- § 2:47 —Joint accounts vs. convenience accounts
- § 2:48 —Banking Law Section 678
- § 2:49 —Disclosure requirements
- § 2:50 —Accounts not in statutory form
- § 2:51 —Joint tenancy at common law
- § 2:52 —Tax waiver dilemma
- § 2:53 —No presumption for transfer tax purposes
- § 2:54 —Liability of funds to creditors' claims
- § 2:55 Income tax consequences
- § 2:56 Effect on elective share

IV. QUALIFIED PLAN BENEFITS

- § 2:57 Introduction
- § 2:58 Income tax consequences
- § 2:59 Effect on elective share
- § 2:60 Creditors' rights

V. PAY-ON-DEATH ARRANGEMENTS (“PODS”)

- § 2:61 In general

VI. LIFE INSURANCE

- § 2:62 Introduction
- § 2:63 Tax consequences of life insurance; income and estate tax
- § 2:64 Giving up incidents of ownership; life insurance trusts
- § 2:65 Payment of premiums; *Crummey* withdrawal powers

§ 2:66 Effect on elective share and creditors' rights

VII. THE PROCESS OF INTESTACY

- § 2:67 Introduction
- § 2:68 Appointment of administrator
- § 2:69 —Identity of the administrator
- § 2:70 — —Priority
- § 2:71 — —Other persons
- § 2:72 — —All distributees incapacitated
- § 2:73 — —Persons not interested in estate
- § 2:74 — —Public administrator
- § 2:75 —Petitioning for appointment of administrator
- § 2:76 — —Contents of petition
- § 2:77 — —Service on distributees
- § 2:78 —Service on persons with priority for administration
[SCPA § 1003(1)]
- § 2:79 — —Petitioner as creditor
- § 2:80 — —Public administrator as petitioner [SCPA
§ 1003(2)]
- § 2:81 —Dispensing with service
- § 2:82 Notice and decree
- § 2:83 —Contents of notice [SCPA § 1005(1)]
- § 2:84 —Successor administrators; “administration *de bonis
non*”
- § 2:85 Bonding requirements
- § 2:86 Dispensing with or lowering the bond
- § 2:87 Powers and duties of the administrator
- § 2:88 —Permissive payment before expiration of notice
period
- § 2:89 —Where notice is not published
- § 2:90 —Accountings voluntary
- § 2:91 —Timing of accountings
- § 2:92 —Form of accounting
- § 2:93 —To whom process is issued
- § 2:94 —Dispensing with service
- § 2:95 Proving a right to an intestate share
- § 2:96 —Form of proof
- § 2:97 — —One distributee

VIII. REVOCABLE TRUSTS

- § 2:98 In general
- § 2:99 Greater privacy
- § 2:100 Transition of management
- § 2:101 Centralization of management

TABLE OF CONTENTS

§ 2:102	Taking title as trustee
§ 2:103	—Practical aspects and problems of trust funding
§ 2:104	—Taxpayer numbers generally; New York EINs
§ 2:105	—Title insurers
§ 2:106	—Change in New York law for self-trusteed trusts
§ 2:107	Audition of corporate co-trustee during lifetime
§ 2:108	Probate issues; delay in opening probate
§ 2:109	—Protection afforded by court proceeding
§ 2:110	—Creditors' rights
§ 2:111	Creation of the revocable trust
§ 2:112	—Declaration of trust vs. deed of trust
§ 2:113	—Deathbed uses
§ 2:114	—Requirements for valid trust
§ 2:115	—Formalities required
§ 2:116	—Choice of governing law
§ 2:117	Operating the revocable trust during lifetime
§ 2:118	—Funding the trust
§ 2:119	—Taking title in the name of the trustee
§ 2:120	—Funding requirements
§ 2:121	—Funded trust
§ 2:122	— —Examples
§ 2:123	—Nominally funded, or unfunded, trust
§ 2:124	— —Examples
§ 2:125	Lack of “ <i>de minimis</i> ” probate under New York law
§ 2:126	Condominium interests
§ 2:127	Cooperative apartment interests
§ 2:128	Income tax consequences of funding the revocable trust
§ 2:129	—Mortgage transfer tax
§ 2:130	—Gains tax
§ 2:131	—Traps with respect to unrecognized income tax
§ 2:132	—New York law effective June 25, 1997
§ 2:133	Revocable trust as beneficiary under the grantor's will
§ 2:134	—Pourover capability
§ 2:135	—History of pouring over
§ 2:136	— —Trusts included
§ 2:137	— —Pourover vehicles approved by statute
§ 2:138	— —Formalities of execution required
§ 2:139	— —Common law rules overridden
§ 2:140	— —Pourovers to third-party revocable trusts
§ 2:141	— —Reverse pourovers, or “pourups”
§ 2:142	—Problems in pouring over; when revocable trusts can fail

TRUSTS AND ESTATES PRACTICE IN NEW YORK

- § 2:143 — —Change to New York law for trusts created on or after June 25, 1997
- § 2:144 — —Funding
- § 2:145 — —Identification of trust and the doctrine of incorporation by reference
- § 2:146 — —Preventive measures and post-death remedies for the failed pourover
- § 2:147 — —Follow the common law doctrine modifying the strict anti-incorporation rule
- § 2:148 — —Grandfathering
- § 2:149 — —Where trust fails by lack of proper acknowledgment or by invalidity of trust
- § 2:150 — —*Estate of O'Brien*: pourover valid
- § 2:151 — —*Matter of Will of Sackler*: pourover valid
- § 2:152 — —*Will of Dickstein*: pourover invalid
- § 2:153 Administering the revocable trust post-death
- § 2:154 — —Joint trusts; income tax planning at the first death
- § 2:155 — —Step-up in basis
- § 2:156 — —Income taxation of non-pro-rata allocation; effect of authorization to allocate
- § 2:157 — —Effect of Rev. Proc. 64-19
- § 2:158 — —Effect on QTIP election and disclaimer
- § 2:159 — —Allocation of particular assets to survivor's share; tax elections by individuals
- § 2:160 — —Transfer taxation of the decedent's share
- § 2:161 — —Non-pro-rata exchange
- § 2:162 — —Property included as Section 2035 property transfer
- § 2:163 — —Service's position prior to enactment
- § 2:164 — —*Jalkut*
- § 2:165 — —Section 2053 deduction for debts and expenses
- § 2:166 — —Expenses; election to pay debts from trust assets
- § 2:167 — —Expenses of administration of trust
- § 2:168 — —Effect of trust ownership on estate tax payments and deferrals
- § 2:169 — —Alternate valuation
- § 2:170 — —Post-death revocable trust administration after Taxpayer Relief Act of 1997
- § 2:171 — —Qualifying trust
- § 2:172 — —Election
- § 2:173 — —Period of tax treatment
- § 2:174 — —Effect of estate income tax election
- § 2:175 — —Election where no probate
- § 2:176 — —GST provisions
- § 2:177 — —Pre-act post-mortem income taxation of revocable trusts

TABLE OF CONTENTS

§ 2:178	— —Treatment of trust as terminated
§ 2:179	— —Treatment of trust as new administrative trust
§ 2:180	— —Separate entity
§ 2:181	— —Lifetime
§ 2:182	— —Authorization to make election; explicit or implicit
§ 2:183	— —Justification under state law
§ 2:184	— —Comparative advantages of separate taxpayer status for period of administration; avoidance of phantom income
§ 2:185	— —Conformity with administration
§ 2:186	— —Preservation of decedent's tax planning
§ 2:187	— —Comparative advantages of treating trust as terminated at death; pass-through of income and deductions
§ 2:188	— —Passive activity items
§ 2:189	— —NOLs
§ 2:190	— —Loss of tax savings reduced
§ 2:191	— —Election and reporting of separate taxpayer status
§ 2:192	— —Estate tax impact of establishment of administrative trust
§ 2:193	— —Continuing administration
§ 2:194	— —Allocation vs. distribution
§ 2:195	— —Probable rule
§ 2:196	— —Income taxation of administrative trusts
§ 2:197	— —Construing the trust instrument and purpose to determine the type of separate trust for income tax purposes of administration
§ 2:198	— —Duty to distribute income
§ 2:199	— —Effect of New York law
§ 2:200	— —New York statutory authority
§ 2:201	— —New York case authority
§ 2:202	— —Compare requirement to distribute
§ 2:203	— —Documenting the selection
§ 2:204	— —Distributing the administrative trust
§ 2:205	— —Controlling income taxation through distributions carrying out DNI
§ 2:206	— —Burden of tax on residue
§ 2:207	— —Effect of separate share rule on DNI allocations
§ 2:208	— —Excess deductions and losses on termination
§ 2:209	— —Succeeding beneficiaries
§ 2:210	— —Excess deductions
§ 2:211	— —NOLs and capital losses
§ 2:212	— —Planning for maximum use of deductions and NOLs

TRUSTS AND ESTATES PRACTICE IN NEW YORK

- § 2:213 — —Comparison to treatment of trust as terminated
- § 2:214 Selected post-mortem problems in administering the revocable trust
- § 2:215 —Income tax problems of disclaimers
- § 2:216 —Effect of establishment of separate administrative trust
- § 2:217 —Administrative trust administered as accumulating trust
- § 2:218 —Treatment of trust as terminated at death
- § 2:219 —Charitable beneficiaries
- § 2:220 — —Terms of instrument
- § 2:221 — —Capital gains
- § 2:222 — —Effect of establishment of separate administrative trust
- § 2:223 — —During reasonable period of administration
- § 2:224 — —Self-dealing
- § 2:225 — —Income
- § 2:226 — —Where trust is treated as terminated at death
- § 2:227 —Problems of particular income producing assets held in trust
- § 2:228 — —True conduit
- § 2:229 — —Partial conduit
- § 2:230 — —Net distribution only
- § 2:231 —S corporation stock held in trust
- § 2:232 — —Grantor trust prior to death
- § 2:233 — —Effect of establishment of separate administrative trust after death
- § 2:234 — —Shareholder for income tax purposes; deemed owner
- § 2:235 — —Owner as shareholder
- § 2:236 — —Effect of probate administration
- § 2:237 — —If no probate administration
- § 2:238 — —Qualification of administrative trust as QSST for individual beneficiary
- § 2:239 — —Distribution
- § 2:240 — —Proration of income
- § 2:241 —Where trust treated as terminated at death
- § 2:242 —Lump-sum distribution to trust
- § 2:243 —Rollovers of benefits from trust to IRA
- § 2:244 —Partnership interests
- § 2:245 — —Time when income is realized
- § 2:246 — —Nature of income
- § 2:247 — —Effect of establishment of separate administrative trust; avoidance of mismatching of income and deductions

TABLE OF CONTENTS

§ 2:248 — —Avoidance of premature mismatching upon distribution

§ 2:249 — —Treatment of trust as terminated at death; avoidance of mismatching of income and deductions

§ 2:250 — —Avoidance of acceleration of IRD element upon distribution

§ 2:251 — —Further discussion

§ 2:252 Fiduciary obligations and problems; duties of loyalty and impartiality

§ 2:253 — —Problems of the trustee/beneficiary

§ 2:254 — —Taxation of trustee/beneficiary

§ 2:255 — —Estate tax exposure

§ 2:256 — —Income taxation where separate administrative trust is used

§ 2:257 — —Trust-only administration; the trustee as statutory executor

§ 2:258 — —Transfer tax elections and liabilities

§ 2:259 — —Liability for failure to pay United States

§ 2:260 — —Discharge from personal liability

§ 2:261 — —Allocation of generation-skipping exemption

§ 2:262 — —QTIP election

§ 2:263 — —Income tax elections; election to join in final joint return with surviving spouse

§ 2:264 — —Election to deduct expenses from income tax return

§ 2:265 — —Problems of the trust-only administration

§ 2:266 — —QTIP-related payments and elections

§ 2:267 — —Direction to pay tax on QTIP property

§ 2:268 — —Powers of appointment

§ 2:269 — —Disclaimer of property of decedent

§ 2:270 — —Election to split gift with surviving spouse

§ 2:271 — —Election to deduct expenses from income tax return

§ 2:272 — —Probate of will

§ 2:273 — —Problems of multiple post-mortem trusts; the surviving spouse trust

§ 2:274 — —Multiple trusts created by the same grantor

§ 2:275 — —Special problems of generation-skipping exempt trusts

§ 2:276 — —Coordination of probate and trust administrations

§ 2:277 — —Income tax advantages of the probate estate reduced

§ 2:278 — —Selection of fiscal year

§ 2:279 — —Recognition of losses on distribution

§ 2:280 — —Deduction for charitable set-aside

- § 2:281 — —Throwback rule eliminated
- § 2:282 — —Advantages of simultaneous probate and trust administration
- § 2:283 — —Deciding to hold assets in decedent’s name or in trust
- § 2:284 — —Problems of simultaneous administration; funding of formula bequests
- § 2:285 — —Preservation of losses and deductions for individuals
- § 2:286 — —Allocation of debts and expenses
- § 2:287 — —Fiduciary obligations in simultaneous administration
- § 2:288 — —Priority of executor for estate tax-related duties
- § 2:289 — —Transferee liability
- § 2:290 — —Allocation of generation-skipping tax exemption
- § 2:291 — —Joint filing election
- § 2:292 — —Election to take deductions on estate or income tax return
- § 2:293 — —S corporation income tax liability
- § 2:294 — —Drafting solutions

VIIIA. TRANSFER ON DEATH SECURITY REGISTRATION

- § 2:295 Introduction
- § 2:296 Registration in beneficiary form; sole or joint tenancy ownership
- § 2:297 Applicable law
- § 2:298 Origination of registration
- § 2:299 Form of registration
- § 2:300 Effect of registration
- § 2:301 Ownership on death of owner
- § 2:302 Protection of registering entity
- § 2:303 Nontestamentary transfer on death
- § 2:304 Terms, conditions and forms

IX. FORMS

- § 2:305 Form 2-1: Renunciation of voluntary administration
- § 2:306 Form 2-2.2: Affidavit in relation to settlement of estate under Article 13, SCPA—Where decedent died on or after January 1, 2009
- § 2:307 Form 2-2.3: Affidavit in relation to settlement of estate under Article 13, SCPA—Where decedent died on or after January 1, 2009—Amended affidavit
- § 2:308 Form 2-3: Report and account in settlement of estate pursuant to Article 13, SCPA

TABLE OF CONTENTS

- § 2:309 Form 2-4: Petition for letters of administration, limited administration, administration with limitations or temporary administration
- § 2:310 Form 2-4.1: Petition for ancillary letters of administration
- § 2:311 Form 2-4.2: Petition for letters of administration d.b.n
- § 2:312 Form 2-7: Waiver of citation, renunciation and consent to appointment of administrator (individual)
- § 2:313 Form 2-8: Decree appointing administrator
- § 2:314 Form 2-9: Account of executors and administrators

CHAPTER 3. PROBATE PROCEEDINGS

I. OVERVIEW

- § 3:1 Historical background and development of the law
- § 3:2 —Purpose of probate
- § 3:3 — —Wills of decedents
- § 3:4 — —Wills of individuals alleged to be deceased
- § 3:5 —Solemn versus common probate
- § 3:6 Statutory framework
- § 3:7 —Prior law
- § 3:8 —Current law
- § 3:9 —A note on the uniform rules for surrogate's courts
- § 3:10 When probate may not be necessary
- § 3:11 —All of decedent's assets pass outside the will
- § 3:12 —All beneficiaries and fiduciaries predeceased
- § 3:13 —Small estates

II. JURISDICTION, VENUE AND PROCEDURE IN PROBATE PROCEEDINGS

- § 3:14 Jurisdiction
- § 3:15 —Supreme court
- § 3:16 —Surrogate's court
- § 3:17 — —Subject matter jurisdiction
- § 3:18 — — —Probate
- § 3:19 — — — —Probate jurisdiction of nondomiciliary where original probate has not been obtained in the domicile jurisdiction
- § 3:20 — — — —Probate jurisdiction of nondomiciliary where original probate has already been obtained in the domicile jurisdiction
- § 3:21 — — — —Compare
- § 3:22 — — — —Matters other than probate

- § 3:23 — —Personal jurisdiction
- § 3:24 — — —Forms of jurisdiction
- § 3:25 — — —Obtaining personal jurisdiction
- § 3:26 Venue
- § 3:27 —Definition of “domicile”
- § 3:28 —New York State decedents
- § 3:29 — —County of domicile changed shortly prior to time of death
- § 3:30 — —Multiple domiciles
- § 3:31 — — —Incarcerated decedent
- § 3:32 — —Improper venue; how to correct
- § 3:33 —Non-New York State decedents
- § 3:34 — —County where property located and county of domicile of debt or wrongful death defendant
- § 3:35 Surrogate’s court procedure: in general

III. PROBATE: PETITION AND PROCEDURE

- § 3:36 Preliminary matters
- § 3:37 —Obtaining the will
- § 3:38 — —Decedent’s attorney or family, the surrogate’s court and other sources
- § 3:39 — —Decedent’s home
- § 3:40 — —Safe deposit box: proceeding to open
- § 3:41 —Preliminary fact finding
- § 3:42 — —Was the will properly executed?
- § 3:43 — —Preliminary assessments regarding security and preservation of assets
- § 3:44 — —Determination of whether probate, preliminary letters, etc., will be needed
- § 3:45 Probate petition
- § 3:46 —Who may petition for probate
- § 3:47 — —Application of statute
- § 3:48 — —Role of the Public Administrator
- § 3:49 —Contents of the petition
- § 3:50 — —General requirements of all petitions
- § 3:51 — —Specific requirements of petitions for probate
- § 3:52 — — —Caveat regarding use of official court forms
- § 3:53 — — —Information regarding the decedent
- § 3:54 — — —Information regarding the instrument
- § 3:55 — — —Description of distributees and all others entitled to receive citation
- § 3:56 — — — —Distributees
- § 3:57 — — — —Others entitled to citation
- § 3:58 — — —Description of all parties entitled to receive notice of probate

TABLE OF CONTENTS

§ 3:59 — — —Persons under a disability
§ 3:60 — — —Size of the estate
§ 3:61 — — — —Probate vs. non-probate assets
§ 3:62 — — — —Categories of property
§ 3:63 — — — —Filing fees
§ 3:64 — — —Cause of action
§ 3:65 — — — —Inventory of assets
§ 3:66 —Additional requirements of the Probate Petition
§ 3:67 — —Will, copies thereof, and copies of any other wills
affected
§ 3:68 — —Death certificates
§ 3:69 — —Attorney-fiduciaries
§ 3:70 — — —Incorporation in the will
§ 3:71 — — —Consequences of noncompliance
§ 3:72 — — —Effective date of Section 2307-a
§ 3:73 — —“Putnam” affidavits
§ 3:74 — —Extraordinary circumstances
§ 3:75 —Citation, waiver, and consent
§ 3:76 — —Contents of citation
§ 3:77 — —Illustrations of sufficiency of citation
§ 3:78 — —To whom citation must issue
§ 3:79 — — —Distributees
§ 3:80 — — —Primary nominated executors
§ 3:81 — — —Parties adversely affected by a later
instrument or by another will on file in the court
§ 3:82 — — — —Codicils
§ 3:83 — — — —Later wills
§ 3:84 — — — —Powers of appointment: service required
§ 3:85 — — — —Joint will conundrum
§ 3:86 — — —Alleged decedent
§ 3:87 — — —New York State Tax Commission
§ 3:88 — — —Attorney General
§ 3:89 — — —Compare: persons entitled to object to will
§ 3:90 — — —Compare: creditors
§ 3:91 — —Timing of determination of necessary parties
§ 3:92 — —Citation of parties under a disability
§ 3:93 — — —Virtual representation
§ 3:94 — — — —General rule for virtual representation
§ 3:95 — — — —Classes of individuals eligible for virtual
representation
§ 3:96 — — — —Additional criteria required for virtual
representation
§ 3:97 — — — —Caveats regarding virtual representation
§ 3:98 — — —Guardians ad litem
§ 3:99 — —Waiver and consent

TRUSTS AND ESTATES PRACTICE IN NEW YORK

- § 3:100 — — —Withdrawal of waiver and consent
- § 3:101 —Notice of Probate
- § 3:102 — —Purpose is informational; not necessary to obtain jurisdiction
- § 3:103 — — —Timing of giving of Notice
- § 3:104 — — —Effect of Notice of Probate
- § 3:105 — —Contents of Notice; parties to whom notice must be given
- § 3:106 — — —Legatees and secondary fiduciaries
- § 3:107 — — —Missing parties
- § 3:108 — — —Virtual representation in Notice of Probate proceedings (or “virtual” virtual representation)
- § 3:109 — —Requirements of notice upon subsequent discovery of assets
- § 3:110 “Proving” the will
- § 3:111 —Burden of proof
- § 3:112 —Due execution
- § 3:113 — —Location of testator’s signature
- § 3:114 — — —Testator cannot sign
- § 3:115 — — —Meaning of “the end”
- § 3:116 — — —Timing of signature; alterations
- § 3:117 — —Presence of witnesses
- § 3:118 — —Declaration and publication
- § 3:119 — —Signature of witnesses
- § 3:120 — — —Timing
- § 3:121 — — —Placement
- § 3:122 — —Compare: attestation clause
- § 3:123 —Attestation of witnesses
- § 3:124 — —Proof by written affidavit
- § 3:125 — — —Contents of 1406 affidavit
- § 3:126 — — —Affidavit prepared at time of execution
- § 3:127 — — —Affidavit prepared subsequent to execution of will
- § 3:128 — — —Exceptions
- § 3:129 — —Proof by examination of witness
- § 3:130 — —When witness’ testimony may be dispensed with
- § 3:131 — — —Reasons for dispensing with witness’ testimony
- § 3:132 — — —Probate under Section 1405
- § 3:133 — — — —One witness available; one witness missing
- § 3:134 — — — —All witnesses missing
- § 3:135 — — — —Witnesses available, but forgetful or conflicting
- § 3:136 — — — —Situations not addressed by statute
- § 3:137 — —Interested witnesses

TABLE OF CONTENTS

- § 3:138 Decree
- § 3:139 —Requirements for decree
- § 3:140 —Denial of decree
- § 3:141 —Simple decrees vs. “special” or “modified” decrees
- § 3:142 — —Will construction
- § 3:143 — —Probate of partial will or codicils
- § 3:144 — —Determine whether will was revoked
- § 3:145 — —Alleged decedent
- § 3:146 Probate of lost, oral, and ancient wills and other extraordinary probate situations
- § 3:147 —Missing or destroyed wills
- § 3:148 — —Wills legitimately lost or destroyed
- § 3:149 — — —Original will has not been revoked
- § 3:150 — — —Original will was duly executed
- § 3:151 — — —Contents of the original will can be clearly and distinctly proven
- § 3:152 — —Wills “suspected” to be lost-proceedings to compel production of a will
- § 3:153 — — —Who may petition
- § 3:154 — — —Who may be summoned
- § 3:155 — — —Scope of inquiry
- § 3:156 — — —Result of 1401 proceeding
- § 3:157 — —Wills existing but unavailable
- § 3:158 — — —Possible limitation on need for Section 1404(2)
- § 3:159 — — —Decree in missing will proceedings
- § 3:160 —Nuncupative and holographic wills
- § 3:161 — —When allowed
- § 3:162 — —Probate requirements
- § 3:163 —“Ancient” wills
- § 3:164 — —Illustrations
- § 3:165 —Probate of multiple original wills
- § 3:166 —Probate of will of person alleged to be deceased
- § 3:167 —Irrevocable mutual or joint wills
- § 3:168 *In terrorem* clauses and probate proceedings
- § 3:169 —Forged or revoked will
- § 3:170 —Infant or incompetent objectant
- § 3:171 —Jurisdiction of court
- § 3:172 —Information relevant to probate
- § 3:173 —Nonconsent to probate
- § 3:174 —Preliminary examinations
- § 3:175 —Will construction proceeding

IV. CONTESTED PROBATE AND CONSTRUCTION PROCEEDINGS

- § 3:176 Contested probate and construction proceedings

V. LETTERS

- § 3:177 Letters in general
- § 3:178 Letters testamentary
- § 3:179 —Nomination under the will
- § 3:180 — —Compare: nomination outside of the will
- § 3:181 —Appearance
- § 3:182 —Eligibility
- § 3:183 — —“Exclusive” nature of statute
- § 3:184 — —Classes of ineligibility
- § 3:185 —Qualification
- § 3:186 — —Process of qualifying
- § 3:187 — —Court intervention in the case of the dilatory petitioner
- § 3:188 —Renunciation of right to letters
- § 3:189 — —Voluntary renunciation
- § 3:190 — —Renunciation by default
- § 3:191 — —Appointment of alternate fiduciary
- § 3:192 — —Retraction of renunciation
- § 3:193 Supplementary letters and letters of administration, c.t.a
- § 3:194 —Supplementary letters
- § 3:195 — —Procedure
- § 3:196 — —Effect on existing letters
- § 3:197 —Letters of administration, c.t.a
- § 3:198 — —Procedure
- § 3:199 — — —Who may apply for letters
- § 3:200 — — —Citation in administration, c.t.a. proceedings
- § 3:201 Preliminary letters testamentary
- § 3:202 —Authority and duties of a preliminary executor
- § 3:203 — —Prohibited powers
- § 3:204 —Procedure for obtaining preliminary letters
- § 3:205 —Term of preliminary executor’s authority
- § 3:206 — —Termination for cause

VI. ANCILLARY PROBATE

- § 3:207 Ancillary probate

VII. FORMS

- § 3:208 Form 3-1: Petition for probate (Official Form P-1)
- § 3:209 Form 3-2: Application for preliminary letters testamentary (Official Form P-2)
- § 3:210 Form 3-2.1: Petition for letters of administration c.t.a. after probate

TABLE OF CONTENTS

- § 3:211 Form 3-3: Affidavit of attesting witness (Official Form P-3)
- § 3:212 Form 3-4: Waiver of process; consent to probate (Official Form P-4)
- § 3:213 Form 3-5: Citation (Official Form P-5)
- § 3:214 Form 3-6: Notice of probate (Official Form P-6)
- § 3:215 Form 3-7: Affidavit of service of citation (Official Form P-7)
- § 3:216 Form 3-8: Application and order for dispensing with testimony of attesting witness (Official Form P-8)
- § 3:217 Form 3-9: Affidavit proving handwriting (Official Form P-9)
- § 3:218 Form 3-10: Renunciation of nominated executor and/or trustee (Official Form P-10)
- § 3:219 Form 3-11: Renunciation of letters of administration c.t.a. and waiver of process (Official Form P-11)
- § 3:220 Form 3-12: Affidavit of no debt (Official Form P-12)
- § 3:221 Form 3-13: Affidavit of comparison (Official Form P-13)
- § 3:222 Form 3-14: Family tree (Official Form FT-1)
- § 3:223 Form 3-15: Suggestions for conducting a diligent search
- § 3:224 Form 3-15.1: Suggestions for conducting a diligent search—Attachment A: sample letter request to postmaster for change of address
- § 3:225 Form 3-16: Acknowledgment of Disclosure (Pursuant to SCPA Section 2307-a)
- § 3:226 Form 3-17: Putnam affidavit
- § 3:227 Form 3-18: SCPA Section 1406 affidavit
- Appendix 3-1. Filing Fees
- Appendix 3-2. Surrogate’s Court Checklists

CHAPTER 4. ADMINISTRATION OF THE NON-CONTESTED ESTATE

I. MARSHALLING AND HOLDING ESTATE ASSETS

- § 4:1 Generally
- § 4:2 Determination of estate principal and income at the decedent’s death
- § 4:3 —Timing of entitlement to an income interest
- § 4:4 —Property received by estate from decedent through will
- § 4:5 — —Specific bequests
- § 4:6 — —Pecuniary bequests in trust

TRUSTS AND ESTATES PRACTICE IN NEW YORK

- § 4:7 — —Assets distributed in kind
- § 4:8 — —Pecuniary bequests not in trust
- § 4:9 — —Residue outright
- § 4:10 — —Residue passing to testamentary trust
- § 4:11 — —Estates vs. irrevocable trusts
- § 4:12 — —Estates vs. revocable trusts
- § 4:13 Equitable adjustments between income and principal
- § 4:14 — —*Warms* case and its progeny
- § 4:15 — —Expansion of *Warms*?
- § 4:16 — —Statutory provision
- § 4:17 Executor's obligations regarding the investment of estate assets
- § 4:18 — —Duty to keep estate assets separate
- § 4:19 — —Duty to invest assets
- § 4:20 — —History of general rule
- § 4:21 — —Old prudent man statute
- § 4:22 — —Prudent Investor Rule
- § 4:23 — —Not a guarantee of performance
- § 4:24 — —Required investment strategy
- § 4:25 — —Factors to be considered in selecting an investment
- § 4:26 — —Diversification requirement
- § 4:27 — —Retention of assets
- § 4:28 — —Types of permissible investments
- § 4:29 — —Other considerations
- § 4:30 — —Delegation of investment responsibility
- § 4:31 — —Special investment skills
- § 4:32 — —Overriding provision in will
- § 4:33 — —Special assets and considerations
- § 4:34 — —Marshalling of particular types of assets
- § 4:35 — —Handling of "special" assets
- § 4:36 — —Power to adjust
- § 4:37 Inventory of assets
- § 4:38 — —Contents of inventory
- § 4:39 — —Due date of inventory
- § 4:40 — —Request for inventory
- § 4:41 — —Payment of additional filing fee
- § 4:42 — —Failure to file inventory

II. ACTIONS BY/AGAINST EXECUTORS AND ESTATES

- § 4:43 Generally

III. COORDINATION WITH NONPROBATE ASSETS

- § 4:44 General principles

TABLE OF CONTENTS

§ 4:45 —Recovery generally
§ 4:46 —Identifying sources and establishing contact
§ 4:47 —Executor must include an inventory
§ 4:48 —Demand for payment
§ 4:49 —Apportionment
§ 4:50 Revocable trust; pourover will
§ 4:51 —Other revocable trusts
§ 4:52 — —Diligence to discover trusts
§ 4:53 — —Significance of trusts during administration
§ 4:54 QTIP trust established by predeceased spouse
§ 4:55 —Estate tax valuation and payment
§ 4:56 —Administration
§ 4:57 —Tax allocation
§ 4:58 QTIP trust qualified for the GST exemption
§ 4:59 —Estate tax payment
§ 4:60 —Source of tax payment
§ 4:61 —Reverse QTIP election
§ 4:62 —Advising beneficiaries
§ 4:63 Retained life estate
§ 4:64 —Generally
§ 4:65 — —Grantor dies before end of term
§ 4:66 — —Grantor dies after end of term
§ 4:67 — —Estate tax recovery
§ 4:68 —Particular vehicles; GRAT
§ 4:69 —Particular vehicles; QPRT
§ 4:70 Insurance generally
§ 4:71 Life insurance trusts
§ 4:72 Charitable remainder unitrusts
§ 4:73 Lifetime agreements restricting the executor
§ 4:74 Property subject to power of appointment
§ 4:75 —Whether property enters probate estate for
administration
§ 4:76 —Administration concerns; special power
§ 4:77 — —General power
§ 4:78 — —Right of recovery
§ 4:79 Property passing to a non-citizen spouse
§ 4:80 —Surviving spouse’s strategies
§ 4:81 — —Spouse to acquire U.S. citizenship
§ 4:82 — —QDOT trust to be established
§ 4:83 —Gift to spouse passes outright and spouse to fund
QDOT
§ 4:84 — —Importance of nine-month period
§ 4:85 — —Reformation of invalid QDOT
§ 4:86 — —Executor’s tax planning
§ 4:87 Property passing from non-citizen decedent

IV. PRIORITIES

§ 4:88 Generally

V. NOTICE

§ 4:89 Generally

VI. INTERIM DISTRIBUTIONS TO ESTATE BENEFICIARIES

§ 4:90 Interim distributions to estate beneficiaries, generally

§ 4:91 Other factors in determining when to distribute estate assets

§ 4:92 —Duty of impartiality

§ 4:93 —Estate tax and other obligations

§ 4:94 —Alternate valuation election

§ 4:95 —Income tax considerations

§ 4:96 — —Income in respect of a decedent

§ 4:97 — —Distributable net income

§ 4:98 — —Pecuniary bequests

§ 4:99 — —Advancements

§ 4:100 — —Spousal rights and exempt property

§ 4:101 — —Right to a share of estate income or statutory interest

§ 4:102 — —Estate income

§ 4:103 — —Statutory interest

VII. SALES OF ASSETS

§ 4:104 Sales of assets, generally

§ 4:105 Prudent investor rule

§ 4:106 Factors and guidelines imposed by rule

§ 4:107 Conflict of interest

§ 4:108 Tax consequences

§ 4:109 Alternate valuation election

VIII. PRACTICE IN THE SURROGATE'S COURT IN UNCONTESTED ESTATES

§ 4:110 Uncontested proceedings

§ 4:111 —Governing statutes

§ 4:112 —Uniform Rules and forms

§ 4:113 —Court structure

§ 4:114 —Role of estate attorney generally

§ 4:115 —Form of filing

§ 4:116 —Substantive pleading requirements

TABLE OF CONTENTS

- § 4:117 — —New signature requirement
- § 4:118 — —Compare: verification
- § 4:119 — —New form of attestation applicable to documents
acknowledged on or after September 1, 1999
- § 4:120 — —Calendaring uncontested proceedings
- § 4:121 — —Reviewing the court file
- § 4:122 — —Form 706
- § 4:123 — —Copying or removing the court file
- § 4:124 Appearances
- § 4:125 Notices
- § 4:126 Executor’s business judgment: the limits of court
petitions
- § 4:127 Continuation of a business
- § 4:128 Dealing with court personnel in uncontested matters;
role of the court
- § 4:129 — —Role of the law assistant
- § 4:130 Conferences
- § 4:131 — —Correspondence with court personnel
- § 4:132 — —Gauging the progress of the decision in chambers
- § 4:133 — —Role of the New York Law Journal
- § 4:134 — —Role of the paralegal
- § 4:135 — —Hearings without contest
- § 4:136 — —Surrogate’s discretion and preference
- § 4:137 — —Use of Uniform Rules
- § 4:138 — —Use of the telephone in communicating with court
staff
- § 4:139 — —Organization of court staff
- § 4:140 — —Interaction with practitioners
- § 4:141 Fiduciary fees in probate
- § 4:142 — —Application
- § 4:143 — —Commission base generally
- § 4:144 — —Items not commissionable; specific bequests
- § 4:145 — —Time of valuation of assets for common purposes
- § 4:146 — —Calculation of dollar value
- § 4:147 — —Corpus
- § 4:148 — —Income
- § 4:149 — —Receiving vs. paying out commissions
- § 4:150 — —Successor fiduciary
- § 4:151 Valuation for commission purposes; gross value
- § 4:152 — —Time of calculation of gross value
- § 4:153 — —Multiple commissions limitation; estates
- § 4:154 — —Gross estate limitation; estates of \$300,000 or
more
- § 4:155 — —Estates below \$300,000

- § 4:156 — —Multiple fiduciaries acting on or after September 1, 1993
- § 4:157 —Special addition to commissions
- § 4:158 —Time of payment of commissions
- § 4:159 — —With court approval
- § 4:160 — —Without court approval
- § 4:161 — —Bond on court approval
- § 4:162 —Rates; bifurcation
- § 4:163 — —Current law
- § 4:164 — —Summary
- § 4:165 — —Exception; corporate fiduciaries
- § 4:166 —What commissions do not cover
- § 4:167 — —What the fiduciary must absorb
- § 4:168 — —Ordinary travel expenses
- § 4:169 — —Extraordinary travel
- § 4:170 — —Ordinary travel anticipated by testator
- § 4:171 —Shipping costs
- § 4:172 Attorney's fees in probate

IX. ROLE OF GUARDIAN *AD LITEM* IN UNCONTESTED ESTATES

- § 4:173 When appointment of guardian *ad litem* is necessary or advisable

X. DRAFTSMAN AS BENEFICIARY OR FIDUCIARY

- § 4:174 Generally
- § 4:175 Ethical issues
- § 4:176 —Bequests
- § 4:177 —Sanctions
- § 4:178 *Putnam* rule
- § 4:179 —More recent cases
- § 4:180 —Question on probate petition
- § 4:181 Attorney as fiduciary
- § 4:182 —Undue influence in naming the attorney
- § 4:183 —Attorney's fees and commissions
- § 4:184 — —New statutory rule (SCPA § 2307-a)
- § 4:185 — —Application of statute to pre-1996 wills

XI. SPECIFIC ASSETS

- § 4:186 Copyright vs. rights of publicity
- § 4:187 Collections
- § 4:188 Auctions
- § 4:189 Dealing with ordinary tangibles

TABLE OF CONTENTS

- § 4:190 Required diligence; boxes, papers, and junk
- § 4:191 Listing real estate for sale
- § 4:192 Exclusive vs. non-exclusive listing
- § 4:193 Memorial gifts
- § 4:194 Life insurance on the life of another
- § 4:195 Administering large blocks of stock; investment counsel
- § 4:196 —Blockage discount
- § 4:197 —Retention
- § 4:198 —Identity of decedent: SEC administration and reporting requirements
- § 4:199 —Identity of executor
- § 4:200 Administering S corporation stock

XII. CLOSING THE ESTATE

- § 4:201 Generally
- § 4:202 Setting aside reserves
- § 4:203 —Contingent or unliquidated claims
- § 4:204 —Estate taxes
- § 4:205 —Accountings
- § 4:206 —Informal accountings with receipt and release agreements
- § 4:207 — —Beneficiaries under a disability
- § 4:208 — —Enforceability of receipt and release agreements
- § 4:209 —Court approval of informal account
- § 4:210 —Judicial accounting
- § 4:211 —Role of Attorney General

XIII. ADMINISTRATION CHECKLIST

- § 4:212 Generally

XIV. FORMS

- § 4:213 Form 4-1: List of assets: inventory (Rule Section 207.20(a))
 - § 4:214 Form 4-2: Notice of appearance and authorization
- Appendix 4-1. Estate administration time table

CHAPTER 5. MISCELLANEOUS PROCEEDINGS

I. COURT PROCEEDINGS UNDER THE DEED OF GUARDIANSHIP

- § 5:1 Introduction

- § 5:2 Execution and recordation
- § 5:3 Recordation after death of parent
- § 5:4 —Place of recordation
- § 5:5 —Three-month deadline for recordation
- § 5:6 —Qualification after recordation
- § 5:7 — —Petition required
- § 5:8 — —Renunciation
- § 5:9 Effect of deed during parent's life
- § 5:10 Appointment of third party as guardian
- § 5:11 Appointment of surviving parent
- § 5:12 —Where presumption fails
- § 5:13 —Weight of deed naming surviving parent
- § 5:14 Court involvement implementing the appointment

II. PERMANENT GUARDIANSHIPS FOR MINORS

- § 5:15 Introduction
- § 5:16 Jurisdiction
- § 5:17 While parents are living
- § 5:18 By petition
- § 5:19 —Petitioner
- § 5:20 —Service
- § 5:21 —Temporary letters
- § 5:22 Necessary documents
- § 5:23 When hearing is required
- § 5:24 Relationship to the deed of guardianship

III. HEALTH CARE PROXIES

- § 5:25 Introduction
- § 5:26 Living will
- § 5:27 Health care proxy
- § 5:28 —Objection to commencement of agency
- § 5:29 —When agency terminates
- § 5:30 Special proceedings involving health care proxies
- § 5:31 —Grounds for removing an agent
- § 5:32 —Grounds for overriding an agent's decision
- § 5:33 —Who may bring proceeding

IV. TRUST REFORMATION AND REVOCATION

- § 5:34 Introduction
- § 5:35 Reformation during the grantor's life
- § 5:36 —Consent rights of beneficiaries cannot be delegated
- § 5:37 —Termination
- § 5:38 Reformation after the grantor's death

TABLE OF CONTENTS

- § 5:39 —Who may bring proceeding
- § 5:40 —Intent of grantor
- § 5:41 —Governing law
- § 5:42 —Termination
- § 5:43 Reformation of charitable trusts
- § 5:44 —Who may seek
- § 5:45 —Conditions for applying doctrine of cy pres
- § 5:46 —Termination

V. STANDBY GUARDIANSHIPS

- § 5:47 Introduction
- § 5:48 How to appoint a standby guardian
- § 5:49 —Appointment by petition
- § 5:50 —Separate petition for each child
- § 5:51 —Contents of petition
- § 5:52 Designation of standby guardian (SCPA § 1726(4))
- § 5:53 —Authorizes standby guardian to petition
- § 5:54 —States effective date of standby guardian’s authority
- § 5:55 Notice provisions
- § 5:56 Requirements
- § 5:57 Court approval of standby guardian
- § 5:58 —Child abuse check
- § 5:59 —To receive letters of guardianship
- § 5:60 Commencing authority of standby guardian
- § 5:61 —Decree issued upon petition
- § 5:62 —Documents to be filed with court
- § 5:63 No divestiture of rights
- § 5:64 SCPA Article 17

VI. APPOINTMENT OF AND ROLE OF THE GUARDIAN *AD LITEM*

- § 5:65 Introduction
- § 5:66 Qualification
- § 5:67 Need
- § 5:68 Appointment of guardian *ad litem*
- § 5:69 —Court has the authority to appoint a guardian *ad litem*
- § 5:70 —Actual appointment of the guardian *ad litem* can occur in two ways
- § 5:71 — —By nomination
- § 5:72 — —Attorney typically nominated
- § 5:73 — —Conflict of interest
- § 5:74 —Petition for infant over the age of fourteen

- § 5:75 —Instances when a person under a disability does not need a guardian *ad litem*
- § 5:76 Service of process
- § 5:77 Duties of the guardian *ad litem*
- § 5:78 —In a probate proceeding
- § 5:79 —Hiring medical expert
- § 5:80 —In an accounting proceeding
- § 5:81 —If the disabled person is the decedent's spouse
- § 5:82 —If the ward's property is to be sold
- § 5:83 —If the ward is an afterborn child
- § 5:84 —If the ward is a prisoner
- § 5:85 Role of guardian *ad litem* as officer of the court
- § 5:86 Compensation of guardian *ad litem*
- § 5:87 —Factors
- § 5:88 —Allocation of fees
- § 5:89 Failure to appoint guardian *ad litem*
- § 5:90 Removal of a guardian *ad litem*
- § 5:91 Compare guardian appointed pursuant to CPLR

VII. GUARDIANSHIPS AND CONSERVATORSHIPS COMPARED

- § 5:92 Actions in conservatorship Article 81 proceedings
- § 5:93 SCPA Article 17A
- § 5:94 Determining whether a guardian is necessary
- § 5:95 —Additional considerations
- § 5:96 Determination of incapacity

VIII. CLAIMING THE ELECTIVE SHARE

- § 5:97 Introduction
- § 5:98 Making the election; notice
- § 5:99 Petition
- § 5:100 Jurisdiction
- § 5:101 Cancellation of election
- § 5:102 Waiver or release of right to elective share

IX. REOPENING AND VACATING PROBATE

- § 5:103 Introduction
- § 5:104 General requirements
- § 5:105 Court's power
- § 5:106 Bringing forward subsequent wills
- § 5:107 —Laches
- § 5:108 —Example: *In re Cohen's Estate*

TABLE OF CONTENTS

- § 5:109 Vacating probate on the basis of fraud, overreaching, misrepresentation, misconduct, newly-discovered evidence or other sufficient cause

X. STANDING OF BENEFICIARY TO SUE FOR MALPRACTICE

- § 5:110 Introduction
- § 5:111 Lack of privity
- § 5:112 Other grounds
- § 5:113 EPTL survival of decedent's personal claim required
- § 5:114 Change in law

XI. ACTIONS IN CONSERVATORSHIP ARTICLE 81 PROCEEDINGS

- § 5:115 Introduction
- § 5:116 Appointment of guardian; "a.i.p." defined
- § 5:117 —Determining whether to appoint a guardian
- § 5:118 —Once a person is determined to be incapacitated
- § 5:119 Jurisdiction: MHL § 81.04
- § 5:120 Petitions
- § 5:121 —Who may petition
- § 5:122 —Specific information required
- § 5:123 —Physician's affidavits
- § 5:124 —Petitioner has burden of proof
- § 5:125 Notice
- § 5:126 Court evaluator
- § 5:127 —Duties of the court evaluator
- § 5:128 —Authority of the court evaluator
- § 5:129 Appointment of counsel to represent a.i.p
- § 5:130 —A.i.p.'s right to counsel
- § 5:131 —Duties of the a.i.p.'s counsel
- § 5:132 —Legal fees
- § 5:133 —Counsel as alternative to court evaluator
- § 5:134 Hearing
- § 5:135 Appointment of guardian
- § 5:136 —Court-appointed guardian
- § 5:137 —Conflicts of interest
- § 5:138 Authority of guardian
- § 5:139 —Medical/psychiatric treatment
- § 5:140 —Additional powers
- § 5:141 —Powers exercisable under revocable trust
- § 5:142 —Proceedings upon death of incapacitated person
- § 5:143 SCPA Article 17A

XII. MOVING TRUSTS

- § 5:144 Judicial discretion
- § 5:145 —Transfer to a different jurisdiction
- § 5:146 —Transfer to another state
- § 5:147 — —Ascertaining intent of donor
- § 5:148 — —Importance of beneficiary location
- § 5:149 Prohibiting transfer of situs
- § 5:150 Out-of-state fiduciary: New York law applicable
- § 5:151 Reciprocity
- § 5:152 Foreign jurisdiction
- § 5:153 Court order from transfer state
- § 5:154 Transfer by invasion of trust principal

XIII. GENERAL APPLICABILITY OF THE CPLR

- § 5:155 Introduction
- § 5:156 Example of SCPA given priority
- § 5:157 Examples of CPLR given priority

XIV. SUITS BY AND AGAINST EXECUTORS AND OTHER FIDUCIARIES

- § 5:158 Introduction
- § 5:159 —Venue
- § 5:160 —Subject matter jurisdiction
- § 5:161 —Personal jurisdiction
- § 5:162 —Procedure
- § 5:163 Suits by executors and other fiduciaries
- § 5:164 —Hearing stage
- § 5:165 —Claims against a co-fiduciary
- § 5:166 —Burden of proof
- § 5:167 Actions that survive a decedent
- § 5:168 —Suits in tort
- § 5:169 —Stockholder derivative suits
- § 5:170 —Actions to preserve the estate
- § 5:171 —Malpractice
- § 5:172 Suits *against* executors and other fiduciaries
- § 5:173 —Claims by creditors
- § 5:174 —Claims by legatees and beneficiaries
- § 5:175 —Fiduciary's liability
- § 5:176 Accounting procedures
- § 5:177 —Statute of limitations
- § 5:178 — —Illustrations
- § 5:179 —Imprudent investing
- § 5:180 —Breach of fiduciary duty

TABLE OF CONTENTS

- § 5:181 —Damages relating to lack of diversification
- § 5:182 Relief against a fiduciary
- § 5:183 —Who may sue
- § 5:184 —Standing requirements
- § 5:185 —Specific proceedings for relief
- § 5:186 —Early distribution favored

XV. STANDING TO PETITION

- § 5:187 Petitions for compulsory accounting
- § 5:188 Creditor
- § 5:189 Person interested
- § 5:190 —Illustrations
- § 5:191 Guardian
- § 5:192 Co-fiduciary
- § 5:193 Voluntary account

XVI. WILL CONTESTS: FILING OBJECTIONS TO PROBATE

- § 5:194 Introduction
- § 5:195 —Pecuniary interest
- § 5:196 —Interest in commission
- § 5:197 Filing
- § 5:198 —Timeliness of objection
- § 5:199 Notice
- § 5:200 —Failure to give notice
- § 5:201 —Change from notice to citation for contests filed on or after January 1, 1998
- § 5:202 Grounds for contesting a will
- § 5:203 —Lack of testamentary capacity
- § 5:204 — —Burden of proof
- § 5:205 —Effect of standard of capacity on availability of jury trial in contest
- § 5:206 —Undue influence and constructive fraud
- § 5:207 — —Sufficiency of evidence
- § 5:208 —Due execution
- § 5:209 —Physical revocation
- § 5:210 Summary judgment
- § 5:211 No-contest clauses
- § 5:212 Weakening of no-contest clauses
- § 5:213 Will contests generally
- § 5:214 Section 1404 of SCPA
- § 5:215 —Will lacks a no-contest clause
- § 5:216 — —Five-year window

- § 5:217 — —Illustrations of special circumstances
- § 5:218 — —Notice
- § 5:219 — —Witnesses not signatories
- § 5:220 —Will has a no-contest clause
- § 5:221 —Presence of third parties at examination; conflict in authority
- § 5:222 Importance of solemn form of probate
- § 5:223 Effect of valid revocation
- § 5:224 Invalid revocation

XVIII. ACTIONS UNDER DURABLE POWERS OF ATTORNEY

- § 5:225 Introduction
- § 5:226 Incapacity at the time of creation of power; statutory authority
- § 5:227 Valid power of attorney: inherent power
- § 5:228 —Court's power to revoke power of attorney
- § 5:229 —Court may appoint guardian chosen by alleged incapacitated person

XIX. HOW TO KNOW WHAT'S HAPPENING IF YOU ARE NOT THE FIDUCIARY; FORCING NOTICES

- § 5:230 How to know what's happening if you are not the fiduciary; forcing notices

XX. STATUS REPORT

- § 5:231 Rule 207.42 status report

XXI. FORMS

- § 5:232 Form 5-1: Deed of surviving parent appointing guardian for child
- § 5:233 Form 5-2: Health care proxy
- § 5:234 Form 5-3: Petition for termination of testamentary charitable trust under \$100,000 because uneconomical (EPTL Sections 7-1.9, 8-1.1)
- § 5:235 Form 5-4: Designation of standby guardian
- § 5:236 Form 5-5: Notice of election by surviving spouse
- § 5:237 Form 5-6: Petition—Appointment of guardian
- § 5:238 Form 5-6.1: Petition—Person only
- § 5:239 Form 5-7: Petition—Property only
- § 5:240 Form 5-8: Petition—Standby guardianship
- § 5:241 Form 5-9: Petition—Appointment/Confirmation standby guardianship

TABLE OF CONTENTS

- § 5:242 Form 5-10: Decree appointing guardian
- § 5:243 Form 5-11: Verified objections to probate

CHAPTER 6. SPOUSAL RIGHTS

I. INTRODUCTION TO THE ELECTIVE SHARE LAW

- § 6:1 Governing law
- § 6:2 Brief history
- § 6:3 —First elective share law
- § 6:4 —Introduction of the concept of testamentary substitutes
- § 6:5 —Elective share law to be liberally construed
- § 6:6 —Use of trust to satisfy elective share
- § 6:7 —1992 Legislation
- § 6:8 —Application of the 1992 legislation

II. QUALIFICATION AS A SURVIVING SPOUSE

- § 6:9 Governing law
- § 6:10 Disqualification of a surviving spouse
- § 6:11 —Termination of marriage valid under New York law
- § 6:12 —Marriage was void
- § 6:13 —Termination of marriage not valid under New York law but procured by living spouse
- § 6:14 — —Compare
- § 6:15 —Separation valid under New York law
- § 6:16 —Abandonment by living spouse
- § 6:17 — —Other grounds for divorce do not disqualify spouse
- § 6:18 — —Elements of abandonment
- § 6:19 — —Compare
- § 6:20 — —Constructive abandonment
- § 6:21 —Failure to support spouse
- § 6:22 Application to the estates of certain non-domiciliary decedents
- § 6:23 —Elective share law may not be used to deprive spouse of rights
- § 6:24 —New York domiciliary may not defeat elective share rights by electing probate in another state
- § 6:25 —New York elective share law does not apply to former New York domiciliary
- § 6:26 No rights to survivor of common law marriage

III. POST-1992 RIGHT OF ELECTION

- § 6:27 Effective date

- § 6:28 Right of election is personal to surviving spouse
- § 6:29 —Persons authorized to elect on behalf of surviving spouse
- § 6:30 —Persons not authorized to elect on behalf of a surviving spouse
- § 6:31 —Elective share amount
- § 6:32 —Minimum elective share amount
- § 6:33 — —Decedent's issue irrelevant
- § 6:34 — —Resources of survivor irrelevant
- § 6:35 —Meaning of pecuniary amount
- § 6:36 —Computation of elective share
- § 6:37 — —Determination of decedent's estate
- § 6:38 — —Compare: gross estate
- § 6:39 — —Compare: exempt property
- § 6:40 — —Determination of net estate
- § 6:41 — —Determination of elective share
- § 6:42 — —Determination of net elective share
- § 6:43 —Intestate property included in net estate
- § 6:44 —Effect of exercise of right of election
- § 6:45 —Property located in jurisdictions outside of New York
- § 6:46 —Examples of computation of net estate

IV. TESTAMENTARY SUBSTITUTES

- § 6:47 Definition
- § 6:48 Timing of transactions that are testamentary substitutes
- § 6:49 Categories of testamentary substitutes
- § 6:50 —Gifts *causa mortis*
- § 6:51 —Gifts within one year of death
- § 6:52 —Totten trusts
- § 6:53 —Joint bank accounts with right of survivorship
- § 6:54 — —Burden of proof
- § 6:55 — —Timing of deposits to joint accounts
- § 6:56 — —Revocability of deposits in joint bank accounts
- § 6:57 — —Convenience accounts
- § 6:58 — —Tenancies by the entirety and joint tenancies with right of survivorship
- § 6:59 —Transfers in which decedent retained certain specified powers
- § 6:60 — —Life insurance
- § 6:61 — —Shareholders' agreements
- § 6:62 —Pension-type assets
- § 6:63 —Presently exercisable general power of appointment
- § 6:64 —Transfer of a security

TABLE OF CONTENTS

V. WAIVER OF RIGHT OF ELECTION

- § 6:65 In general
- § 6:66 Waiver must be signed and acknowledged
- § 6:67 Effectiveness of waiver
- § 6:68 —Waiver valid if executed before or after marriage
- § 6:69 —Waiver valid regardless of date of execution
- § 6:70 —Waiver valid whether executed by one or both spouses
- § 6:71 —Waiver valid regardless of consideration
- § 6:72 —Waiver valid whether absolute or conditional
- § 6:73 —Pension waivers recognized as valid

VI. CONTRIBUTIONS FROM THIRD PARTIES

- § 6:74 In General

VII. FUNDING OF THE ELECTIVE SHARE

- § 6:75 In General

VIII. PROCEDURE FOR EXERCISE OF RIGHT OF ELECTION

- § 6:76 Time period within which notice of an election must be made
- § 6:77 Service of notice
- § 6:78 Form of notice
- § 6:79 Relief from default in timely filing

IX. COMPETING RIGHTS OF FORMER SPOUSE AND CURRENT SPOUSE

- § 6:80 Generally
- § 6:81 Case law
- § 6:82 —Joint wills
- § 6:83 —Separation agreements
- § 6:84 Reconciling the cases
- § 6:85 —Joint wills
- § 6:86 —Separation agreements
- § 6:87 Protection of first spouse
- § 6:88 —Life insurance
- § 6:89 —QDROs
- § 6:90 Protection against a surviving spouse's future spouses

X. RIGHTS OF SURVIVING SPOUSES IN ADDITION TO RIGHT OF ELECTION

- § 6:91 Rights in intestacy

- § 6:92 Exemption for benefit of family
- § 6:93 Miscellaneous other rights
- § 6:94 —Voluntary administrator
- § 6:95 —Wrongful death award
- § 6:96 —Homestead exemption

XI. LEGAL REPRESENTATION OF SPOUSES: TAX PLANNING AND ETHICAL CONSIDERATIONS

- § 6:97 Planning for the elective share
- § 6:98 —QTIP and QDOT trusts
- § 6:99 — —Marital deduction
- § 6:100 — —QTIP trusts
- § 6:101 — —QDOT trusts
- § 6:102 — —Advantage of trusts
- § 6:103 — —Interplay between trusts and the elective share
- § 6:104 —Current law; use of waivers to provide for trusts
- § 6:105 — —Terms of waiver
- § 6:106 — —Enforceability of waiver
- § 6:107 — —Possible need for separate counsel
- § 6:108 —Impact of elective share on use of credit shelter
- § 6:109 —Planning to minimize the elective share
- § 6:110 — —Allocation of taxes
- § 6:111 — —Premarital transfers
- § 6:112 — —Life insurance
- § 6:113 — —Beneficiary designation on pension plans
- § 6:114 — —Lifetime gifts
- § 6:115 — —Protection of closely held business interests
- § 6:116 — —Use of trust with waiver
- § 6:117 — —Buy-sell agreements
- § 6:118 — —Voting trusts
- § 6:119 — —Limited partnerships
- § 6:120 — —Agreement to have marital waivers
- § 6:121 Ethical issues in representing spouses
- § 6:122 —Estate planning generally
- § 6:123 —Planning for the elective share
- § 6:124 —Ethical guidance
- § 6:125 — —Joint representation generally
- § 6:126 — —Consultation and consent
- § 6:127 — —Confidentiality
- § 6:128 —Engagement letter
- § 6:129 —Attorney-client fee dispute resolution program

XII. FORMS

- § 6:130 Form 6-1: Notice of election by surviving spouse

TABLE OF CONTENTS

- § 6:131 Form 6-2: Qualified domestic relations order
- § 6:132 Form 6-3: Mutual waiver of right to share of estate
- § 6:133 Form 6-4: Mutual waiver of right to outright share of estate
- § 6:134 Form 6-5: Engagement letter

CHAPTER 7. INTESTACY

I. INTRODUCTION TO INTESTACY

A. DEFINITIONS

- § 7:1 Intestate
- § 7:2 —Illustrations
- § 7:3 Distributee

B. GOVERNING LAW

- § 7:4 Sections 4-1.1 to 4-1.6 of the EPTL

C. ADMINISTRATION OF AN INTESTATE ESTATE-RELATED LAWS

- § 7:5 Appointment of an administrator
- § 7:6 Ancillary administration

D. BRIEF HISTORY

- § 7:7 Derivation of current law
- § 7:8 1992 legislation
- § 7:9 Application of the 1992 legislation

E. PROPERTY NOT SUBJECT TO THE INTESTACY RULES

- § 7:10 Non-probate property
- § 7:11 —Ineffective disposition of non-probate assets
- § 7:12 — —Totten trusts
- § 7:13 — —Ineffective beneficiary designation
- § 7:14 Family exemption

F. CALCULATION OF THE INTESTATE ESTATE

- § 7:15 In general
- § 7:16 Family exemption
- § 7:17 Deduction of debts, administration expenses and funeral expenses
- § 7:18 Estate taxes

§ 7:19 Advancements

II. INTESTATE DESCENT AND DISTRIBUTION

A. DEFINITIONS

- § 7:20 Issue “by representation”
- § 7:21 “Issue”
- § 7:22 Issue take *per capita* at each generation
- § 7:23 Compare: *per stirpes*
- § 7:24 Illustrations
- § 7:25 Effect of disclaimer on distribution

B. DISTRIBUTIVE SCHEME UNDER SECTION 4-1.1 OF THE EPTL

- § 7:26 In general
- § 7:27 Decedent is survived by a spouse and issue
- § 7:28 Compare: distribution to the surviving spouse differs from pre-1992 rules
- § 7:29 Decedent is survived by a spouse and no issue
- § 7:30 Compare: distribution differs from pre-1992 rules
- § 7:31 Decedent is survived by issue but no spouse
- § 7:32 Decedent is survived by either or both parents and no spouse or issue
- § 7:33 Decedent is survived by the issue of his parents and no spouse, issue or parents
- § 7:34 Decedent is survived by at least one grandparent or a child or grandchild of a grandparent and no spouse, issue, parents or issue of parents
- § 7:35 Decedent is survived by at least one great-grandchild of grandparents and no spouse, issue, parents, issue of parents, grandparents or children or grandchildren of grandparents
- § 7:36 Escheat
- § 7:37 Property located in New York never benefits another state or a foreign jurisdiction

III. ELIGIBLE DISTRIBUTEES

- § 7:38 In general
- § 7:39 Date upon which distributees are determined
- § 7:40 Posthumous distributees
- § 7:41 Half-blood relatives
- § 7:42 Adopted distributees
- § 7:43 —Adopted-out child inherits from his adoptive parents and not his natural parents

TABLE OF CONTENTS

- § 7:44 —Adopted-out child’s right of inheritance extends to his distributees
- § 7:45 —Special rules apply when a child is adopted by the spouse of a natural or adoptive parent
- § 7:46 —Special rules apply when a child is adopted by a family member
- § 7:47 —Adult adoption
- § 7:48 Non-marital children
- § 7:49 —Non-marital child is always a distributee of his natural mother
- § 7:50 —Subsequent marriage by parents of a non-marital child
- § 7:51 —Inheritance rights of a non-marital child with respect to his natural father or non-gestating intended parent
- § 7:52 — —Order of filiation or parentage
- § 7:53 — —Acknowledgment of parentage pursuant to Public Health Law
- § 7:54 — —Execution of formal instrument acknowledging parentage
- § 7:55 —Inheritance rights of a non-marital child with respect to his natural father—Clear and convincing evidence of paternity and acknowledgment of child by father
- § 7:56 — —Blood genetic marker test
- § 7:57 — —Existence of a child support agreement does not make a non-marital child a distributee of his natural father
- § 7:58 Missing distributees

IV. DISQUALIFICATION OF DISTRIBUTEES

- § 7:59 In general
- § 7:60 Disqualification of a parent to take an intestate share
- § 7:61 —Abandonment of or failure to support child under age 21
- § 7:62 — —Failure to support
- § 7:63 — —Abandonment
- § 7:64 — —Fraudulent adoption
- § 7:65 — —Resumption of parental duties
- § 7:66 — —Implementation of intestate distribution scheme when Section 4-1.4 applies
- § 7:67 — —No effect on child’s right to inherit
- § 7:68 —Subject to Social Services Law § 384-b proceeding
- § 7:69 Disqualification of spouse to take an intestate share
- § 7:70 —Invalid marriage

- § 7:71 —Valid divorce or annulment
- § 7:72 —Surviving spouse obtained invalid divorce or annulment
- § 7:73 —Valid decree of separation
- § 7:74 —Abandonment of deceased spouse
- § 7:75 —Spouse failed or refused to support deceased spouse
- § 7:76 Killer of the decedent
- § 7:77 —Intentional vs. unintentional homicides
- § 7:78 —Absence of criminal charges
- § 7:79 —Special statutory provision for joint tenants in bank accounts
- § 7:80 Waiver of an intestate share
- § 7:81 Disclaimer of an intestate share
- § 7:82 —Post-mortem tax planning

V. INTRA-FAMILY SETTLEMENTS

- § 7:83 In general
- Appendix 7-1. Former EPTL Section 4-1.1
- Appendix 7-2. Diagrams illustrating the operation of EPTL Section 4-1.1
- Appendix 7-3. Diagram illustrating the effect of disclaimer on intestate distribution
- Appendix 7-4. Diagram illustrating final eligible distributees
- Appendix 7-5. Diagram illustrating the effect of unborn children on intestate distribution

Volume E

CHAPTER 8. CLAIMS

I. DUTY TO PAY CLAIMS

- § 8:1 Fiduciary's obligation
- § 8:2 —Statutory regulation
- § 8:3 —Types of claims
- § 8:4 — —Identifying claims
- § 8:5 — —Claims exempt from fiduciary liability
- § 8:6 Fiduciary's safe harbor against personal liability
- § 8:7 —Claims period
- § 8:8 —Limits to safe harbor
- § 8:9 —Notice by publication
- § 8:10 —Effect of running out claims period

TABLE OF CONTENTS

II. PROCEDURE FOR PRESENTING CLAIMS

- § 8:11 Forum
- § 8:12 Form for filing claims under Article 18
- § 8:13 Exception
- § 8:14 Service
- § 8:15 Tolling Statute of Limitations
- § 8:16 Proving claims
- § 8:17 —Third-party objections to claims
- § 8:18 —Fiduciary liability for handling of claims
- § 8:19 Personal claims by fiduciary
- § 8:20 Action upon claims
- § 8:21 —Claims allowed
- § 8:22 —Claims rejected
- § 8:23 —Establishing the validity of claims rejected
- § 8:24 —Amending claims
- § 8:25 —Contingent or unliquidated claims
- § 8:26 —Compromising claims
- § 8:27 —Declaratory relief

III. PRIORITIES

- § 8:28 In general
- § 8:29 No bankruptcy protection
- § 8:30 Priority of debts
- § 8:31 —Administration expenses
- § 8:32 —Funeral expenses
- § 8:33 —Federal and state debts
- § 8:34 —Property taxes assessed prior to the decedent's death
- § 8:35 —Judgments and decrees
- § 8:36 —All secured claims
- § 8:37 —All other debts, claims and demands
- § 8:38 Spousal elective share
- § 8:39 —Net estate: computing the elective share
- § 8:40 —Exempt property
- § 8:41 —Establishing status as surviving spouse
- § 8:42 —Objections to elective share
- § 8:43 —Effect of election on other bequests
- § 8:44 Medicaid estate claims
- § 8:45 Priority of assets used to pay estate obligations
- § 8:46 Insolvent estates: interests abated
- § 8:47 Refunds by transferees on behalf of late claimants
- § 8:48 —Limitations
- § 8:49 —Order of surrender
- § 8:50 —Exception: federal transfer tax

IV. EXEMPTING A DECEDENT'S PROPERTY FROM CLAIMS

- § 8:51 In general
- § 8:52 Family property exemptions
- § 8:53 Life insurance
- § 8:54 —Irrevocable trust
- § 8:55 Pensions and annuities
- § 8:56 —Totten trust accounts
- § 8:57 —Joint accounts
- § 8:58 —Article 18 limitation
- § 8:59 —Revocable administrative trust as plan beneficiary
- § 8:60 — —EPTL exemption
- § 8:61 — —CPLR exemption
- § 8:62 —Qualified state tuition programs
- § 8:63 — —Operation
- § 8:64 — —Exemption from creditors

V. CLAIMS BY INFANTS AND DOMESTIC PARTNERS

- § 8:65 Claims by infants
- § 8:66 Claims by domestic partners

VI. FORMS

- § 8:67 Form 8-1 Notice of claim against the estate
- § 8:68 Form 8-2: Claimant's affidavit
- § 8:69 Form 8-3: Petition for compulsory accounting
- § 8:70 Form 8-4: Citation for compulsory accounting
- § 8:71 Form 8-5: Order for compulsory accounting
- § 8:72 Form 8-6: Petition by fiduciary under SCPA § 1809 to determine validity of claim
- § 8:73 Form 8-7: Notice of election by surviving spouse

CHAPTER 9. FEDERAL ESTATE TAX

I. FEDERAL ESTATE TAX FRAMEWORK

- § 9:1 Historical overview
- § 9:2 —Pre-1977 system
- § 9:3 —Post-1976 system
- § 9:4 Unified system
- § 9:5 Rate schedule
- § 9:6 —Annual exclusion of \$19,000
- § 9:7 —Filing of federal estate tax return

TABLE OF CONTENTS

§ 9:8	Payment of tax
§ 9:9	Determine gross estate
§ 9:10	—Calculate taxable estate
§ 9:11	—Apply unified tax rates
§ 9:12	— —Adjusted taxable gifts
§ 9:13	— —Revaluation of lifetime gifts
§ 9:14	— —Similar provision for gifts subject to valuation rules of Chapter 14 of the Code
§ 9:15	— —IRS provision prior to enactment
§ 9:16	—Calculate net estate tax
§ 9:17	Gross estate
§ 9:18	—Broad definition of property owned
§ 9:19	—Role of federal and state laws
§ 9:20	—Property passing by dower or curtesy (Section 2034)
§ 9:21	—Transfers within three years of death (Section 2035)
§ 9:22	— —Inclusion of certain retained interests
§ 9:23	— —Inclusion of certain gift taxes
§ 9:24	— —Effect of retained interest rule
§ 9:25	— —Revocable trust distributions
§ 9:26	— —Impact of three-year rule on certain special Code provisions
§ 9:27	—Transfers with retained life estate (Section 2036)
§ 9:28	— —Voting of controlled corporation's stock
§ 9:29	— —Length of retained term
§ 9:30	— —Use for decedent's legal obligation or benefit
§ 9:31	— —Right to designate possession or enjoyment
§ 9:32	— —Trustee removal power
§ 9:33	— —Special valuation rules
§ 9:34	—Transfers taking effect at death (Section 2037)
§ 9:35	— —Definition of reversionary interest
§ 9:36	— —Valuation of reversionary interest
§ 9:37	— —Power of disposition
§ 9:38	— —Pre-October 8, 1949 transfers
§ 9:39	— —Where survival of decedent is not required
§ 9:40	— —Examples
§ 9:41	—Revocable transfers (Section 2038)
§ 9:42	— —Requirement of notice or expiration of term
§ 9:43	— —Power requiring consent of interested parties
§ 9:44	— —Powers held by other persons
§ 9:45	— —Certain features of power are irrelevant
§ 9:46	— —Transfers to minors
§ 9:47	— —Relinquishment of power
§ 9:48	— —Pre-June 22, 1936 transfers

TRUSTS AND ESTATES PRACTICE IN NEW YORK

- § 9:49 —Annuities (Section 2039)
- § 9:50 — —Definition of annuity or other payment
- § 9:51 — —When deemed “payable” to decedent
- § 9:52 — —Valuation
- § 9:53 — —Insurance proceeds
- § 9:54 —Repeal of Section 4980A tax
- § 9:55 —Joint interests (Section 2040)
- § 9:56 —Amount includible
- § 9:57 —Presumption of full inclusion
- § 9:58 —Qualified joint interest with spouse
- § 9:59 Powers of appointment (Section 2041)
- § 9:60 —Requirement of notice, expiration of term or occurrence of event
- § 9:61 —Exercise of power to create another power
- § 9:62 —Power to dispose of property
- § 9:63 —Definition of general power of appointment
- § 9:64 —Exceptions
- § 9:65 —Substantial interest
- § 9:66 —Adverse interest
- § 9:67 —Broad interpretation of “power”
- § 9:68 —Powers exercisable to pay liabilities or discharge obligations of decedent
- § 9:69 —Powers limited by an ascertainable standard
- § 9:70 —Power to remove trustee
- § 9:71 —Comparison
- § 9:72 —Exercised or released power
- § 9:73 —Disclaimed power of appointment
- § 9:74 —Lapse may be deemed to be release
- § 9:75 —When power is exercised
- § 9:76 —Power over certain assets or property interests
- § 9:77 —When power is deemed created
- § 9:78 Proceeds of life insurance (Section 2042)
- § 9:79 —Definition of insurance
- § 9:80 —Includible proceeds
- § 9:81 —Incidents of ownership
- § 9:82 —Insurance held in trust
- § 9:83 —Insurance for certain corporations
- § 9:84 —Reversionary interests
- § 9:85 —Amount includible
- § 9:86 —Transfer within three years
- § 9:87 Transfers for insufficient consideration (Section 2043)
- § 9:88 —Relinquishment of statutory marital rights
- § 9:89 —Section 2526(1) transfers
- § 9:90 Certain property for which marital deduction was previously allowed (Section 2044)

TABLE OF CONTENTS

§ 9:91 —Rebuttable presumption of full inclusion
§ 9:92 —Amount includible
§ 9:93 —Gift tax exclusion amount
§ 9:94 —Severed QTIP trust
§ 9:95 Taxable estate
§ 9:96 —Expenses, indebtedness, and taxes (Section 2053)
§ 9:97 — —Funeral expenses
§ 9:98 — —Administration expenses
§ 9:99 — —Executors' commissions
§ 9:100 — —Attorney's fees
§ 9:101 — —Special circumstances
§ 9:102 — —Reasonableness of attorney's fees under New
York law
§ 9:103 — —Miscellaneous administration expenses
§ 9:104 — —Expenses of sale
§ 9:105 — —Interest on funds borrowed to pay estate taxes
§ 9:106 — —Interest when time to pay tax is extended
§ 9:107 — —Interest on tax deficiency or late payment of tax
§ 9:108 —Claims against estate
§ 9:109 — —Contingent or uncertain claims
§ 9:110 — —Deduction founded upon promise or agreement
§ 9:111 — —Medical expenses
§ 9:112 — —Taxes
§ 9:113 — —Property taxes
§ 9:114 — —Estate taxes
§ 9:115 — —Gift taxes
§ 9:116 — —Income taxes
§ 9:117 — —Claims relating to Section 2044 property
§ 9:118 — —Mortgage or other indebtedness
§ 9:119 — —Expenses of administering property not subject
to claims
§ 9:120 — —Limitation on deduction to amount allowed by
local law
§ 9:121 — —Deduction based upon estimates
§ 9:122 —Losses (Section 2054)
§ 9:123 —Transfers for public, charitable and religious uses
(Section 2055)
§ 9:124 — —Conditional bequests
§ 9:125 — —Charitable bequests by reason of disclaimers
§ 9:126 — —Termination or non-exercise of power to
appropriate property for non-charitable use
§ 9:127 — —Charitable transfers of certain partial interests
§ 9:128 — —Charitable split-interest trusts
§ 9:129 — —Remainder interests
§ 9:130 — —Guaranteed annuity interest

TRUSTS AND ESTATES PRACTICE IN NEW YORK

- § 9:131 — —Unitrust interests
- § 9:132 — —No charitable deduction allowed for other interests that are not absolute and outright
- § 9:133 — —Reformation of non-qualifying interests
- § 9:134 — —General power of appointment property
- § 9:135 — —Payment of death taxes from charitable bequest
- § 9:136 — —Reduction for administration expenses and post-death interest
- § 9:137 — —Charitable bequests pursuant to settlement of estate litigation
- § 9:138 — —Transfer of art or copyright on art
- § 9:139 — —Bequests to surviving spouse (who is a United States citizen) (Section 2056)
- § 9:140 — —Property must pass from decedent to spouse
- § 9:141 — —Outright interests
- § 9:142 — —Terminable interests in property
- § 9:143 — —Limitation on deduction for terminable interests
- § 9:144 — —Spousal bequests that may be satisfied with non-deductible property
- § 9:145 — —Survivorship requirement
- § 9:146 — —Deductible terminable interests
- § 9:147 — —A “general power of appointment” trust
- § 9:148 — —Interests in portion of property
- § 9:149 — —Partial interest in property
- § 9:150 — —Separate consideration of each interest
- § 9:151 — —Local law controls
- § 9:152 — —Rights to income from trust
- § 9:153 — —Power of appointment requirements
- § 9:154 — —Life insurance, endowment or annuity contract
- § 9:155 — —Rules on specific portions and powers of appointment
- § 9:156 — —Contract need not confer “power” using that term
- § 9:157 — —“Qualified terminable interest property” (or QTIP) trust
- § 9:158 — —Definition of qualifying income interest
- § 9:159 — —Rights to income
- § 9:160 — —Power to distribute trust principal to spouse
- § 9:161 — —Annuities
- § 9:162 — —“Estate” trust
- § 9:163 — —Charitable remainder trust
- § 9:164 — —Value of deductible interest
- § 9:165 — —Material limitations
- § 9:166 — —Special use election
- § 9:167 — —Reduction for death taxes and debts payable from marital bequest

TABLE OF CONTENTS

§ 9:168 — —Reduction for administration expenses and post-death interest

§ 9:169 — —Remainder interests

§ 9:170 — —No double deduction allowed under Section 2053 and Section 2056

§ 9:171 — —No double deduction allowed under Section 2054 and Section 2056

§ 9:172 — —Transitional rule

§ 9:173 — —Requests to surviving spouse (who is not a United States citizen)

§ 9:174 — —Spouse who becomes U.S. citizen after decedent's death

§ 9:175 — —Definition of QDOT

§ 9:176 — —Trust requirements

§ 9:177 — —Additional requirements to ensure tax collection

§ 9:178 — —Non-assignable annuities and plans

§ 9:179 — —Domestic corporation

§ 9:180 — —Annual statement by U.S. Trustee

§ 9:181 — —Estate tax upon distribution from QDOT

§ 9:182 — —Calculation of tax

§ 9:183 — —Exemption for hardship distributions

§ 9:184 — —Other exempt distributions

§ 9:185 — —Tax upon termination of QDOT status

§ 9:186 — —Due date for payment of tax

§ 9:187 — —Liability of trustees for tax

§ 9:188 — —Estate tax lien

§ 9:189 — —Tax credits, deductions and elections available at surviving spouse's death

§ 9:190 — —QDOT election

§ 9:191 — —Protective QDOT election

§ 9:192 — —Spousal transfer or assignment to QDOT

§ 9:193 — —Treatment of transferred or assigned property

§ 9:194 — —Time for transfer of property to QDOT

§ 9:195 — —Protective assignment to QDOT

§ 9:196 — —Joint property

§ 9:197 — —Multiple QDOTs; Designated filer rules

§ 9:198 — —Reformation proceedings

§ 9:199 — —Form 706-QDT

§ 9:200 Credits against estate tax

§ 9:201 — —Credit against estate tax (Section 2010)

§ 9:202 — —Credit for state death taxes (Section 2011)

§ 9:203 — —Credit for gift tax (Section 2012)

§ 9:204 — —Maximum credit

§ 9:205 — —Split gifts

§ 9:206 — —Calculation of gift tax paid

TRUSTS AND ESTATES PRACTICE IN NEW YORK

- § 9:207 — —Credit for tax on prior transfers (Section 2013)
- § 9:208 — —Percentage credit
- § 9:209 — —Requirements for qualification for credit
- § 9:210 — —Limitation on credit
- § 9:211 — —Effect of charitable deduction
- § 9:212 — —Multiple transferors
- § 9:213 —Valuation of property transferred
- § 9:214 —Credit for foreign death taxes (Section 2014)
- § 9:215 — —Limitation on credit
- § 9:216 — —Maximum credit
- § 9:217 — —Proof of foreign taxes paid
- § 9:218 — —Timing of payment of foreign taxes
- § 9:219 — —No credit allowed for taxes deducted under
Section 2053
- § 9:220 — —Resident alien decedents
- § 9:221 — —Treaties
- § 9:222 Estates of nonresident aliens
- § 9:223 Valuation of assets
- § 9:224 —Fair market valuation
- § 9:225 —Need for accurate valuation
- § 9:226 —Step-up in basis
- § 9:227 —Discounts and premiums
- § 9:228 — —Minority interests
- § 9:229 — —Lack of marketability
- § 9:230 — —Blockage
- § 9:231 — —Control premium
- § 9:232 —Valuation of specific types of property
- § 9:233 — —Stocks and bonds
- § 9:234 — —Securities traded on multiple exchanges
- § 9:235 — —Bonds traded on an exchange
- § 9:236 — —Sales prices unavailable within reasonable
period
- § 9:237 — —Bid and asked prices also unavailable either
before or after valuation date
- § 9:238 — —Valuation not reflective of fair market value
- § 9:239 — —Bid and asked prices also completely unavailable
- § 9:240 — —Securities pledged or bought on margin
- § 9:241 — —Securities subject to option or contract to
purchase
- § 9:242 — —Ex-dividends
- § 9:243 — —Flower bonds
- § 9:244 — —Business interests
- § 9:245 — —Valuation factors
- § 9:246 — —Goodwill
- § 9:247 — —Buy-sell agreements, options, etc.

TABLE OF CONTENTS

§ 9:248	— —Substantiation of valuation
§ 9:249	— —Real Property
§ 9:250	— —Notes
§ 9:251	— —Cash
§ 9:252	— —Household and personal effects
§ 9:253	— —Itemization of property
§ 9:254	— —Appraisal required for certain valuable property
§ 9:255	— —Selection of appraiser
§ 9:256	— —Private Annuities, life estates, terms for years, remainders and reversions
§ 9:257	— —Annuities, insurance and mutual funds
§ 9:258	— —Remainder interest in CRT
§ 9:259	— —Life or term interest in CRT
§ 9:260	— —Pooled income fund
§ 9:261	— —Dependent interests
§ 9:262	— —Alternate valuation method; date of death
§ 9:263	— —Election must decrease gross estate and taxes imposed
§ 9:264	— —Election applies to all property
§ 9:265	— —Disposition of assets within six months
§ 9:266	— —Earnings or accruals within six-month period
§ 9:267	— —Interest accrued or principal paid on bonds or notes after death
§ 9:268	— —Non-interest bearing obligations sold at discount
§ 9:269	— —Dividends
§ 9:270	— —Effect of Section 2032 election on deductions
§ 9:271	— —Special use valuation
§ 9:272	— —Qualified real property
§ 9:273	— —Material participation requirement
§ 9:274	— —Indirectly owned or leased property
§ 9:275	— —Residential property
§ 9:276	— —Definition of qualified use
§ 9:277	— —Cash lease
§ 9:278	— —Definition of adjusted value
§ 9:279	— —Definition of qualified heir
§ 9:280	— —Definition of member of family
§ 9:281	— —Definition of farm
§ 9:282	— —Definition of farming purposes
§ 9:283	— —Valuation methods
§ 9:284	— —Valuation discounts on special use property
§ 9:285	— —Election
§ 9:286	— —Partial election
§ 9:287	— —Protective election
§ 9:288	— —Agreement of interested persons

- § 9:289 — —Estate tax upon disposition or cessation of qualified use
- § 9:290 — —Amount of tax
- § 9:291 — —Due date of tax
- § 9:292 — —Liability of qualified heir for tax
- § 9:293 — —Cessation of qualified use
- § 9:294 — —Exception for qualified use commencing within two years
- § 9:295 — —Basis of qualified use property
- § 9:296 — —Section 2044 property
- § 9:297 — —Section 2057: Family owned business deduction

II. GENERATION-SKIPPING TRANSFER TAX PURPOSE AND HISTORY OF GST TAX

- § 9:298 Purpose
- § 9:299 History of GST tax
- § 9:300 Effective date of current GST tax system
- § 9:301 — —Exemption for certain irrevocable trusts
- § 9:302 — —Exemption for certain wills and revocable trusts
- § 9:303 Generation-skipping transfer tax system
- § 9:304 — —Generation-skipping transfer
- § 9:305 — —Transferor
- § 9:306 — —Split gifts
- § 9:307 — —Reverse QTIP elections
- § 9:308 — —Generation determination
- § 9:309 — —Direct skips
- § 9:310 — —Indirect Skips
- § 9:311 — —Predeceased child exception
- § 9:312 — —Addition to predeceased child exception
- § 9:313 — —Trust transfers as direct skips
- § 9:314 — —\$2 million exclusion for certain transfers before 1990
- § 9:315 — —Taxable terminations
- § 9:316 — —Predeceased child exception may apply
- § 9:317 — —Taxable distributions
- § 9:318 — —Predeceased child exception may apply
- § 9:319 — —Skip persons
- § 9:320 — —Trusts
- § 9:321 — —GST Trust
- § 9:322 — —Interests in property held in trust
- § 9:323 — —Taxable amount
- § 9:324 — —Tax on taxable distributions
- § 9:325 — —Tax on taxable terminations
- § 9:326 — —Tax on direct skips

TABLE OF CONTENTS

§ 9:327	—Valuation
§ 9:328	— —Direct skip property included in transferor's estate
§ 9:329	— —Taxable terminations on death may elect alternate valuation
§ 9:330	—GST exemption
§ 9:331	— —Lifetime deemed allocations to direct skips and indirect skips
§ 9:332	— —Avoiding automatic allocation
§ 9:333	— —Irrevocability of allocations
§ 9:334	— —Lifetime allocations to other transfers
§ 9:335	— —Effective date of allocation
§ 9:336	— —Extension of time to allocate GST exemption and to elect out of deemed allocation rules
§ 9:337	— —Substantial compliance with allocation rules
§ 9:338	— —Retroactive allocation of GST exemption permitted for unnatural order of death
§ 9:339	— —Exception for property subject to an ETIP
§ 9:340	— —Allocations after death
§ 9:341	—Calculation of GST tax
§ 9:342	— —Taxable amount
§ 9:343	— —Applicable rate
§ 9:344	— —Maximum federal estate tax rate
§ 9:345	— —Inclusion ratio
§ 9:346	— —Applicable fraction
§ 9:347	— —Zero denominator
§ 9:348	— —ETIP
§ 9:349	— —CLAT property after October 13, 1987
§ 9:350	— —Redetermination of applicable fraction
§ 9:351	— —Valuation rules
§ 9:352	—Special election for QTIPs
§ 9:353	—Taxation of multiple skips
§ 9:354	—Separate trust rules
§ 9:355	— —Multiple transferors
§ 9:356	— —Separate and independent shares of multiple beneficiaries
§ 9:357	— —Severance into separate trusts
§ 9:358	—GST tax filing requirements
§ 9:359	— —Taxable distributions
§ 9:360	— —Taxable terminations
§ 9:361	— —Direct skips
§ 9:362	—Liability for payment of GST tax
§ 9:363	— —Taxable distributions
§ 9:364	— —Taxable terminations
§ 9:365	— —Direct skips

- § 9:366 — —Burden for payment of GST tax
- § 9:367 — —Executor's right of recovery
- § 9:368 — —Payment by trustee
- § 9:369 — —Trustee's liability for increase in GST tax
- § 9:370 —Time and manner of filing
- § 9:371 —Liens
- § 9:372 Nonresident aliens
- § 9:373 —Scope of GST tax
- § 9:374 —GST exemption

III. FEDERAL ESTATE TAX RETURN

- § 9:375 Introduction
- § 9:376 —Filing requirement for certain smaller estates
- § 9:377 —Possible adjustment in value of post-1976 gifts
- § 9:378 —Non-resident aliens
- § 9:379 Filing of Form 706
- § 9:380 —Retain evidence of timely mailing
- § 9:381 —Calculation of proper due date
- § 9:382 —Extension of time to file Form 706
- § 9:383 —Supplemental filings
- § 9:384 —Extension to file does not affect time to pay tax
- § 9:385 —Late filing
- § 9:386 —All executors should sign Form 706
- § 9:387 —Place of filing
- § 9:388 —Use of current form
- § 9:389 —Parts of Form 706 to be completed by all estates
- § 9:390 —Attachments to Form 706
- § 9:391 —Rounding of values to nearest dollar
- § 9:392 —Listing of entries on schedules
- § 9:393 —Continuation schedules
- § 9:394 —Alternate valuation entries
- § 9:395 —Likelihood of audit
- § 9:396 Schedule A: real estate
- § 9:397 —Description of real property
- § 9:398 —What constitutes an interest in real property
- § 9:399 —Indebtedness
- § 9:400 —Valuation
- § 9:401 — —Section 2032A election
- § 9:402 — —Reductions in value
- § 9:403 — —Discounts for minority interest and lack of marketability
- § 9:404 — —Reduction for anticipated costs of sale
- § 9:405 —Attachments
- § 9:406 —Selection of appraiser

TABLE OF CONTENTS

§ 9:407 Schedule A-1-Section 2032A valuation
§ 9:408 —Election must be made for both estate tax and GST tax purposes
§ 9:409 —Protective election
§ 9:410 —Calculation of additional GST tax upon disposition
§ 9:411 —List persons who receive an interest in special use property
§ 9:412 —Written agreement by persons with an interest in special use property
§ 9:413 —Requirements for valid election
§ 9:414 Schedule B: stocks and bonds
§ 9:415 —Jointly owned securities
§ 9:416 —Securities held in trust
§ 9:417 —Types of interest included on Schedule B
§ 9:418 —Securities subject to foreign death taxes
§ 9:419 —Description of securities
§ 9:420 —Dividends and interest
§ 9:421 —Worthless securities
§ 9:422 —Securities traded on an exchange
§ 9:423 —Common trust funds
§ 9:424 — —Flower bonds
§ 9:425 — —Mutual funds
§ 9:426 — —U.S. bonds
§ 9:427 — —Cooperative apartments
§ 9:428 — —Business interests
§ 9:429 — —Discounts in valuation
§ 9:430 — —Premiums in valuation
§ 9:431 —Dividends and interest
§ 9:432 Attachments
§ 9:433 Schedule C: mortgages, notes and cash
§ 9:434 —Types of assets included on Schedule C
§ 9:435 —Valuation
§ 9:436 —Descriptions
§ 9:437 —Discounts in valuation
§ 9:438 —Checks drawn shortly before death
§ 9:439 — —Intention to make a gift
§ 9:440 — —Checks drawn by attorney-in-fact
§ 9:441 Schedule D: insurance on the decedent's life
§ 9:442 —Includible proceeds under Section 2042
§ 9:443 —Description
§ 9:444 —Attachment
§ 9:445 —Valuation
§ 9:446 —Non-includible proceeds
§ 9:447 —Interest paid on insurance proceeds
§ 9:448 —Insurance owned by a corporation

TRUSTS AND ESTATES PRACTICE IN NEW YORK

- § 9:449 Schedule E: jointly owned property
- § 9:450 —Qualified joint interests
- § 9:451 — —Pre-1977 joint property
- § 9:452 — —Non-citizen spouses
- § 9:453 —Other joint property
- § 9:454 —Attachments
- § 9:455 —Joint property held with a non-spouse
- § 9:456 Schedule F: other miscellaneous property not reportable under any other schedule
- § 9:457 —Types of assets included on Schedule F
- § 9:458 —Safe deposit boxes
- § 9:459 —Valuation
- § 9:460 — —Household contents valued at \$100 or less
- § 9:461 — —Items of artistic or intrinsic value
- § 9:462 — —Coin and currency collections
- § 9:463 — —Mineral royalties
- § 9:464 — —Patents
- § 9:465 — —Remainder interests
- § 9:466 — —Discounts in valuation
- § 9:467 — —Appraisals
- § 9:468 Attachments
- § 9:469 Schedule G: transfers during decedent's life
- § 9:470 —Federal gift taxes for gifts within three years of death
- § 9:471 —Other transfers within three years of death
- § 9:472 —Transfers under Section 2036
- § 9:473 —Transfers under Section 2037
- § 9:474 —Transfers under Section 2038
- § 9:475 —Section 2701 et seq
- § 9:476 —Decedent as custodian of a Gifts to Minors account
- § 9:477 —Valuation
- § 9:478 —Attachments
- § 9:479 — —Lifetime transfers not includible in decedent's estate
- § 9:480 Schedule H: powers of appointment
- § 9:481 —Status as trustee, or power to remove and replace trustee
- § 9:482 —Valuation
- § 9:483 —Attachments
- § 9:484 Schedule I: annuities
- § 9:485 —Annuities reported on Schedule I
- § 9:486 —Joint and survivor annuities
- § 9:487 Valuation
- § 9:488 —Attachments

TABLE OF CONTENTS

- § 9:489 Schedule J: funeral expenses and expenses incurred in administering property subject to claims
- § 9:490 —Funeral expenses
- § 9:491 —Administration expenses
- § 9:492 — —Executors' commissions
- § 9:493 — —Attorney's fees
- § 9:494 — —Interest on estate taxes
- § 9:495 — —Expenses of sale
- § 9:496 — —Penalties
- § 9:497 — —Executors' expenses
- § 9:498 — —Trustees' commissions
- § 9:499 —Declaration of executors' commissions and attorney's fees
- § 9:500 Schedule K: debts of the decedent, and mortgages and liens
- § 9:501 —Types of debts included on Schedule K
- § 9:502 —Calculation of accrued income tax liability
- § 9:503 —Alimony and support obligations
- § 9:504 —Creditors who have not filed a claim against the estate
- § 9:505 —Protective claims for unpaid debts
- § 9:506 —Settlement of will contest
- § 9:507 —Guarantee of another's debt
- § 9:508 —Mortgage or lien
- § 9:509 Schedule L: net losses during administration and expenses incurred in administering property not subject to claims
- § 9:510 —Administration expenses relating to property not subject to claims
- § 9:511 Schedule M: bequests, etc., to surviving spouse
- § 9:512 —Property subject to indebtedness or payment of estate taxes
- § 9:513 —QTIP election
- § 9:514 — —Terminable interests generally
- § 9:515 — —QTIP election
- § 9:516 — —Partial QTIP election
- § 9:517 — —Reasons for partial QTIP elections
- § 9:518 — —Protective QTIP elections
- § 9:519 — —Joint and survivor annuities
- § 9:520 —Non-citizen spouses
- § 9:521 —Residuary bequest
- § 9:522 —Property rights vesting in spouse at decedent's death
- § 9:523 —Will contests or other litigations
- § 9:524 —Disclaimers

TRUSTS AND ESTATES PRACTICE IN NEW YORK

- § 9:525 —Listing of marital deduction property
- § 9:526 Schedule O: charitable, public, and similar gifts and bequests
- § 9:527 —Partial or trust interests
- § 9:528 — —Charitable remainder trusts
- § 9:529 — —Surviving spouse as sole non-charitable beneficiary of property ultimately passing to charity
- § 9:530 — —Art and copyrights on art
- § 9:531 —Reduction for estate taxes payable from charity
- § 9:532 —Disclaimers to charity
- § 9:533 —Attachments
- § 9:534 —*Warms* adjustment
- § 9:535 —Charitable pledges unpaid at death
- § 9:536 Schedule P: credit for foreign death taxes
- § 9:537 —Amount of credit
- § 9:538 — —Use of treaty between U.S. and foreign country
- § 9:539 — —Current treaties
- § 9:540 —Certification of payment of foreign death tax
- § 9:541 —Foreign death taxes not yet paid
- § 9:542 —Refund of foreign death taxes
- § 9:543 Schedule Q: credit for tax on prior transfers
- § 9:544 —Decedent who predeceased transferor
- § 9:545 —Calculation of credit
- § 9:546 —Amount of credit
- § 9:547 —Definition of property
- § 9:548 — —Unified credit trusts
- § 9:549 — —Life estates
- § 9:550 —Property in successive estates
- § 9:551 —Special use property
- § 9:552 —Effect of Section 6166 deferral by transferor's estate
- § 9:553 Schedules R and R-1: generation-skipping transfer tax
- § 9:554 —Calculation of GST tax on Form 706
- § 9:555 —Direct skips
- § 9:556 — —Marital deduction trusts
- § 9:557 — —Insurance or annuities
- § 9:558 —Charitable bequests
- § 9:559 —Allocation of GST exemption
- § 9:560 —Allocation of exemption to trust property
- § 9:561 —Reverse QTIP election
- § 9:562 —Schedule R-1 acts as notice to trustee of GST tax due
- § 9:563 —Valuation for GST tax purposes
- § 9:564 —Pecuniary bequests

TABLE OF CONTENTS

- § 9:565 State death tax credit and deduction
- § 9:566 State death tax deduction
- § 9:567 —Certification of state death taxes
- § 9:568 Other Form 706 Considerations: Alternate valuation election
- § 9:569 —Special use valuation
- § 9:570 —Section 6166 election to defer certain taxes
- § 9:571 Deferral of taxes on reversionary or remainder interest
- § 9:572 Recapitulation on Form 706
- § 9:573 Schedule F must be completed
- § 9:574 Tax computation on Form 706
- § 9:575 —Authorization of others to act on behalf of estate

IV. PAYMENT OF ESTATE TAX

- § 9:576 Due date and method of payment
- § 9:577 Prior payments
- § 9:578 Method of payment
- § 9:579 Method of payment (including use of flower bonds)—
Extensions generally (Section 6161)
- § 9:580 — —Further extensions
- § 9:581 — —Extension to pay tax deficiency
- § 9:582 — —Request for extension
- § 9:583 — —Due date of tax extended
- § 9:584 — —Bond requirement
- § 9:585 —Extensions on tax attributable to reversionary or remainder interests (Section 6163)
- § 9:586 — —Further extensions
- § 9:587 — —What taxes may be extended
- § 9:588 — —Request for extension
- § 9:589 — —Bond requirement
- § 9:590 —Deferral of taxes attributable to certain closely held business interests (Section 6166)
- § 9:591 — —Consequences of Section 6166 election
- § 9:592 — —Interest payable on tax deferred
- § 9:593 — —No deduction for interest payments
- § 9:594 — —Declaratory relief on tax value
- § 9:595 — —Definitions and rules under Section 6166
- § 9:596 — —Election
- § 9:597 — —Protective election
- § 9:598 — —Election upon assessment of tax deficiency
- § 9:599 — —Payment of tax deficiency when election was previously made
- § 9:600 — —Acceleration of deferred tax

TRUSTS AND ESTATES PRACTICE IN NEW YORK

- § 9:601 — —Exception for stock redemptions, stock sales, etc.
- § 9:602 — —Certain sales excluded
- § 9:603 — —Changes in form
- § 9:604 — —Payment of deferred tax where estate has undistributed net income
- § 9:605 — —Acceleration of deferred tax upon failure to pay installment when due
- § 9:606 — —Deferral of GST tax on direct skips
- § 9:607 — —Lien imposed on Section 6166 property
- § 9:608 — —Extension to pay Section 6166 tax
- § 9:609 — —Written agreement to pay tax in installments (Section 6159)
- § 9:610 Liability of executor and other fiduciary
- § 9:611 — —Liability of person in possession of decedent's property if no executor is acting
- § 9:612 — —Personal liability by reason of paying debts before estate taxes
- § 9:613 — —Application by executor for discharge from liability
- § 9:614 — —Application by other fiduciary for discharge from liability
- § 9:615 — —Discharge for liability based upon decedent's lifetime gifts
- § 9:616 — —Liability of persons other than executors
- § 9:617 — —Right to contribution by others
- § 9:618 — —Recovery from insurance proceeds in decedent's estate
- § 9:619 — —Recovery from general power of appointment property in decedent's estate
- § 9:620 — —Recovery from marital deduction property in decedent's estate
- § 9:621 — —Gift may result if recovery is not pursued
- § 9:622 — —Trust property
- § 9:623 — —Recovery from Section 2036 property
- § 9:624 — —Transferee liability
- § 9:625 — —Statute of Limitations
- § 9:626 — —Exceptions whereby no limitations period exists
- § 9:627 — —Written agreement to extend limitations period
- § 9:628 — —Rule for estate tax attributable to refund of state or foreign death taxes
- § 9:629 — —Rule where certain property in decedent's estate is omitted from Form 706
- § 9:630 — —Time for collection of tax
- § 9:631 — —Suspension of limitations period for assets in court's control
- § 9:632 — —Time to claim credit or refund of overpayment

TABLE OF CONTENTS

- § 9:633 —Estate tax liens
- § 9:634 — —Term of lien
- § 9:635 — —Property excluded from lien
- § 9:636 — —Release of or discharge from lien
- § 9:637 — —Special lien for deferred estate tax
- § 9:638 — — —Election for special lien
- § 9:639 — — —Property subject to special lien
- § 9:640 — — —Term of special lien
- § 9:641 — — —Release from or discharge of special lien
- § 9:642 — — —Priority of lien
- § 9:643 — —Special lien for special use property
- § 9:644 — —Term of lien
- § 9:645 — —Priority of lien
- § 9:646 Interests and penalties
- § 9:647 —Interest payable on tax deferred under Section 6166
- § 9:648 —Interest received on overpayments
- § 9:649 —Late filing of return
- § 9:650 —Late payment of tax
- § 9:651 —Failure to pay upon notice and demand
- § 9:652 —Substantial or gross valuation understatement
- § 9:653 —Underpayment due to fraud
- § 9:654 —Penalties imposed upon the preparer
- § 9:655 —Refund of state death taxes

CHAPTER 10. NEW YORK STATE ESTATE TAX

I. OVERVIEW OF THE NEW YORK STATE ESTATE TAX

- § 10:1 Description of the tax
- § 10:2 Resident and nonresident decedents
- § 10:3 —Comparison to gift tax and to federal law
- § 10:4 —Determining residence
- § 10:5 —Case law examples
- § 10:6 —Proving nonresidence
- § 10:7 Federal tax treatment of same-sex spouses
- § 10:8 Rate of the tax

II. CALCULATION OF THE TAX

- § 10:9 Formula for residents dying prior to October 1, 1998
- § 10:10 Formula for residents dying on or after October 1, 1998 until January 31, 2000

TRUSTS AND ESTATES PRACTICE IN NEW YORK

- § 10:11 Sop tax for residents dying on or after February 1, 2000
- § 10:12 Sop tax for residents dying on or after January 1, 2002
- § 10:13 Taxation of estates of residents dying in 2010
- § 10:14 Taxation of estates of residents dying in 2014
- § 10:15 Formula for nonresidents
- § 10:16 Definition of “gross estate” for residents
- § 10:17 Definition of “gross estate” for residents—
Adjustments to the gross estate due to certain limited powers of appointment
- § 10:18 Definition of “gross estate” for nonresidents
- § 10:19 Separate QTIP election required
- § 10:20 Elimination of gift tax January 1, 2000
- § 10:21 Income or estate tax deductions
- § 10:22 Uniform Principal and Income Act

III. PAYING THE TAX

- § 10:23 Estate tax power of attorney
- § 10:24 Notice requirement for decedents dying prior to February 1, 2000
- § 10:25 —Exceptions to the notice requirement
- § 10:26 —Waivers of the notice requirement; procedure for obtaining waivers
- § 10:27 — —Form ET-30
- § 10:28 — —Form ET-85
- § 10:29 — —Form ET-99
- § 10:30 No notice requirement for decedents dying on or after February 1, 2000
- § 10:31 Estate tax liens
- § 10:32 —Prior mortgages on real property
- § 10:33 —Release of liens/certificates of discharge
- § 10:34 —Applying for a release of lien
- § 10:35 — —Form ET-30
- § 10:36 — —Form ET-85
- § 10:37 — —Form ET-117
- § 10:38 — —Fee
- § 10:39 Estate tax return (Form ET-90)
- § 10:40 Estate tax returns: Form ET-90—Residents dying on or after February 1, 2000
- § 10:41 —Nonresidents—Nonresidents dying on or after February 1, 2000
- § 10:42 Payment of tax
- § 10:43 Penalties for nonpayment
- § 10:44 Simultaneous filing with the Surrogate’s Court

TABLE OF CONTENTS

§ 10:45 Privacy of the New York returns

IV. TAX APPORTIONMENT

- § 10:46 Liability for the tax
- § 10:47 Rules of apportionment
- § 10:48 —Special rule for temporary interests
- § 10:49 —Pro-rata apportionment
- § 10:50 —Exemptions or deductions based on relationship to decedent, life insurance proceeds, or charitable gifts
- § 10:51 —Taxed property
- § 10:52 —Interest
- § 10:53 —Discounts for prepayment
- § 10:54 —Decedent's directives regarding apportionment
- § 10:55 — —Effect of a subsequent testamentary direction
- § 10:56 — —Effects of a subsequent non-testamentary direction
- § 10:57 — —Limits on exoneration from non-testamentary direction
- § 10:58 — —Broad direction to pay all taxes

V. THE NEW YORK GENERATION-SKIPPING TRANSFER TAX

§ 10:59 In general

VI. FORMS

- § 10:60 Form 10-1: New York State estate tax domicile affidavit (Form ET-141)
- § 10:61 Form 10-2: Stipulation reserving domicile
- § 10:62 Form 10-3: Estate tax power of attorney (Form ET-14)
- § 10:63 Form 10-4: Notice of payment of death benefit under employees' pension or profit-sharing plan
- § 10:64 Form 10-5: Application for estate tax waivers/release of estate tax lien (Form ET-30)
- § 10:65 Form 10-6: New York State estate tax certification (Form ET-85)
- § 10:66 Form 10-7: Estate tax waiver notice (Form ET-99)
- § 10:67 Form 10-8: Release of estate tax lien (Form ET-117)
- § 10:68 Form 10-9: New York State estate tax return (Form ET-90)
- § 10:69 Form 10-10: Tentative payment of estate tax (Form ET-130)
- § 10:70 Form 10-11: Application for extension of time to file and/or pay estate tax (Form ET-133)

§ 10:71 Form 10-12: List of assets/inventory

VII. TABLES

§ 10:72 Table 10-2: Federal credit for state death taxes

CHAPTER 11. POST-MORTEM PLANNING AND INCOME TAX CONSIDERATIONS

I. POST-MORTEM PLANNING

- § 11:1 Introduction
- § 11:2 Disclaimers
- § 11:3 —Unused applicable exclusion amount
- § 11:4 —Avoid gift and estate taxes
- § 11:5 — —Illustrations
- § 11:6 —Defer taxes through marital deduction
- § 11:7 — —Another scenario
- § 11:8 —Charitable split interest trust
- § 11:9 —Qualified real property
- § 11:10 —Trusts
- § 11:11 Interests in property that may be disclaimed
- § 11:12 Federal requirements
- § 11:13 —Disclaimer is in writing
- § 11:14 —Delivery and timing
- § 11:15 — —Method of delivery
- § 11:16 — —Mailing
- § 11:17 — —Date of creation of interest in property
- § 11:18 —No acceptance
- § 11:19 — —Evidence of acceptance
- § 11:20 — —Insufficient evidence of acceptance
- § 11:21 —Property passes without direction
- § 11:22 — —Requirement violated
- § 11:23 — —Void or voided disclaimer
- § 11:24 — —Surviving spouse as trust beneficiary
- § 11:25 — —Surviving spouse; no power of appointment
- § 11:26 — —Disclaimer of power of appointment
- § 11:27 — —Non-binding language on disposition
- § 11:28 —Who may disclaim; individual who holds interest
- § 11:29 —Fiduciary who holds power
- § 11:30 —Parents of minor child
- § 11:31 —Executor of deceased person
- § 11:32 —Court-appointed guardian
- § 11:33 —Donor of joint property
- § 11:34 —Beneficiary of life insurance policy

TABLE OF CONTENTS

§ 11:35	Partial disclaimers
§ 11:36	—Trust interests
§ 11:37	—Powers of appointment
§ 11:38	—Pecuniary amounts
§ 11:39	—Severable property
§ 11:40	Property interests created before January 1, 1977
§ 11:41	Form 706
§ 11:42	New York State rules and requirements
§ 11:43	—What interests may be renounced
§ 11:44	—When an interest is created
§ 11:45	— —Creation by will or other means at death
§ 11:46	— —Creation by trust agreement or other means during lifetime
§ 11:47	— —Default rule
§ 11:48	— —Special rules for future interests
§ 11:49	—No acceptance rule
§ 11:50	—Manner of disclaiming
§ 11:51	— —Affidavit
§ 11:52	— —Notice
§ 11:53	— —When to file and serve
§ 11:54	—Effect of disclaimer
§ 11:55	—Partial disclaimers
§ 11:56	—Disclaimer on another's behalf
§ 11:57	— —Infant
§ 11:58	— —Incompetent or conservatee
§ 11:59	— —Decedent
§ 11:60	Planning in estates with surviving spouses
§ 11:61	—QTIP election: Manner and timing of election
§ 11:62	—Protective election
§ 11:63	—Partial election
§ 11:64	—Reverse QTIP election
§ 11:65	—Reasons for election or non-election
§ 11:66	—Lifetime gifts
§ 11:67	—Reformation or disclaimer
§ 11:68	—Non-citizen spouses
§ 11:69	— —Manner and timing of election
§ 11:70	— —Additions to, or creation of, QDOT
§ 11:71	— —Become U.S. citizen
§ 11:72	— —Reformation or disclaimer
§ 11:73	— —Protective election
§ 11:74	— —Partial election
§ 11:75	— —Reasons for election/non-election
§ 11:76	—Elective share or intestacy rights
§ 11:77	—Pension benefits; rollover of lump sum by spouse

TRUSTS AND ESTATES PRACTICE IN NEW YORK

- § 11:78 — —Advantage of roll-over
- § 11:79 — —Designation of charitable beneficiaries by spouse
- § 11:80 — —Make spousal IRA contribution
- § 11:81 — —Joint property
- § 11:82 — —Proof of survivor’s contribution
- § 11:83 — —Pre-1977 joint property
- § 11:84 — —Non-citizen spouse
- § 11:85 — —Split gifts
- § 11:86 — —File joint income tax returns
- § 11:87 — —Waiver of commissions
- § 11:88 Charitable bequests
- § 11:89 — —Release of a power to consume
- § 11:90 — —Disclaimers
- § 11:91 — —Reformation
- § 11:92 — —Compromise
- § 11:93 Fiduciary commissions
- § 11:94 — —Surviving spouses
- § 11:95 — —Other beneficiaries
- § 11:96 — —Tax-free estates
- § 11:97 — —Taxable estates
- § 11:98 Valuation of assets
- § 11:99 — —Alternate valuation
- § 11:100 — —When election is available
- § 11:101 — —How election is made
- § 11:102 — —When to elect
- § 11:103 — —Special use valuation
- § 11:104 — —When election is available
- § 11:105 — —How election is made
- § 11:106 — —When to elect
- § 11:107 — —Filing of federal estate tax return
- § 11:108 — —Extensions
- § 11:109 Payment of federal estate tax
- § 11:110 — —Section 6161
- § 11:111 — —Section 6163
- § 11:112 — —Section 6166
- § 11:113 — —Timing and manner of election
- § 11:114 — —Consequences of election
- § 11:115 — —Taxpayer Relief Act of 1997
- § 11:116 — —Prior law
- § 11:117 — —Redeem “flower” bonds
- § 11:118 — —Section 303 stock redemption
- § 11:119 — —Eligibility
- § 11:120 — —Shareholders who may use Section 303

TABLE OF CONTENTS

- § 11:121 — —Maximum redemption amount
- § 11:122 — —Timing of redemption
- § 11:123 — —Avoidance of executor liability
- § 11:124 — —Discharge from personal liability
- § 11:125 — —Posting of bond
- § 11:126 — —Lien on Section 6166 property
- § 11:127 — —Discharge as to income and gift tax liability
- § 11:128 — —Request for prompt audit of income and gift tax returns
- § 11:129 — —Collect tax
- § 11:130 — —Use of deductions
- § 11:131 Filing of New York State estate tax return
- § 11:132 — —Extension
- § 11:133 Payment of New York State estate tax
- § 11:134 — —Extension
- § 11:135 Generation-skipping transfer tax matters
- § 11:136 — —Use of disclaimers
- § 11:137 — —Allocation of exemption
- § 11:138 — —Pre-death transfers
- § 11:139 — —Testamentary transfers
- § 11:140 — —Method of allocation
- § 11:141 — —Reverse QTIP election
- § 11:142 — —Effect of reverse QTIP election
- § 11:143 — —Split QTIP trust to qualify for election
- § 11:144 — —How to elect
- § 11:145 — —Splitting of trusts
- § 11:146 — —Tuition and medical payments
- § 11:147 Distributions
- § 11:148 — —S corporation stock
- § 11:149 — —Pecuniary bequests
- § 11:150 — —Estate income
- § 11:151 — —Lower bracket beneficiary
- § 11:152 — —Timing of inclusion
- § 11:153 — —Trapping distributions
- § 11:154 — —Distributions to charity
- § 11:155 — —Distributions of capital gain
- § 11:156 — —Income in respect of decedent
- § 11:157 — —Distribution to charitable beneficiary
- § 11:158 — —Distribution to surviving spouse
- § 11:159 — —Acceleration of IRD

II. INCOME TAX CONSIDERATIONS

- § 11:160 Decedent's final income tax return
- § 11:161 — —When to file and pay

- § 11:162 —Who must file
- § 11:163 —What is reported
- § 11:164 — —Income
- § 11:165 — —Losses
- § 11:166 — —Passive losses
- § 11:167 — —Partnership interests
- § 11:168 — —S corporation interests
- § 11:169 — —Interest on Series E or EE savings bonds
- § 11:170 — —Deductibility of medical expenses
- § 11:171 —Joint returns
- § 11:172 —Election as to certain savings bonds
- § 11:173 —Medical expenses
- § 11:174 Income in respect of a decedent (“IRD”)
- § 11:175 —Definition of IRD
- § 11:176 —Determination of IRD
- § 11:177 —Recipient of IRD
- § 11:178 — —Estate
- § 11:179 — —Estate beneficiary
- § 11:180 — —Recipient by reason of decedent’s death
- § 11:181 — —Timing of taxation of IRD; receipt of IRD
- § 11:182 — —Transfer of right to IRD
- § 11:183 — —Satisfaction of pecuniary bequest
- § 11:184 — —Other estate distributions
- § 11:185 — —Extinguishment of IRD obligation
- § 11:186 — —Exempt transfers
- § 11:187 — —Installment obligations
- § 11:188 —Amount of IRD recognized
- § 11:189 —Character of IRD
- § 11:190 —Deductions in respect of a decedent
- § 11:191 —Timing and entitlement to DRD
- § 11:192 —Deduction for federal estate tax
- § 11:193 — —Ordinary income
- § 11:194 — —Capital gain or lump sum benefit plan distributions
- § 11:195 — —IRD from prior decedent
- § 11:196 — —Computation of deduction
- § 11:197 — —Deduction for generation-skipping transfer tax
- § 11:198 — —Allocation of deduction
- § 11:199 — — —Bequest satisfied with IRD items
- § 11:200 — — —Estate or trust receives IRD
- § 11:201 Partnership elections
- § 11:202 —Section 754 election
- § 11:203 —Section 732(d)
- § 11:204 Estate’s income tax returns

TABLE OF CONTENTS

§ 11:205	—Selection of taxable year
§ 11:206	— —First year
§ 11:207	— —Last year
§ 11:208	— —Compare revocable trusts
§ 11:209	— —Compare testamentary trusts
§ 11:210	—Filing of income tax returns and payment of tax
§ 11:211	—Taxable income
§ 11:212	—Section 642 deductions and credits
§ 11:213	—Foreign tax credit
§ 11:214	— —Personal exemption
§ 11:215	— —Charitable set-asides
§ 11:216	— —Net operating losses
§ 11:217	— —Depreciation and depletion
§ 11:218	— —Amortization
§ 11:219	— —Section 2053 and 2054 deductions
§ 11:220	— —Effect of 2% floor
§ 11:221	—Distributable net income (“DNI”)
§ 11:222	— —Definition of DNI
§ 11:223	— — —No deduction
§ 11:224	— — —Capital gains
§ 11:225	— — —Capital losses excluded
§ 11:226	— — —Tax-exempt interest
§ 11:227	— — —Extraordinary dividends and taxable stock dividends
§ 11:228	— — —Effect of Section 663(a)(1)
§ 11:229	— — —Amount of deduction
§ 11:230	— — —Amount includible by estate beneficiaries
§ 11:231	— — —Currently distributable income exceeds the estate’s DNI
§ 11:232	— — —Aggregate amount of currently distributable income exceeds the estate’s DNI
§ 11:233	— — —Different taxable years
§ 11:234	— — —Character of income includible
§ 11:235	Termination of estate
§ 11:236	—Passing out of excess deductions
§ 11:237	— —Excess deductions used in beneficiary’s taxable year in which the estate terminates
§ 11:238	— —Section 67(a) 2% floor
§ 11:239	— —Distributions to trusts
§ 11:240	—Passing out of loss carryovers
§ 11:241	— —Excess loss may be carried forward
§ 11:242	— —Determination of carry forward period

III. FORMS

§ 11:243	Form 11-1: Renunciation of certain interests in estate pursuant to EPTL § 2-1.11
----------	--

- § 11:244 Form 11-2: Affidavit with respect to renunciation of certain interests in estate pursuant to EPTL § 2-1.11
- § 11:245 Form 11-3: Notice of renunciation of certain interests in estate pursuant to EPTL § 2-1.11
- § 11:246 Form 11-4: Affidavit of service with respect to renunciation of certain interests in estate pursuant to EPTL § 2-1.11

CHAPTER 12. TRUST AND ESTATE ACCOUNTINGS

I. APPLICABLE LAW AND PURPOSE

- § 12:1 Applicable law
- § 12:2 Purpose
- § 12:3 Timing
- § 12:4 Limiting right of beneficiaries to compel accounting

II. JURISDICTION AND VENUE

- § 12:5 Supreme Court jurisdiction
- § 12:6 Surrogate's Court jurisdiction
- § 12:7 Venue

III. VOLUNTARY ACCOUNTING PROCEEDINGS- PERSONAL REPRESENTATIVES

- § 12:8 Time for voluntary accounting proceedings
- § 12:9 —Petitions for settlement of account: Surrogate must entertain
- § 12:10 —Petitions for settlement of account: Surrogate may entertain in his discretion
- § 12:11 — —Disposition of real property
- § 12:12 — —Disposition of real property to pay administration expenses
- § 12:13 — —Purposes for which disposition may be made
- § 12:14 — —One year since prior accounting
- § 12:15 Form and content of petition for voluntary accounting
- § 12:16 —Authority to present accounting for settlement
- § 12:17 — —Decedent information
- § 12:18 — —Personal representative information
- § 12:19 — —Section 2208(1) basis for petition
- § 12:20 —Persons and entities to be cited
- § 12:21 —Estate assets and prior fiduciary accountings
- § 12:22 —Statement regarding taxes and debts to governmental agencies

TABLE OF CONTENTS

§ 12:23	—Attorney’s fees and personal representative’s commissions
§ 12:24	—Intermediate accountings
§ 12:25	—Affidavit
§ 12:26	Issuance of process for voluntary accountings
§ 12:27	—Persons to whom process must issue
§ 12:28	— —Creditors
§ 12:29	— —Surety
§ 12:30	— —Co-fiduciaries
§ 12:31	— —Successor fiduciaries
§ 12:32	— —Attorney general
§ 12:33	— —Distributees, devisees, legatees, and beneficiaries
§ 12:34	— —Trustees
§ 12:35	— —Accounting fiduciary acting in multiple capacities
§ 12:36	— —When process need not be issued
§ 12:37	— —Protecting the interests of the beneficiaries
§ 12:38	— —Death of person required to be cited
§ 12:39	—Exceptions to citation requirements
§ 12:40	—Joinder and representation requirements
§ 12:41	—Time and manner of issuance of process
§ 12:42	—Importance of issuance of process
§ 12:43	Proceedings on voluntary accounting
§ 12:44	—SCPA authority for examination of accounting personal representative
§ 12:45	— —Purpose of SCPA examinations
§ 12:46	— —Scope of SCPA examination
§ 12:47	— —Alternatives to SCPA examinations
§ 12:48	—Accounting party’s burden of proof
§ 12:49	— —Amendments
§ 12:50	—Objections to personal representative’s accounting
§ 12:51	— —Timing for objections
§ 12:52	— —Persons with standing to object to a personal representative’s accounting
§ 12:53	— —Burden of proof
§ 12:54	— —Accounting and construction
§ 12:55	—Proceedings where no objections or appearances for examination are made
§ 12:56	— — <i>Sua sponte</i> review of personal representative’s accounting
§ 12:57	— —Initial rejection of Surrogate’s <i>sua sponte</i> review
§ 12:58	— —Reconfirmation in <i>Matter of Stortecky v. Mazzone</i>
§ 12:59	— — <i>Sua sponte</i> review of attorney’s fees
§ 12:60	— — —Exercise of that review

IV. ALTERNATIVES TO VOLUNTARY ACCOUNTING PROCEEDINGS

- § 12:61 Alternatives to voluntary accounting proceedings, in general
- § 12:62 Section 2202: informal settlement of accounting by recording or filing receipts and releases
- § 12:63 —Statutory authority
- § 12:64 —Form and content of instrument under Section 2202
- § 12:65 —Persons to execute receipts and releases under Section 2202
- § 12:66 —Effect of receipt and release executed under Section 2202
- § 12:67 —Attacking an accounting settled under Section 2202
- § 12:68 Section 2203: informal settlement of accounting with judicial release and discharge of personal representative
- § 12:69 —Statutory authority
- § 12:70 —Form and content of petition under Section 2203
- § 12:71 — —Information relating to the decedent and personal representative
- § 12:72 — —Names and addresses of interested persons
- § 12:73 — —Payment of taxes
- § 12:74 — —Disclosure of administration through accounting
- § 12:75 — —Basis for petition
- § 12:76 — —Attachment of receipts and releases
- § 12:77 —Persons who must execute receipts and releases to be filed with petition under Section 2203
- § 12:78 —Time at which petition under Section 2203 will be heard
- § 12:79 — —Revocation of letters
- § 12:80 — —Creditors' claim period has expired

V. COMPULSORY ACCOUNTING PROCEEDINGS- PERSONAL REPRESENTATIVES

- § 12:81 Introduction
- § 12:82 Time for compulsory accounting proceedings
- § 12:83 Types of accountings that may be the subject of a compulsory accounting proceeding
- § 12:84 Persons who may institute compulsory accounting proceedings
- § 12:85 —Illustrations
- § 12:86 Discretion of the court

TABLE OF CONTENTS

VI. BINDING EFFECT OF JUDICIALLY SETTLED ACCOUNTING

- § 12:87 Authority of decrees or orders issued by the Surrogate's Court
- § 12:88 Case law supports authority by decree
- § 12:89 Decree is binding upon fiduciary as well as beneficiaries

VII. PRE-ACCOUNTING CONSIDERATIONS

- § 12:90 Retaining and maintaining adequate records
- § 12:91 —Retention of records of administration
- § 12:92 — —Beneficiary discovery rights
- § 12:93 —Financial and transactional information to be maintained in records of administration
- § 12:94 — —Banking records
- § 12:95 — —Brokerage records
- § 12:96 — —Bills and statements
- § 12:97 — —Tax returns
- § 12:98 — —Asset records
- § 12:99 —Record of exercise of discretionary powers
- § 12:100 —Beneficiary information
- § 12:101 Proceeding for discovery of estate assets prior to accounting
- § 12:102 —Statutory authority
- § 12:103 —Purpose
- § 12:104 — —Application

VIII. ROLE OF ACCOUNTING IN ESTABLISHING COMMISSIONS

- § 12:105 Estate administration
- § 12:106 Trust administration

IX. PRINCIPAL AND INCOME ISSUES IN ACCOUNTINGS

- § 12:107 Interplay with Prudent Investor Act
- § 12:108 Discretion of the fiduciary
- § 12:109 Historical note: stock returns in kind and mortgage salvages
- § 12:110 Timing split interests and the practical problem of the delay of administration
- § 12:111 —*Inter vivos* gifts
- § 12:112 —Pecuniary gifts
- § 12:113 —Specific bequests

TRUSTS AND ESTATES PRACTICE IN NEW YORK

- § 12:114 —Pecuniary bequests in trust
- § 12:115 —Assets distributed in kind
- § 12:116 —Pecuniary bequests distributed in cash
- § 12:117 —Residue outright
- § 12:118 —Residue passing to testamentary trust
- § 12:119 Creating the principal and income accounts; non-probate accounts
- § 12:120 Default rules; discretion
- § 12:121 Trustees power to adjust
- § 12:122 —When trustee cannot make an adjustment
- § 12:123 —Judicial control of the trustee's power to adjust
- § 12:124 Optional Unitrust Provision
- § 12:125 Principal and income issues regarding trust property
- § 12:126 —Property received by transfer to *inter vivos* irrevocable trust by contract at death
- § 12:127 —Property received by transfer to *inter vivos* irrevocable trust by will at death
- § 12:128 —Property received by transfer to testamentary trust by a living donor
- § 12:129 —Property received by transfer to testamentary trust by will
- § 12:130 —Property transferred to successive life or remainder interest
- § 12:131 — —Marital deduction
- § 12:132 — —Generation-skipping transfer following QTIP marital trust
- § 12:133 — —GST tax on dynasty trust

X. APPORTIONING INCOME: ESTATE ACCOUNTS

- § 12:134 In general
- § 12:135 What is apportioned
- § 12:136 What is accrued
- § 12:137 Accrued vs. due
- § 12:138 Retention of character as income
- § 12:139 Stipulation against or for apportionment
- § 12:140 Specific items: what overrides statute re apportionment
- § 12:141 Use of discretion

XI. FORMS

- § 12:142 Accounting of personal representative
- § 12:143 Account of executor or administrator—Based on Official Form JA-7

TABLE OF CONTENTS

§ 12:144	Form 12-2: Petition for supplemental accounting
§ 12:145	Form 12-3: Supplemental accounting form
§ 12:146	Form 12-4: Petition for voluntary accounting to be filed under SCPA § 2208
§ 12:147	Form 12-5: Citation to be issued upon the filing of a petition for voluntary accounting
§ 12:148	Form 12-6: Objections to personal representative's accounting under SCPA § 2211
§ 12:149	Form 12-7: Beneficiary's receipt and release
§ 12:150	Form 12-8: Agreement settling personal representative's accounting
§ 12:151	Form 12-9: Petition for discharge without accounting under SCPA § 2203
§ 12:152	Form 12-10: Petition to institute proceeding for compulsory accounting under SCPA § 2205
§ 12:153	Form 12-10.1: Petition to compel filing of final accounting—By remainder beneficiary of estate
§ 12:154	Form 12-11: Personal representative's answer to petition to institute compulsory accounting proceedings under SCPA § 2205
§ 12:155	Form 12-12: Objections to account
§ 12:156	Petition for judicial settlement of account
§ 12:157	Petition for compulsory accounting

CHAPTER 13. TRUSTS

I. VALIDITY OF TRUSTS UNDER NEW YORK LAW

§ 13:1	Requirements for valid express trust
§ 13:2	—Transfer of legal title
§ 13:3	— —Compare: no title vests in executor or administrator
§ 13:4	— —Exceptions
§ 13:5	— —Right to revoke distinguished
§ 13:6	— —Where merger occurs, the trust interest converts
§ 13:7	— —Result of merger
§ 13:8	—Terms of the trust
§ 13:9	—Evidence of trust creation
§ 13:10	— —Writing
§ 13:11	— —Deed
§ 13:12	— —Expression of terms of trust
§ 13:13	— —What is not necessary
§ 13:14	— —New revocable trust law—Multiple trust agreements
§ 13:15	Trustee

TRUSTS AND ESTATES PRACTICE IN NEW YORK

- § 13:16 —What passes to the trustee
- § 13:17 —Divestiture of ownership and control
- § 13:18 —Failure to specify trustee
- § 13:19 —Appointment of trustees by will
- § 13:20 Beneficiaries
- § 13:21 —If sole trustee and sole beneficiary are the same
- § 13:22 —Beneficiary not qualified to take
- § 13:23 —Multiple beneficiaries
- § 13:24 —Defining “issue” and “descendants”
- § 13:25 Termination or amendment of irrevocable trusts
other than by express terms
- § 13:26 —Who must consent
- § 13:27 —Revocation after grantor’s death
- § 13:28 —Waiver or laches
- § 13:29 Multiple trustees
- § 13:30 —Two trustees
- § 13:31 —Three or more trustees
- § 13:32 — —Designation clauses
- § 13:33 —Delegation of trust powers between trustees
- § 13:34 —Joint and several liability for breach of obligation
- § 13:35 Death of trustee
- § 13:36 Successor trustees
- § 13:37 Removing trustees
- § 13:38 —Friction between trustee and beneficiary
- § 13:39 *Inter vivos* vs. testamentary trusts
- § 13:40 —Statutory regulation
- § 13:41 —Concurrent jurisdiction
- § 13:42 — —Jurisdiction and venue for lifetime trusts
- § 13:43 — —Effect of concurrent jurisdiction
- § 13:44 —Limitations upon exoneration
- § 13:45 — —*Inter vivos* trusts
- § 13:46 — —Testamentary trusts
- § 13:47 Coverage under SCPA; important definitions
- § 13:48 —Grantor
- § 13:49 —Corporate trustee
- § 13:50 —Individual trustee
- § 13:51 —Disclaimer or renunciation
- § 13:52 —Judicial settlement
- § 13:53 —Lifetime trust
- § 13:54 —Person interested
- § 13:55 —Fiduciary
- § 13:56 —Trust
- § 13:57 Compare definitions in EPTL
- § 13:58 —Creator as compared to grantor

TABLE OF CONTENTS

§ 13:59	—Disposition
§ 13:60	—Estate
§ 13:61	—Fiduciary
§ 13:62	—New definition: lifetime trust
§ 13:63	Trustee commissions
§ 13:64	—SCPA Section 2308
§ 13:65	— —Annual commissions
§ 13:66	— — —Computation of
§ 13:67	— — —Trustee’s duty to provide statement to beneficiaries
§ 13:68	— —Public, religious, charitable, scientific, literary, educational or fraternal trusts
§ 13:69	— —Trustee authorized or required to accumulate income
§ 13:70	—Property considered as money
§ 13:71	—Time bifurcation
§ 13:72	—Paying out commissions
§ 13:73	—Definition of paying out commission
§ 13:74	—Comparison to annual fee commission
§ 13:75	—Other commissions
§ 13:76	—Time of valuation for purposes of commissions
§ 13:77	—Change in accounting period
§ 13:78	—Limitation of commissions for multiple trustees
§ 13:79	— —Commissions for corporate trustees
§ 13:80	— —1984 change
§ 13:81	— —Problems of court review
§ 13:82	— —Investment advisory and custodial fees
§ 13:83	— —Fee of corporate trustee for common trust fund management
§ 13:84	— —Exception
§ 13:85	Governance of EPTL
§ 13:86	—Default mode generally
§ 13:87	—Fiduciary duties and powers
§ 13:88	Investing prior to Prudent Investor Rule
§ 13:89	—New York law
§ 13:90	—May 1, 1970 through January 1, 1995
§ 13:91	—Powers and duties relating to investments for 1970-1995
§ 13:92	— —Application
§ 13:93	—Prudent investor standard
§ 13:94	— —Standard
§ 13:95	— —Mandate
§ 13:96	— —Additional requirements
§ 13:97	— —Effective date and considerations
§ 13:98	— —Trust considerations

- § 13:99 — —Delegation
- § 13:100 — —Liability of investment advisor delegee;
standard of care
- § 13:101 — —Higher standard for professional trustee
- § 13:102 Powers of trustee
- § 13:103 —Structure of EPTL Section 11-1.1
- § 13:104 —EPTL Section 11-1.1(b)(1)–(4)
- § 13:105 —EPTL Section 11-1.1(b)(5)
- § 13:106 — —Illustrations
- § 13:107 —EPTL Sections 11-1.1(b)(6)–(8)
- § 13:108 —EPTL Sections 11-1.1(b)(9)–(10)
- § 13:109 —EPTL Sections 11-1.1(b)(11)–(22)
- § 13:110 —EPTL Sections 11-1.1(c) and (d)
- § 13:111 —Incorporation by reference
- § 13:112 —Duty of loyalty
- § 13:113 —Self-dealing
- § 13:114 — —Purchases by trustee
- § 13:115 —Distribution by trustee
- § 13:116 —Self-dealing—Interests of trustee vs. beneficiaries
- § 13:117 — —Exonerating trustee in the case of conflict of
interest
- § 13:118 — —Limits of self-dealing
- § 13:119 —Segregation of trust property
- § 13:120 — —Nominee title by non-bank trustee forbidden
- § 13:121 — —Nominee title by bank trustee permitted
- § 13:122 — —Effect of written override in trust instrument
- § 13:123 —Separating and consolidating trusts

II. REVOCABLE TRUSTS

- § 13:124 Why choose a revocable trust
- § 13:125 —Identification of assets
- § 13:126 —Control of assets
- § 13:127 —Avoid court proceeding for incompetence
- § 13:128 —Capacity for valid execution

III. IRREVOCABLE TRUSTS

- § 13:129 Powers and duties of income beneficiaries generally
under New York law
- § 13:130 —Spendthrift provisions
- § 13:131 —Retained interest trust
- § 13:132 —Other rights of income beneficiary unless
otherwise specified in governing instrument
- § 13:133 —Application of principal to income beneficiary
- § 13:134 —Trusts created on or after September 1, 1967

TABLE OF CONTENTS

§ 13:135 —Share advance

IV. INCOME TAXATION OF IRREVOCABLE TRUSTS

- § 13:136 Income taxation and beneficial interests
- § 13:137 —Cash method
- § 13:138 —Tax vs. beneficial accounting
- § 13:139 —Overview of temporary entities
- § 13:140 —Allocation of taxable income and deductions between trust or estate and beneficiaries
- § 13:141 — —Distributable net income
- § 13:142 — —Distributions to beneficiaries
- § 13:143 — —Transactions between trusts as identified in Section 267(b) of the Code
- § 13:144 Simple vs. accumulating trusts
- § 13:145 —Income taxation of simple trusts and their beneficiaries
- § 13:146 — —Distributions of DNI
- § 13:147 — —Ordinary income
- § 13:148 — —Capital gains
- § 13:149 — —Exception
- § 13:150 —Income taxation of accumulating trusts and their beneficiaries; distributions
- § 13:151 — —Ordinary income
- § 13:152 — —Proration
- § 13:153 — —Capital gains
- § 13:154 — —Throwback rule; introduction
- § 13:155 — —Elimination of throwback rule
- § 13:156 — —Throwback rule; operation
- § 13:157 — —Sixty-five day election
- § 13:158 —Recognition of gain on distribution of appreciated assets
- § 13:159 — —Simple trust
- § 13:160 — —Sale treatment at distribution
- § 13:161 — —Basis
- § 13:162 — —Allocation of DNI
- § 13:163 — —Accumulating trust
- § 13:164 —Undistributed net income
- § 13:165 —Capital gains
- § 13:166 —Deductions
- § 13:167 —Items of trust income and deductions
- § 13:168 — —Administration expenses
- § 13:169 — —Trust and estate expenses
- § 13:170 — —Mortgage interest; fiduciary allocations

- § 13:171 — —Depreciation and depletion
- § 13:172 — —Interplay between DNI and principal and income law
- § 13:173 — —Definition of DNI
- § 13:174 — —Accounting income and the deduction for distribution of DNI
- § 13:175 — —Equitable adjustments
- § 13:176 — —Determination of whether inequity exists
- § 13:177 — —When an inequity is determined to exist
- § 13:178 — —Determination whether repayment is necessary
- § 13:179 — —Method of repayment
- § 13:180 — —Income tax effects of repayment
- § 13:181 — —Where principal pays taxes ultimately chargeable to income
- § 13:182 — —Fiduciary practice
- § 13:183 — —Drafting solutions
- § 13:184 — —Instruction to make adjustment
- § 13:185 — —Specific allocations of items of income and principal
- § 13:186 — —Limitations under the Code
- § 13:187 — —Manipulation of discretionary items

V. PRINCIPAL AND INCOME GENERALLY

- § 13:188 Allocations between principal and income
- § 13:189 — —Allocation of receipts
- § 13:190 — —Income from other trusts or estates
- § 13:191 — —Rental property
- § 13:192 — —Obligation to pay money
- § 13:193 — —Insurance policies and similar contracts
- § 13:194 — —Deferred compensation, annuities and equivalents
- § 13:195 — —Liquidating assets
- § 13:196 — —Natural resources
- § 13:197 — —Timber
- § 13:198 — —Derivatives and options
- § 13:199 — —Asset-backed security
- § 13:200 — —Allocation of expenses
- § 13:201 Areas of discretion
- § 13:202 Treatment of qualified plan benefits passing to and distributed from the trust
- § 13:203 Treatment of corporate obligations purchased at discount
- § 13:204 Problems caused by characterization rules; burden of “phantom” income
- § 13:205 — —Phantom income included in DNI

TABLE OF CONTENTS

- § 13:206 —In the case of a simple trust
- § 13:207 —New York law
- § 13:208 —Underproductive property in the characterization of income and principal
- § 13:209 —Successive income beneficiaries
- § 13:210 —Special corporate yields
- § 13:211 — —Definition of principal
- § 13:212 — —Definition of income
- § 13:213 — —New York law
- § 13:214 —Characterization of passive income and losses under principal and income law
- § 13:215 —Partnership distributions under principal and income law
- § 13:216 — —Problems created by characterization of partnership distributions
- § 13:217 — —Depletion and depreciation
- § 13:218 — —Phantom income
- § 13:219 —Effect of the prudent investor rule on principal and income
- § 13:220 —Companion changes in the concepts of income and principal
- § 13:221 —Drafting in anticipation of change
- § 13:222 —Option to treat trust as unitrust
- § 13:223 —Commencement of beneficiary's interest

VI. PARTICULAR ASPECTS OF IRREVOCABLE TRUSTS

- § 13:224 Powers of appointment; generally
- § 13:225 —Intent of creator; limitations
- § 13:226 —Broad coverage of powers regulated by the EPTL
- § 13:227 —Compare: EPTL coverage of other powers
- § 13:228 —Classifications of powers of appointment pertinent to EPTL limitations
- § 13:229 — —Types of special powers
- § 13:230 — —Imperative or discretionary powers
- § 13:231 —Creation of power
- § 13:232 — —Ambiguity
- § 13:233 —Exercise of classified powers
- § 13:234 — —Beginning date
- § 13:235 —Creditors' rights in appointive property
- § 13:236 — —Special powers
- § 13:237 — —General powers
- § 13:238 — —Matured powers
- § 13:239 — —Postponed powers not yet exercisable

TRUSTS AND ESTATES PRACTICE IN NEW YORK

- § 13:240 — —Powers relating to real property
- § 13:241 — —Donor’s intent
- § 13:242 — —Donee’s powers and duties under the plain language of the power
- § 13:243 — —Rule against perpetuities
- § 13:244 — —Power to contract
- § 13:245 — —Remedies in event of invalid contract to appoint
- § 13:246 — —Making clear the intention to exercise
- § 13:247 — —Meaning of “manifest”
- § 13:248 — —Construing and meeting the technical requirements
- § 13:249 — —Conforming to the directions of the creator
- § 13:250 — —Default rules
- § 13:251 Interpretation of instruments
- § 13:252 — —Partial invalidity
- § 13:253 — —EPTL Section 3-3.1: What the trust can receive under the will
- § 13:254 — —What is covered
- § 13:255 — —General language
- § 13:256 — —After-acquired property; historical note
- § 13:257 — —Property under contract
- § 13:258 — —Partial disposition
- § 13:259 — —Meaning of “partial” change in interest
- § 13:260 — —Aspects of lifetime trusts
- § 13:261 — —Interpreting lifetime trusts
- § 13:262 — —Interpreting “beneficiary”
- § 13:263 Where testator has become incapacitated
- § 13:264 — —What is not covered
- § 13:265 — —Express exclusion of after-acquired property
- § 13:266 — —Failure to amend description of property
- § 13:267 — —Residuary gift as exercise of power of appointment
- § 13:268 — —Disposition of “all my property”
- § 13:269 — —Presumption of exercise
- § 13:270 — —Power granted after execution of will
- § 13:271 — —Where presumption operates to include ineligible appointees
- § 13:272 — —Disposition of the property of the kind covered by the power
- § 13:273 — —Failure to exercise “by necessary implication”
- § 13:274 — —Problems inherent in determination
- § 13:275 — —Standards for determination of no exercise by necessary implication
- § 13:276 — —Use of extrinsic evidence
- § 13:277 — —Debts relating to specific bequests at death, such as mortgages and other encumbrances

TABLE OF CONTENTS

- § 13:278 — —Mortgage and other liens relating to specific asset
- § 13:279 — —Assumption of liability to avoid sale
- § 13:280 — —Override of assumption
- § 13:281 — —Direction to pay from residue
- § 13:282 — —Effect of general instruction to pay debts
- § 13:283 — —Liability of insurance proceeds
- § 13:284 — —Liability of multiple takers
- § 13:285 — —Lapse and its preventions
- § 13:286 — —Gifts covered
- § 13:287 — — —“Issue”
- § 13:288 — —Timing distinction due to change in definition of “*per stirpes*”
- § 13:289 — —Exceptions
- § 13:290 — —Construction
- § 13:291 — —Where anti-lapse does not apply
- § 13:292 — —Revival of prior will
- § 13:293 Interpretation of instruments—Revival of prior will—Application of doctrine of dependent relative revocation
- § 13:294 — —Vesting and terminations: presumptions applicable
- § 13:295 — —When presumptions operate
- § 13:296 — —Cut-off date for contingencies
- § 13:297 — —Accumulations of income
- § 13:298 Marital trusts; special issues under New York law
- § 13:299 — —Retention of property
- § 13:300 Distribution by spouse trustee
- § 13:301 — —Distributions by and to beneficiary/trustee; generally
- § 13:302 — —Discretionary power only affected
- § 13:303 — —Allocation of receipts between principal and income
- § 13:304 — —Co-trustees
- § 13:305 — —Jurisdiction in appropriate court for exercise
- § 13:306 Savings clauses
- § 13:307 Exclusions from application of perpetuities rule

VII. GRANTOR TRUSTS

- § 13:308 Grantor trusts
- § 13:309 — —Income tax consequences; ING Trusts
- § 13:310 — —No application to charitable trusts
- § 13:311 Limitation: trust for benefit of grantors void as against creditors

VIII. CHARITABLE TRUSTS

- § 13:312 Who is entitled to enforce a charitable trusts;
standing
- § 13:313 Registration
- § 13:314 Annual Reports
- § 13:315 Filing required by the New York State Department
of State, Office of Charities Registration
- § 13:316 —How to register
- § 13:317 —Annual reports

IX. EXTENDING THE LIFE OF A TRUST

- § 13:318 Appointment in further trust by trustee
- § 13:319 Restrictions on appointment—Intent of creator
- § 13:320 —Best interests of beneficiaries
- § 13:321 —Exclusion of beneficiaries
- § 13:322 —Miscellaneous
- § 13:323 Avoidance of transfer taxes
- § 13:324 Notice of exercise of power
- § 13:325 Compare: trust amendment

X. STATUTORY TRUST SPLITTING

- § 13:326 Purpose
- § 13:327 Consent as key distinction
- § 13:328 —For specified purpose
- § 13:329 —For other appropriate reasons
- § 13:330 — —Judicial proceeding
- § 13:331 — —Nonjudicial proceeding
- § 13:332 — —Definition of persons interested
- § 13:333 Types of trusts that can be split
- § 13:334 Documenting the split trusts where court proceeding
not held
- § 13:335 Funding the split trusts
- § 13:336 Trustee commissions for split trusts

XI. SUPPLEMENTAL NEEDS TRUSTS

- § 13:337 History
- § 13:338 Scope
- § 13:339 Trusts not covered
- § 13:340 Rules of construction in event of policy change
- § 13:341 Coordination with income beneficiary's statutory
entitlements
- § 13:342 Special needs trusts and guardianships

TABLE OF CONTENTS

- § 13:343 Compensable disbursements by the trustee;
compensable services

XII. INSURANCE TRUSTS

- § 13:344 Generally
- § 13:345 Beneficiary designations
- § 13:346 —Unfunded revocable life insurance trust
- § 13:347 —Testamentary trust created by will of insured
- § 13:348 —Default: no designation of beneficiary
- § 13:349 Creditors' rights, generally
- § 13:350 Insurance as testamentary substitute for purpose of
elective share
- § 13:351 Proceeds as income or principal of insurance trust

XIII. FORMS

- § 13:352 Form 13-1: Form of supplemental needs trust under
EPTL § 7-1.12(E)(1)
- § 13:353 Proposed order, agreement, and settlement
- § 13:354 Charitable foundation trust agreement
- § 13:355 —Corporate settlor
- § 13:356 —Payments directed by committee
- § 13:357 —Payments directed by trustees
- § 13:358 Application for appointment of additional trustee of
charitable remainder unitrust
- § 13:359 Petition for permission to consolidate trusts

CHAPTER 14. MINORS AS ESTATE BENEFICIARIES

I. OVERVIEW

- § 14:1 Generally

II. AGE OF MAJORITY

- § 14:2 Who is a minor
- § 14:3 —Minors over age 14
- § 14:4 Minors under the Uniform Transfers to Minors Act

III. ESTATE DISTRIBUTIONS TO MINORS

- § 14:5 Overview
- § 14:6 Outright distributions to minors
- § 14:7 —Power to manage funds during minority
- § 14:8 —Powers of a donee of a power during minority

- § 14:9 Distributions to the minor’s parent or other interested adult
- § 14:10 Distributions to the guardian of a minor
- § 14:11 Payment to the court or financial institution
- § 14:12 Distributions to a custodian under the Uniform Transfers to Minors Act

IV. GUARDIANSHIPS

- § 14:13 Overview
- § 14:14 Who is appointed as a guardian?
- § 14:15 —Parent
- § 14:16 —Someone other than the parent
- § 14:17 Powers of the guardian in general
- § 14:18 —Under the SCPA
- § 14:19 —Under the DRL
- § 14:20 —Guardian to use “prudent investor” standard in investing
- § 14:21 Disposition of real property
- § 14:22 —Under the SCPA
- § 14:23 — —Contents of the petition
- § 14:24 — —Service of process
- § 14:25 — —Hearing
- § 14:26 —Under the Real Property Actions and Proceedings Law
- § 14:27 Administration of an infant’s property
- § 14:28 —Use of guardianship assets for a minor’s support and education
- § 14:29 —Use of assets for funeral expenses
- § 14:30 —Use of Social Security payments
- § 14:31 —Use of guardianship assets for benefit of minor’s family
- § 14:32 —Petitioning the court
- § 14:33 Appointment of the guardian under the SCPA
- § 14:34 —Jurisdiction of the Surrogate’s Court
- § 14:35 —Petition
- § 14:36 — —By whom made
- § 14:37 — —Contents of the petition
- § 14:38 — —Service of process
- § 14:39 — —Others may be required
- § 14:40 — —Exceptions
- § 14:41 —Guardianship hearing
- § 14:42 — —Infant’s preference
- § 14:43 —Guardianship decree
- § 14:44 —Bonding requirements

TABLE OF CONTENTS

- § 14:45 — —Exceptions
- § 14:46 — —Procedure for joint control of guardianship assets
- § 14:47 —Term of guardian’s office
- § 14:48 —Removal of a guardian
- § 14:49 Accounting for guardianship property
- § 14:50 —Contents of the accounting
- § 14:51 —Review of the accounting
- § 14:52 Commissions

V. GUARDIANS *AD LITEM*

- § 14:53 Generally
- § 14:54 Duties of the guardian *ad litem*
- § 14:55 —Limit on guardian *ad litem*’s role
- § 14:56 —Compare guardian *ad litem* and minor’s attorney
- § 14:57 Qualification of the guardian *ad litem*
- § 14:58 Appointment of the guardian *ad litem*
- § 14:59 —Nomination by the infant or his parent or guardian
- § 14:60 —Court-appointed guardians *ad litem*
- § 14:61 Proceedings where a guardian *ad litem* is not required
- § 14:62 Tenure of the guardian *ad litem*
- § 14:63 —Cessation of the guardian *ad litem*’s authority
- § 14:64 —Removal of the guardian *ad litem*
- § 14:65 Guardian *ad litem*’s compensation

VI. CUSTODIANS UNDER THE UNIFORM TRANSFERS TO MINORS ACT

- § 14:66 Introduction
- § 14:67 Testamentary transfers to minors under the Act
- § 14:68 Who can be a custodian?
- § 14:69 Duties and powers of the custodian
- § 14:70 —Investment and sale of custodial property
- § 14:71 —Consenting to reorganizations
- § 14:72 —Special considerations for life insurance policies and annuity contracts
- § 14:73 —Payments to or for the minor
- § 14:74 — —By court order
- § 14:75 — —Upon termination of custodianship
- § 14:76 —No commingling of property
- § 14:77 —Transferring property under the Act
- § 14:78 — —Permissible custodial property
- § 14:79 — —Manner of transferring specific property under the Act

- § 14:80 — —Registered securities
- § 14:81 — —Unregistered securities
- § 14:82 — —Money
- § 14:83 — —Life insurance policies or annuity contract
- § 14:84 — —Transfers of real property
- § 14:85 Transfers of tangible personal property
- § 14:86 —Transfers of all other types of property
- § 14:87 Effect of the transfer
- § 14:88 Compensation and expenses of custodian
- § 14:89 Liability of custodians and third parties
- § 14:90 Bond requirement
- § 14:91 Removal of a custodian
- § 14:92 Accounting by a custodian

VII. SPECIAL CONSIDERATIONS OF MINORS IN ESTATE PROCEEDINGS

- § 14:93 Introduction
- § 14:94 Service of process upon a minor
- § 14:95 —Under the SCPA
- § 14:96 —Under the CPLR
- § 14:97 Appearance on behalf of a minor
- § 14:98 —Appearance under the SCPA
- § 14:99 —Appearance under the CPLR
- § 14:100 Default judgments
- § 14:101 Liability for costs of minor
- § 14:102 —Under the SCPA
- § 14:103 —Under the CPLR
- § 14:104 Compromise of controversies under the SCPA
- § 14:105 —Procedures for approval of compromise
- § 14:106 —Who may petition the court to approve a compromise
- § 14:107 —Representation of minor in a compromise proceeding
- § 14:108 —Payment of minor's share to court
- § 14:109 Compromise of controversies under the CPLR
- § 14:110 —Who may petition the court for approval of settlement
- § 14:111 —Affidavit of minor's representative
- § 14:112 —Affidavit of attorney of minor or minor's representative
- § 14:113 —Appearance and representation at hearing
- § 14:114 Arbitration of controversy involving a minor

VIII. FORMS

- § 14:115 Form 14-1: Transfer under the New York Uniform Transfers to Minors Act

TABLE OF CONTENTS

- § 14:116 Petition—Withdrawal of infant’s property for support and education

**CHAPTER 15. THE MOBILE CLIENT:
MULTIJURISDICTIONAL ISSUES**

**I. DEFINING THE GOVERNING LAW IN THE CASE
OF A MULTISTATE STRADDLE**

- § 15:1 What law governs
- § 15:2 —Importance of domicile
- § 15:3 —Nature of property
- § 15:4 Common straddles and issues
- § 15:5 —Real property
- § 15:6 —Personal Property
- § 15:7 —Mixed asset form
- § 15:8 —Will executed while testator is a New York domiciliary
- § 15:9 —Will executed while testator was not domiciled in New York but is a domiciliary at death
- § 15:10 —Cross-border powers of appointment
- § 15:11 — —Powers created out of state but exercisable by a New York resident; real vs. personal property
- § 15:12 —Powers of appointment over personal property
- § 15:13 —Effect of law on interpretation of dispositions when testator becomes New York domiciliary prior to death
- § 15:14 —Revocations
- § 15:15 —Non-domiciliary election of New York law
- § 15:16 — —New York law governs
- § 15:17 — —Limitation; law governing formal validation
- § 15:18 —Expansion of choice of New York law in *Matter of Renard*
- § 15:19 — —Prior law
- § 15:20 — —Intervening legislation
- § 15:21 — —Application of *Renard* after *Clark*
- § 15:22 — —Determining the domicile of the decedent
- § 15:23 —Post-*Renard*
- § 15:24 — —Factual dissimilarities of *Clark* and *Renard*
- § 15:25 — —Applying Section 3-5.1
- § 15:26 — —No coverage of *inter vivos* instruments
- § 15:27 — —Matters of validity, construction and interpretation vs. administration
- § 15:28 — —Choice of law by implication
- § 15:29 — —Totten trust accounts

TRUSTS AND ESTATES PRACTICE IN NEW YORK

- § 15:30 — —Equitable modifications following *Clark* and *Renard*
- § 15:31 — —Reviewing the will of the testator who becomes domiciled in New York
- § 15:32 — —The problem of the pour-up trust to trust with single trustee (the California and Florida models)
- § 15:33 — —Self-trusteed trust under New York law
- § 15:34 — —Additional trustee
- § 15:35 — —Holographic will
- § 15:36 — —Incorporation by reference
- § 15:37 — —Reference to letters of instruction
- § 15:38 — —Reference to fee schedules
- § 15:39 — —Choosing New York law; *inter vivos* trusts
- § 15:40 — —Assessing the text of an out-of-state trust under New York law
- § 15:41 — —Standard of care
- § 15:42 — —Delegation
- § 15:43 — —Principal and income law
- § 15:44 — —Conflict of law issues pertaining to Alaska and Delaware asset protection trusts

II. NEW YORK ESTATE TAXATION AFFECTING MULTI-SITUS ASSETS

- § 15:45 Out-of-state tangibles
- § 15:46 Shares of cooperative apartments located in New York State
- § 15:47 Residence deduction
- § 15:48 Enactment of “sop” tax

III. NEW YORK STATE INCOME TAX

- § 15:49 Pension benefits earned in New York by the New Yorker domiciled in New York
- § 15:50 General rule
- § 15:51 Lump-sum payments to nonresidents
- § 15:52 Benefits exempt
- § 15:53 Income tax consequences of change of New York resident trust mid-year
- § 15:54 Change in residency of grantor of *inter vivos* revocable trust
- § 15:55 —Source of income
- § 15:56 —Applicable credits
- § 15:57 —New York State income tax for multi-situs trusts
- § 15:58 —New York resident beneficiary of out-of-state trust
- § 15:59 —Nonresident beneficiary of New York trust

TABLE OF CONTENTS

- § 15:60 —Where federal DNI, as adjusted, is reported on New York return
- § 15:61 —Where there is no DNI sufficient to require a federal tax filing
- § 15:62 —Throwback distributions to nonresident beneficiary of New York trust
- § 15:63 —Where trust is part-year resident
- § 15:64 —Filing requirements for part-year or nonresident trust
- § 15:65 —Who must file and sign return
- § 15:66 —Example: Nonresident trust with nonresident beneficiaries
- § 15:67 —Example: Resident trust with mixed-residence beneficiaries
- § 15:68 —Example: Allocation of deductions

IV. MOVING TRUSTS

- § 15:69 Generally
- § 15:70 Court approval in moving the testamentary trust out of New York State
- § 15:71 —Historical reluctance
- § 15:72 —Newer acceptance
- § 15:73 Testamentary trusts
- § 15:74 *Inter vivos* trusts
- § 15:75 Charitable trusts subject to New York registration
- § 15:76 —Registration
- § 15:77 —Annual reports
- § 15:78 New York State unrelated business income
- § 15:79 Registration of other trusts in New York State
- § 15:80 Procedure

V. PRESERVATION OF COMMUNITY PROPERTY UNDER NEW YORK LAW

- § 15:81 Community property system
- § 15:82 Disposition of community property
- § 15:83 Uniform Disposition of Community Property Rights at Death Act
- § 15:84 —Importance
- § 15:85 —Qualification
- § 15:86 —Effect on elective share
- § 15:87 —Property left behind in community property state
- § 15:88 —Property left behind in New York State
- § 15:89 —Property moving out of New York State; intangibles
- § 15:90 —Separate property moved out of New York State

VI. SURROGATE'S COURT JURISDICTION

- § 15:91 In general
- § 15:92 Jurisdiction
- § 15:93 Venue
- § 15:94 Additional situs rules determined by SCPA
- § 15:95 —Personal property and venue for non-domiciliary
- § 15:96 —Exception
- § 15:97 —Insurance policy on life of non-domiciliary
- § 15:98 —Stock owned by non-domiciliary

VII. FOREIGN TRUSTEES ACTING FOR NEW YORK TRUSTS

- § 15:99 Foreign trustees acting for New York trust
- § 15:100 Qualification of foreign bank
- § 15:101 Payment from New York probate to out-of-state corporate trustee
- § 15:102 Law governing limits of trust powers relating to real estate in New York State

Table of Laws and Rules

Table of Cases

Index