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Problems and Materials  
ON  
DECEDENTS' ESTATES  
AND TRUSTS

*Sixth  
Edition*



ASPEN LAW & BUSINESS

**Problems and Materials on  
DECEDENTS' ESTATES AND TRUSTS**

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**Sixth Edition**

**Eugene F. Scoles**

Max L. Rowe Professor of Law, Emeritus  
College of Law, University of Illinois  
Distinguished Professor of Law, Emeritus  
School of Law, University of Oregon

**Edward C. Halbach, Jr.**

Walter Perry Johnson Professor  
School of Law, University of California, Berkeley

**Ronald C. Link**

Dan K. Moore Professor of Law  
University of North Carolina

**Patricia Gilchrist Roberts**

Professor of Law  
Wake Forest University



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## Preface to the Sixth Edition

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This sixth edition continues the time-tested approach of the earlier editions (see Preface to the First Edition, hereafter). Typically, text is used to set up a challenging problem, which is followed by selected statutory, case, or text material to be studied for insights into the issues presented. The problems are designed to develop and test the student's skills of advocacy and of doctrinal and statutory analysis; they also invite consideration of whether the planner or drafter could have prevented the controversy involved and whether the law could offer a better background for its avoidance or resolution.

In the most fundamental of its revisions, this edition incorporates the subject matter of the previously separate Halbach & Scoles, *Problems and Materials on Future Interests* (1977). This edition alone is therefore suitable for the now typical, all-inclusive course encompassing future interests as well as succession, trusts, and fiduciary administration. The goals of efficiently condensing and integrating, rather than just combining, the various bodies of material led us to reexamine the book's organization along pedagogical rather than topical lines. The results include chapters entitled "Introduction to Future Interests and Powers of Appointment" (Chapter 10), "Constructional Problems in Estate and Trust Distribution" (Chapter 11), and "Rules Relating to Perpetuities" (Chapter 20). Following Chapter 9's introduction to the trust device, Chapter 10 acquaints students with some of the most important distributive provisions of trusts. Chapter 11 then examines constructional issues arising from changes in a testator's property between execution of the will and distribution of the estate — matters formerly covered later in the book — and then proceeds to constructional issues resulting from changes among the potential beneficiaries prior to the distribution of an estate or trust. This permits an economical treatment and useful comparison of such matters as class gifts, lapse and other survivorship questions, and constructional issues involving powers of appointment. Having laid the groundwork for the time-divided ownership that is characteristic of trusts, the book proceeds to other aspects of trust law and fiduciary administration, with little *structural* change in these areas. In closing with a detailed study of rules regulating perpetuities (the outlines of which are introduced earlier), the book facilitates a review and pulling together of some of the previous material in the course and raises anew a major aspect of the dead hand control questions that pervade trust law.

Possibly the next most important change in this edition is the inclusion throughout of extensive materials reflecting the growing importance of professional responsibility issues in what has traditionally been thought of as a relatively nonadversarial field. In other structural and coverage changes, the materials on grounds for contesting a will have been moved up to Chapter 3 on Family Protection and Limits on Testation, and the treatment in that chapter of living wills has been significantly expanded to include other elder law issues. Of course, throughout the book there has been updating and adaptation to reflect recent developments, evolving themes, and shifts in emphasis within the field of donative transfers and estate planning.

Prior editions have reflected the upsurge of legislative reform in probate and trust law, especially through the Uniform Probate Code — still a focus of ongoing study and adaptation. The trend of change has accelerated and expanded since the publication of the fifth edition, with trust law receiving particular attention. The Uniform Prudent Investor Act of 1994 was followed by a significantly related 1997 Revised Uniform Principal and Income Act, and a comprehensive Uniform Trust Code is expected to be promulgated later this year. The 1999 Uniform Disclaimer of Property Interests Act and the earlier Uniform Statutory Rule Against Perpetuities also bear importantly on trust law, while the Uniform Health-Care Decisions Act evidences growing interest in legal issues associated with aging. The pace of reform in the field of estates and trusts has gained much of its momentum from ongoing projects of the American Law Institute: the Restatement (Third) of Trusts and the Restatement (Third) of Property — Wills and Other Donative Transfers, plus a Restatement (Third) of the Law Governing Lawyers.

To strike a balance between detail and brevity, and to avoid the need for a statutory supplement, uniform acts and other statutes are set out in full where the language is critical, but otherwise, relevant legislation is summarized. (Some instructors, of course, will wish to supplement the materials with local statutes.) While many new cases have been added, we did not engage in age discrimination: if the classic case is still the best, we kept it.

We hope the mix of the practical and the theoretical will continue to receive the acceptance reported by teachers and students who used the first five editions. The experience and observations of prior users are, we believe, reflected in pedagogical details as well as in content, with a goal of aiding students' independent mastery of much of the course material, both to protect classroom time and to advance the level of class discussion. We look forward to the comments of teachers who use this new edition, in which the original authors have been joined by Professors Link and Roberts.



We acknowledge with appreciation the authors and publishers who have granted us permission to reprint portions of their work and also the many helpful suggestions from teachers who have used prior editions. On the latter score we are particularly indebted to Professors Martin Begleiter and Richard Gould. We also wish to thank our student research assistants and the support staff at our respective institutions.

*Eugene F. Scoles*  
*Edward C. Halbach, Jr.*  
*Ronald C. Link*  
*Patricia Gilchrist Roberts*

August 2000

## Preface to the First Edition

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This book is designed primarily for a combined course in Decedents' Estates and Trusts, including fiduciary administration, or for use, in conjunction with separate materials on future interests, in a more inclusive course encompassing the traditional subjects of Wills Trusts, and Future Interests.

The organization of the book is not necessarily a "logical" one. The materials are presented in a sequence calculated to make the study of them more meaningful, and also more efficient when possible. For example, matters relating to the termination of trusts are not presented at the end but are taken up earlier, because certain characteristics of trusts and certain rights of beneficiaries relating to termination are relevant to a thorough consideration of many aspects of trust administration. It will also be noted that much of the book is built around problems. The order in which some topics are taken up is dictated by the objective of adequately preparing students to approach the problems with an understanding of the legal and practical considerations that are relevant to public policy or to private solution through planning. In most instances the cases and other materials have been prepared not simply to be studied as such, but to be considered for the purpose of attacking a particular problem. We have tended to reverse the typical casebook format of cases followed by notes; usually we have placed text before the related cases, especially where basic doctrine can satisfactorily and more easily be imparted in this fashion. This organization, together with the more extensive use of textual material, is intended to make the experience of working with cases and problems more valuable and more interesting than if they were approached without some background in the basic rules involved. In other words, text is used to "set up" the cases and problems. Because a student does not come to them blindly, cases and problems which are more challenging can be used, or at least a more sophisticated discussion of a given case or problem can be expected. We believe that more is gained by this technique than is lost by what some teachers will consider a giving away of too much too readily. We hope, frankly, that a higher level of performance and interest can be stimulated concerning selected issues by having their practical and legal context, as well as by having a certain amount of general subject matter coverage, provided by text.

It is our objective that both the content and emphases of this book

reflect the realities of present-day practice in the field of estates and trusts, while also revealing that the field is very much alive with new (as well as old) problems in need of solution. For example, although we do not seek in this book to teach tax planning, we do feel that course emphasis should reflect the types of current questions being opened up by various dispositions and fiduciary practices that are prompted by considerations of legitimate tax minimization. You may also note an effort in appropriate parts of the book to shift attention from the abundant case experience which grew out of the depression of the thirties to the largely unexplored issues arising from long-term inflation.

In the overall picture, however, a very important factor in determining the content, emphasis, and method of this book is a realization that growing demands upon lawyers, and hence upon law school curricula, require that significant features of this course area be covered in fewer classroom hours than in the past, without unduly sacrificing either depth of understanding in the field itself or fundamental insights which this course should offer concerning the law in general.

Finally, we wish to express our appreciation to the authors and publishers who have granted us permission to reprint portions of copyrighted texts and articles in this book.

*Eugene F. Scoles*  
*Edward C. Halbach, Jr.*

1965

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