UNDERSTANDING TRUSTS AND ESTATES

THIRD EDITION

By

Roger W. Andersen
Professor of Law
University of Toledo
College of Law

LexisNexis™

ISBN#: 0820557269

Editorial Offices
744 Broad Street, Newark, NJ 07102 (973) 820-2000
201 Mission St., San Francisco, CA 94105-1831 (415) 908-3200
701 East Water Street, Charlottesville, VA 22902-7587 (804) 972-7600
www.lexis.com

(Pub.00728)

Chapter 1

LAWYERS, ESTATES, AND TRUSTS

§ 1 Serving the Living

You may be pleasantly surprised to learn that Trusts and Estates is not about dead people. Rather, it is the study of ways to help living people solve real family problems. If your clients have aging parents, if they have just lost a spouse, if they have young children, if they seek to save taxes, if they are anticipating their own retirement and possible disability, you can help. You will have the opportunity to offer them a wide variety of ideas, tools you can use together to craft a solution.

Such a task is both interesting and challenging: interesting because of the interplay between intellectual ideas and individual personalities; challenging because of the required attention to detail and the number of choices faced.

Recognizing that lawyer conduct affects the living, courts have broken down traditional defenses and held lawyers responsible to will beneficiaries who were not their clients. In *Ogle v. Fuiten*,[1] for example, two nephews brought an action for malpractice and breach of contract against the law partner of their aunt and uncle's then-deceased lawyer.[2]

The nephews claimed that the aunt and uncle had wanted the property to go to whichever of them survived the other by 30 days; otherwise the nephews were to get the property. Because of a drafting error, the nephews did not get the property, even though the aunt did not survive the uncle by 30 days.

The lawyer's mistake was easy to make: he left a gap in coverage when he combined two different kinds of clauses in the wills. First, in each spouse's will he made the gift to the other spouse contingent on survival by 30 days. Then, he provided that if both spouses were killed in a "common disaster" the nephews would take.[3]

As luck would have it, neither event occurred. The uncle died of a stroke, and 15 days later the aunt died of cancer. Neither spouse survived long enough to get the other's property, but the nephews did not qualify to take

[1] 466 N.E.2d 224 (Ill. 1984).

[2] The estate was also named as a defendant.

[3] The common disaster clause is a particularly bad way to deal with survivorship problems. *See* § 45[B][2][a], *infra*.

In this case, one wonders if the lawyer merely inserted the clause as standard "boilerplate," without discussing it with his clients. If so, the nephews might have had another ground for recovery. *See generally* Roger W. Andersen, *Informed Decision Making in an Office Practice*, 28 B.C. L. Rev. 225 (1987).

it because there was no common disaster.[4] The lawyer had left a gap, and the nephews lost out.

The court allowed the nephews' claim, following a growing, but not uniform, trend toward ignoring defenses based on lack of privity—"they were not my clients"—and statutes of limitation—"the claim is too late because it arose when the will was drafted, not at the later death."[5] Courts have recognized that unless lawyers' duties are extended to will beneficiaries and unless statutes of limitation are applied from the time a mistake is likely to be found, lawyers will escape liability for their mistakes.[6] After all, by the time most will drafting errors are identified, the client is in no position to complain.

Cases like *Ogle* are important because they remind us that we serve people whose lives are affected by how carefully we practice our craft. As you work your way through this text, keep in mind that the doctrine you learn is not important in its own right, but because the use and abuse of this doctrine can affect the lives of real people.

§ 2 An Overview of Intergenerational Wealth Transfer

This section introduces some terminology and basic concepts discussed in later chapters. Its major purpose is to provide a "big picture," so you will know the context in which particular doctrines operate. After a discussion of the probate system for transferring decedents' property, we will examine probate-avoidance devices, lifetime transfers that can serve as substitutes for wills. The section closes with a word about the uniform statutes and Restatements.

---

[4] The estate went to other relatives under what is called an *intestate statute,* a topic covered in the next chapter.

[5] *See* Lucas v. Hamm, 364 P.2d 685 (Cal. 1961) (will beneficiaries have cause of action against drafting attorney in both tort and contract); Auric v. Continental Casualty Co., 331 N.W.2d 325 (Wis. 1983) (will beneficiary allowed to maintain an action against attorney). *But see* Miller v. Mooney, 725 N.E.2d 545 (Mass. 2000) (rejecting tort liability); Barcelo v. Elliott, 923 S.W.2d 575 (Tex. 1996) (lack of privity barred will beneficiary's claim against drafting attorney). *See generally* Martin D. Begleiter, *Attorney Malpractice in Estate Planning—You've Got to Know When to Hold Up, Know When to Fold Up,* 38 U. Kan. L. Rev. 193 (1990); Bradley E.S. Fogel, *Attorney v. Client – Privity Malpractice, and the Lack of Respect for the Privacy of the Attorney-Client Relationship in Estate Planning*, 68 Tenn. L. Rev. 261 (2001). Helen Bishop Jenkins, *Privity—A Texas-Sized Barrier to Third Parties for Negligent Will Drafting—An Assessment and Proposal*, 42 Baylor L. Rev. 687 (1990); Mary Elizabeth Phelan, *Unleashing the Limits on Lawyers' Liability?* Mieras v. DeBona: *Michigan Joins the Mainstream . . .* 72 U. Det. Mercy L. Rev. 327 (1995).

Some courts have abolished the privity defense in contexts not involving wills. *See, e.g.,* Holsapple v. McGrath, 521 N.W.2d 711 (Iowa 1994) (allowing a claim by grantees of a faulty deed).

The increased malpractice exposure serves as a spur to reform outmoded doctrines which haunt this area of law. *See* Jesse Dukeminier, *Cleansing the Stables of Property: A River Found at Last*, 65 Iowa L. Rev. 151 (1979).

[6] Lawyers may also be liable for the mistakes of their employees. *See* John W. Wade, *Tort Liability of Paralegals and Lawyers Who Utilize Their Services*, 24 Vand. L. Rev. 1133 (1971).

[A] Probate

[1] The Process

Probate systems collect the assets of decedents, satisfy creditors, resolve conflicts among beneficiaries, and distribute what is left to the appropriate persons or institutions.[1] Procedural details vary from place to place, but the basic concept of probate carries through differing approaches.

Only some property interests are "subject to probate." Property that the decedent held alone or as a tenant in common is subject to the system. On the other hand, a number of sources of wealth do not pass through probate.[2] Joint tenancy (or tenancy by the entirety) property, life insurance proceeds on the decedent's life, and property in lifetime trusts are all outside of probate.[3]

Notice how little wealth may actually be subject to probate. A typical married couple may hold virtually everything in joint tenancy—house, cars, bank accounts, investments. There may be no probate assets until the surviving spouse dies. If a wealthy family adopts a sophisticated plan, they may have most of their property in trust—again, not subject to probate.

Despite the relatively narrow coverage, the probate system is fundamentally important to the entire intergenerational wealth transfer process. Much of the law governing wealth transfer developed in the context of probate. Moreover, it is the ultimate "fail-safe" system. If no other theory authorizes a shift of property from a decedent to another, the probate system comes into play.

When a person dies and a decision is made to probate his estate, someone—usually a family member—will petition a court[4] in the decedent's state of domicile to appoint a "personal representative" to handle the work.[5] If the decedent owned property in other states, a separate, "ancillary" probate might have to be opened (and a personal representative appointed) in each of those states.[6] Ancillary probate is designed to protect local creditors and is particularly likely if the out-of-state asset is real property.

---

[1] Technically, "probate" refers to the proving of a will and "administration" refers to the process under which assets are collected and dispersed to successors, whether there is a will or not. *See* McGovern & Kurtz at 467-68. In more common usage, however, "probate" has come to mean the entire process, and the term is used in that sense here.

[2] *See generally* § 2[B], *infra*.

[3] Several states allow married couples to hold property as "community property," which is shared equally. At death, the decedent's one-half of the community property may pass through probate or may pass directly to the other spouse. *See generally* Robert L. Mennell and Thomas M. Boykoff, Community Property in a Nutshell (2d ed. 1988). *See also* § 28[A], *infra*.

[4] The court may be called a probate court, a surrogate's court, or even an orphan's court.

[5] The personal representative owes fiduciary duties to the estate's beneficiaries. *See generally* Chapter 14, *infra*.

[6] *See generally* McGovern & Kurtz at 973-77.

The term "personal representative" is a generic term that covers any of the various categories of people[7] named to handle an estate. If there is a will,[8] the first choice for a personal representative would be the person named in the will as "executor."[9] If there is no will, the decedent has died "intestate," and a state statute[10] will direct how the property is to be distributed[11] and provide a hierarchy[12] from which to choose an "administrator."[13]

States differ in the level of judicial supervision they require. Modern probate procedures evolved from two approaches taken in English ecclesiastical courts. "Common form" probate was an ex parte process. After the validity of the will was proved, the court would allow the executor to begin administration without further court involvement. Anyone who objected could petition for probate in "solemn form," which involved notice to interested parties and court supervision. Sensing trouble ahead, an executor might simply elect the solemn form from the start. While some states permit a variant of common form probate,[14] most states' courts supervise the entire process.[15]

In part as a response to complaints that there is too much supervision,[16] at too high a cost,[17] the Uniform Probate Code (UPC) takes a different

---

[7] Trust companies and trust departments of commercial banks often serve in these various capacities as well.

[8] Anyone who wants to transfer probate property at death must make a valid will. People who make wills are called "testators" and are said to die "testate." *See generally* Chapter 3, *infra*.

[9] In the past, the term "executrix" has been used if the personal representative was female. Since gender has no legal consequence in this context, "trix" endings are gradually making their way out of our language. In this text, use of the "or" suffix makes no assumption about the gender of the person involved.

[10] If a decedent owns property in different jurisdictions, different statutes may apply to identify who inherits. Personal property is governed by the law of the decedent's domicile, and real property is governed by the law of its location. *See generally* William M. Richman & William L. Reynolds, Understanding Conflict of Laws §§ 66, 86 & 87 (2d ed. 1993).

[11] *See generally* Chapter 2, *infra*.

[12] Usually the surviving spouse is first on the list, followed by other relatives and, finally, other qualified persons.

[13] Other titles sometimes indicate special circumstances. If the named executor is out of the country for a while, it might be necessary to appoint a "special administrator" to get things started. If the will only names people who cannot serve, a court will appoint someone who could be called an "administrator with will annexed," to indicate that—despite the "administrator" title—there is indeed a will.

[14] *E.g.*, N.C. Gen. Stat. § 31-12.

[15] Many states allow small estates to pass without court administration, or with minimal court involvement. *See, e.g.*, Ind. Code Ann. § 29-1-8-1; Ohio Rev. Code Ann. § 2113.03. *See also* UPC §§ 3-1201 to 3-1204. A few states allow an administration independent of judicial supervision once the will has been proved and there has been an inventory, an appraisal, and a list of claims established. *See* Tex. Prob. Code Ann. § 145.

[16] *See* Richard V. Wellman, *The Uniform Probate Code: A Possible Answer to Probate Avoidance*, 44 Ind. L.J. 191 (1969).

[17] *See, e.g.*, Norman F. Dacey, How to Avoid Probate (Rev. ed. 1990).

approach. Although the traditional approach of full supervision is available,[18] administration also may be largely unsupervised. The court can be called upon as needed. An interested party who feels that a low appraisal should be reviewed, for example, can obtain court supervision of that one controversy without generating supervision of all other questions.[19]

In addition, the UPC offers the choice of universal succession, which skips administration entirely and gives title to the heirs[20] or residuary devisees,[21] subject to the claims of creditors and any other devisees.[22]

The discussion that follows assumes a court's continuing supervision.

Upon appointment of the personal representative, the court issues appropriately titled "letters" to evidence the individual's authority. Armed with official copies of letters and of death certificates, the personal representative can contact banks, stock transfer agents, and the like, to collect the decedent's assets.[23]

An inventory is then filed.

While the personal representative is collecting assets, she also should be notifying creditors. The traditional method of giving such notice (and thereby starting fairly short statutes of limitation running against the assertion of any claims) had been publication in a local newspaper. All that changed in 1988 when the U.S. Supreme Court ruled, in *Tulsa Professional Collection Services, Inc. v. Pope*,[24] that more was required.

In *Pope,* the executor (the widow) published appropriate notices in the local paper, giving creditors two months to file their claims. The hospital in which the decedent died did not file in time, so the local court denied the claim. On appeal, the hospital argued that notice-by-publication was insufficient under the due process clause.[25] The Supreme Court distinguished this situation from mere "self-executing" statutes of limitation not subject to due process notice requirements,[26] because in the probate context

---

[18] UPC § 3-501.

[19] *See* UPC § 3-107 (comment).

[20] The "heirs" are those who would take under the intestate statute if there were no will.

[21] Historically, the term "devisee" meant someone who took real property by will. The UPC expands that term to include anyone who takes real or personal property by will. UPC § 1-201(10), (11). The "residuary devisees" are those who would take under a will clause which follows any gifts to individuals or groups and reads: "I give all the rest of my property to . . ."

[22] *See* UPC §§ 3-312 to 3-322. *See also* Eugene Scoles, *Succession Without Administration: Past and Future*, 48 Mo. L. Rev. 371 (1983).

[23] For an example of a personal representative that failed to meet its obligation to exercise due care in this context, see *In re First Nat'l Bank of Mansfield*, 307 N.E.2d 23 (Ohio 1974), discussed in § 56[B], *infra*.

[24] 485 U.S. 478, 99 L. Ed. 2d 565, 108 S. Ct. 1340 (1988). *See generally* Sarajane Love, *Estate Creditors, The Constitution, and the Uniform Probate Code,* 30 U. Rich. L. Rev. 411 (1996).

[25] *Pope* also illustrates the folly of not being thoughtful (or at least wary) of others involved in the probate process. Here, the executor and the hospital each knew of the death and pending bill, yet neither bothered to contact the other in the context of settling the estate. Instead, they spent substantial funds litigating.

[26] *See* Texaco, Inc. v. Short, 454 U.S. 516, 70 L. Ed. 2d 738, 102 S. Ct. 781 (1982).

there is significant state action throughout the process. Harkening back to *Mullane v. Central Hanover Bank & Trust Co.*,[27] the Court held that due process requires actual notice (like mail) to known or reasonably ascertainable creditors before their claims can be cut off.

Once the assets are assembled and the creditors have been contacted, estate administration enters a holding period. Appraisals are made; tax forms are filed; sometimes property is sold to pay creditors or because no one wants it. If there is a will that an interested party[28] believes should not be enforced, there may be a will contest.[29] If there is a dispute about the will's meaning or whether a substantive rule (like the Rule Against Perpetuities) has been violated, there may be litigation.

Traditionally, the scope of a personal representative's duty to protect the estate's assets during this period fit the short-term nature of estate administration: the focus was on supervision and preservation.[30] Because courts have been moving toward treating personal representatives in much the same way as trustees, we will discuss the duties of each after we have examined the law of trusts.[31]

Once assets have been assembled, creditors paid, and problem areas addressed, the personal representative closes the estate by distributing the remaining property to those entitled to it. Distributions might be to individuals, to charities, to trustees of already existing trusts, or to trustees of trusts created by the decedent's will.

[2] Is Probate Necessary?

We sometimes assume that because the probate system is available, it must be used. Instead, in each case, we ought to be recalling the functions of the system and asking whether this particular probate is necessary.

Imagine that Marge Gorski comes into your office to tell you of the death of her husband, Ed. Ed was recently retired from Monroe Tool Works; Marge still works for Ace Hardware. They owned a house in joint tenancy, and had joint checking and savings accounts, and a car titled in both names.

---

[27] 339 U.S. 306, 94 L. Ed. 865, 70 S. Ct. 652 (1950). In *Mullane,* the Court announced due process standards for adequate notice, which now apply to both *in personam* and *in rem* actions.

[28] In this context, an "interested party" is someone who would benefit from the will being invalidated. Most commonly, challengers are persons who would take under an earlier will or under the intestate statute if there were no valid will.

[29] The most common grounds for contest are that the testator (will maker) lacked mental capacity, was subject to undue influence, or failed to follow technical rules regarding the will's execution. *See* Jeffrey A. Schoenblum, *Will Contests—An Empirical Study*, 22 Real Prop. Prob. & Tr. J. 607 (1987). *See generally* Chapter 3, *infra*.

Procedures for contesting wills vary. In some jurisdictions, a contest may be brought in the probate court. In others, it must be in the court of general jurisdiction. *See generally* Page ch. 26.

[30] For a good illustration of the problems a personal representative might face, see *Estate of Baldwin*, 442 A.2d 529 (Me. 1982).

[31] *See* Chapter 13, *infra*.

Ed's retirement plan names Marge as the next beneficiary, and there is some life insurance, again payable to Marge. They have no other assets beyond clothes, jewelry, and furniture. The only debts are pending charge card bills. Ed's will gives everything to Marge; the children are making no claims.

On these facts, there is no good reason to bother probating Ed's estate. The only assets Ed owned alone (the tangible personal property) are already in the house, so there is no problem with assembling estate assets. Marge fully intends to pay off the charge cards, so creditors are not a worry. Since Marge's survivorship interest gives her the house, there is no potential title problem.

The example suggests some situations that could call for probate. If a bank account were in Ed's name alone, letters of authority from a probate court might be the only way to get the bank to release the money. On the other hand, perhaps something else could be worked out informally. If Ed had owned a business, cutting off creditor's claims might be important. Though the *Pope* case, discussed above, would require reasonable efforts to find and notify creditors, going through probate would provide some security against creditors who appeared later. Before deciding, you would want to know how likely their appearance would be. If children from a former marriage are questioning the will's validity, you may need a hearing, but you may be able to reach a settlement. If the house had been in Ed's name alone, probate probably would be necessary to vest a clear title in Marge. Some title insurance companies, however, might be willing to insure a title in Marge's name on the strength of affidavits, instead of requiring a probate court order. For any number of reasons, you may want to advise Marge to use the probate process, but you ought to have reasons.

When someone has died, we need to collect the assets, take care of creditors, resolve any disputes among claimants, and get clear title into the hands of the right survivors. If we need the probate system to accomplish one of those tasks, we should use it. If not, we shouldn't.

[B] Lifetime Transfers

We now turn to devices that effectively transfer wealth at someone's death, but that are not subject to the probate system. For this reason, they are often called "will substitutes." Principal among them is the trust, which we will cover in detail later.[32] This section introduces the trust concept and some terminology, and then describes other nonprobate transfers.[33]

Be sure to distinguish probate avoidance from tax avoidance. Many forms of wealth that do not pass through probate are nonetheless subject to tax.[34]

---

[32] *See* Chapter 4, *infra*.

[33] *See generally* Chapter 5, *infra*.

[34] The federal gift and estate tax system is discussed in Chapter 14, *infra*.

[1] Trusts

Because trusts are so flexible, they are the most useful single estate planning device. Professor Scott, the dominant figure of 20th century trust law, reminds us that "[t]he purposes for which trusts can be created are as unlimited as the imagination of lawyers."[35] Scott challenges us to use trusts creatively to meet the needs of our clients. Trusts are flexible because the essential elements are so few: (1) an intention to create a trust with (2) property (sometimes called the res) (3) held by someone (the trustee) (4) to benefit someone else (the beneficiary). The property serves as the principal (or corpus) of the trust, invested to generate income for the beneficiaries. Of course, there must be someone to create the trust. This person might be called the settlor, donor, trustor, or testator, depending upon the situation and local custom.

One person can assume any number of different roles, just so long as the trustee owes a duty to *someone* else. The settlor could be a trustee, by announcing that property she owned was now being held in trust for the benefit of others. One of those beneficiaries could even be the settlor/trustee herself. The only limit is that one person cannot be both trustee and *sole* beneficiary.[36] Of course, different people might assume each of those roles. It is quite common, for example, for a settlor to give money to a bank as trustee to invest for members of the settlor's family.

A trust may be created by lifetime transfer or by will. If a trust is created during the life of the settlor, it is called a "living" (or "lifetime" or "inter vivos") trust. If a trust is created by will, it is called a "testamentary" trust. Questions involving living trusts can be resolved in courts of general jurisdiction, but there is no ongoing judicial supervision. Testamentary trusts are typically subject to the continuing jurisdiction and supervision of the probate court.

To see when a trust might be appropriate, consider a couple who want to provide for their young children if the parents die while the children are minors. Each of the parent's wills could give everything to the surviving parent. If one died but the other survived, the survivor would continue to care for the children. If there were no surviving parent,[37] however, the will could give everything in trust to the local bank to manage for the children. In addition, life insurance might be made payable to the trustee. While the children were young, the income (and perhaps principal) from the trust would help support them. Once the children reached adulthood, the trustee could distribute the principal. Later we will examine some of the variations

---

[35] 1 Austin W. Scott & William F. Fratcher, The Law of Trusts 4 (Little, Brown 4th ed. 1987-1991).

[36] The basic notion is that without *someone* to enforce a trustee's duties, there are no duties. Technically, we may say there is no separation between legal title (held by the trustee) and equitable title (held by the beneficiaries). For discussion, see §§ 12[B], [C], [D], *infra*.

[37] Suppose a car crash, or deaths from different causes but close in time, as in *Ogle*, discussed in § 1, *supra*.

available to shape the trust to the needs of particular families. For now, concentrate on understanding the trust's basic structure.

[2] Other Lifetime Transfers

While the trust is the most complex probate-avoidance device, others are more common. You will recall from your Property course how the surviving joint tenants own the entire property when one joint tenant dies. This survivorship feature makes joint tenancy holdings extraordinarily popular, especially among persons of modest means. Real estate, bank accounts, stocks, and bonds can all be held in "joint with survivorship" form. Because the survivor no longer shares ownership with the one who has died, the decedent effectively has transferred wealth at death. Because of the legal theory that the survivor has owned the property all along, however, no will is required.

The law of contracts supplies another way around probate. Funds paid by a third party at the death of someone are often treated as contract rights of the beneficiary, rather than property of the one who died.

Life insurance is the most common example of this way of giving money at death. Though the industry has developed a wide array of products in recent years, they commonly fall into one of two basic categories. Term insurance covers the risk of someone dying during the term of the policy.[38] Other products incorporate an investment feature as well.[39]

Death benefits from life insurance bypass the probate system because courts do not consider, for purposes of transferring title, those benefits as property of the decedent. In recent years, the use of "payable-on-death" and "transfer-on-death" accounts has expanded significantly. Statutes have authorized bank accounts and, more recently, mutual funds, other securities[40] and even land,[41] to be held in these forms. The explosion of retirement plans also has produced a new way of accumulating wealth and leaving it to survivors outside of probate.[42]

Professor John Langbein has noted how these developments have profound implications for the law of wealth transfer.[43] On the one hand, the law of wills could learn from the law that has developed around these other devices. On the other, what Langbein calls the subsidiary law of wills—rules about how to interpret documents in various situations—holds many

---

[38] If there is a death, the company pays the face amount to the beneficiary.

[39] If the insured dies while the policy is in force, the beneficiary is paid. Because of the investment feature, however, the owner has the option of drawing out the built-up value of the policy before death.

[40] *See* Richard V. Wellman, *Transfer-on-Death Securities Registration: A New Title Form*, 21 Ga. L. Rev. 789 (1987).

[41] Ohio Rev. Code § 302.22-.23.

[42] Sometimes retirement benefits are created by contract and sometimes the trust form is used, but the probate avoidance result is the same.

[43] *See* John H. Langbein, *The Nonprobate Revolution and the Future of the Law of Succession*, 97 Harv. L. Rev. 1108 (1984).

lessons for nonprobate transfers. For example, if someone makes a will in favor of a spouse whom he later divorces, the will provision commonly is treated as revoked.[44] Should we not get the same result if the gift had been in trust? The notion that we should have an integrated wealth-transfer system, which depends more on substance than on form, is gaining increasing attention. As we consider the various doctrines discussed in this text, we will be asking whether good reasons support the different approaches traditionally taken toward these various devices.

[C] The Uniform Codes and the Restatements

Law reform engines have significantly affected the law of trusts and estates. The Uniform Probate Code (UPC) and the Uniform Trust Code (UTC) offer statutory language and commentary to state legislatures considering reform (and indirectly influence court decisions). The Restatements of Property and of Trusts provide guidance to courts (and indirectly influence legislatures). This subsection briefly introduces these vehicles for reform.

In 1969, the Commissioners on Uniform State Laws promulgated the UPC as a comprehensive statute covering a broad range of issues related to family wealth transfers: jurisdiction, intestacy, wills, probate procedure, guardianship, trust administration.[45] Since then, a number of revisions have been made, most notably in 1990.[46]

The UTC was approved in 2000 and is being considered in a number of states.[47] The act codifies an area of law traditionally established by court decisions that necessarily left large gaps in some jurisdictions.[48]

The UPC is a continually evolving document, sheparded by the Joint Editorial Board for the Uniform Probate Code (JEB-UPC). This group of

---

[44] *See, e.g.*, UPC (pre-1990) § 2-508. *See generally* 45[B][1], *infra.*

[45] For brief discussions of the process of creating and marketing uniform laws, see John H. Langbein & Lawrence W. Waggoner, *Reforming the Law of Gratuitous Transfers: The New Uniform Probate Code*, 55 Alb. L. Rev. 871, 875-899 (1992), and Lawrence H. Averill, Jr., *An Eclectic History and Analysis of the 1990 Uniform Probate Code*, 55 Alb. L. Rev. 891, 901-906 (1992).

[46] Many of the changes are analyzed in an extensive symposium. *See Symposium on the Uniform Probate Code: Reflections on Recent Revisions*, 55 Alb. L. Rev. No. 4 (1992). *See also* Mark L. Ascher, *The 1990 Uniform Probate Code: Older and Better, or More Like the Internal Revenue Code*, 77 Minn. L. Rev. 639 (1993); Mary L. Fellows, *Traveling the Road of Probate Reform: Finding the Way to Your Will (A Response to Professor Ascher)*, 77 Minn. L. Rev. 659 (1993); Bruce H. Mann, *Formalities and Formalism in the Uniform Probate Code*, 142 U. Pa. L. Rev. 1033 (1994). The Uniform Laws Annotated lists 16 adopting states of various UPC versions: Alaska, Arizona, Colorado, Florida, Hawaii, Idaho, Maine, Michigan, Minnesota, Montana, Nebraska, New Mexico, North Dakota, South Carolina, South Dakota and Utah. 8 U.L.A. 1 (2002 Pocket Part).

[47] Iowa's new trust code is based on a UTC draft. *See* Martin D. Begleiter, *In the Code We Trust—Some Trust Law for Iowa at Last,* 49 Drake L. Rev. 165 (2001).

[48] *See generally* David M. English, *The Uniform Trust Code (2000): Significant Provisions and Policy Issues*, 67 Mo. L. Rev. 143 (2002).

academic lawyers and practitioners monitors how the UPC is working and recommends both piecemeal and comprehensive (as in 1990) revisions. Facilitated by overlap of interest and personnel, the JEB-UPC has worked cooperatively with groups revising the Restatement of Property and the Restatement of Trusts.

Those Restatements, like others you have learned about, are the product of the American Law Institute, an organization of judges, lawyers and law professors founded in 1923 to clarify, simplify and otherwise reform the law. Two projects are particularly relevant to our topic: The Restatement (Third) of Property (Wills and Other Donative Transfers) and the Restatement (Third) of Trusts. Both are ongoing efforts, but the directions in which they are moving can guide us as to how the law of the future—the law you will be using—will look.

As unlikely as it may seem, the law of wills and trusts is full of life. Its subject matter is people, and its doctrine is in the process of reforming to take advantage of newly developed approaches and to meet new needs.