PART 1
INTRODUCTION

CHAPTER 1
THE HISTORY OF THE TRUST ........................................ 3
§ 1.1. Introduction ..................................................... 3
§ 1.2. Early English Equity ........................................... 9
§ 1.3. The Development of Uses and Trusts ....................... 11
§ 1.4. The First Period ................................................. 12
§ 1.5. The Second Period ............................................... 13
§ 1.6. The Third Period ................................................ 17
§ 1.7. The Fourth Period ............................................... 19
§ 1.8. Trusts of Personal Property ................................. 22
§ 1.9. Trusts in America ............................................... 24
§ 1.10. Analogous Devices in Other Legal Systems .......... 25
§ 1.11. Legislation ...................................................... 27

CHAPTER 2
THE NATURE OF A TRUST ............................................. 31
§ 2.1. The Nature of a Trust .......................................... 32
§ 2.1.1. The Classification of Trusts .............................. 33
§ 2.1.2. Other Trusts .................................................. 34
§ 2.1.3. The Definition of a Trust .................................. 35
§ 2.1.4. The Trust as a Relationship .............................. 37
§ 2.1.5. Fiduciary Relationship ..................................... 37
§ 2.1.6. Relationship with Respect to Property ............... 38
§ 2.1.7. Relationship Involving Duties ............................ 39
§ 2.1.8. Relationship Arising From a Manifestation of Intention .... 39
§ 2.2. Terminology ...................................................... 40
§ 2.2.1. The Settlor .................................................... 40
§ 2.2.2. The Trust Property ......................................... 41
§ 2.2.3. The Beneficiary ........................................ 41
§ 2.2.4. The Terms of the Trust ................................. 42

§ 2.3. Distinctions between Trusts and Other Relationships
§ 2.3.1. Trust and Bailment ...................................... 50
§ 2.3.2. Trust and Executorship .................................. 54
  § 2.3.2.1. Removal and Renunciation ......................... 58
  § 2.3.2.2. Liability of Sureties .............................. 59
  § 2.3.2.3. Requirement of Unanimity ......................... 60
§ 2.3.3. Trust and Guardianship ................................ 61
§ 2.3.4. Trust and Agency ....................................... 62
  § 2.3.4.1. Bank as Trustee or Agent ......................... 67
§ 2.3.5. Trust and Mortgage, Pledge, or Lien .................. 69
§ 2.3.6. Trust and Equitable Charge ........................... 71
  § 2.3.6.1. Personal Liability of Transferee ................ 72
  § 2.3.6.2. Subsequent Transferees of Property Subject to a Charge .......... 74
  § 2.3.6.3. Kinds of Charges ................................. 75
  § 2.3.6.4. Character of the Relationship .................... 76
  § 2.3.6.5. The Statute of Limitations ....................... 77
  § 2.3.6.6. Intention to Create a Charge or a Trust ........ 77

§ 2.3.7. Trust and Condition .................................. 80
§ 2.3.8. Trust and Debt ........................................ 87
  § 2.3.8.1. Intention Determinative ......................... 88
  § 2.3.8.2. The Statute of Limitations ....................... 107
  § 2.3.8.3. Accidental Loss ................................. 108
  § 2.3.8.4. Effect of Insolvency ............................. 109
  § 2.3.8.5. Formalities in the Creation of a Trust or Debt ........ 110
  § 2.3.8.6. Bank Deposits .................................... 111
  § 2.3.8.7. Stockbrokers ..................................... 112
  § 2.3.8.8. Novation—Substitution of Debt For Trust .......... 113
PART 2
THE CREATION OF A TRUST

CHAPTER 3
THE CREATION OF A TRUST: GENERAL PRINCIPLES .................................. 137

§ 3.1. Methods of Creating a Trust .............................................. 137
§ 3.1.1. Declaration of Trust ................................................. 140
§ 3.1.2. Exercise of Power of Appointment ............................ 142
§ 3.1.3. Promise in Trust ....................................................... 147
§ 3.1.4. Other Methods of Creating a Trust ............................ 149
§ 3.1.5. Statutory Trusts .......................................................... 150

§ 3.2. Capacity to Create a Trust .............................................. 150

§ 3.3. Consideration Not Necessary to Create a Trust ............ 156
§ 3.3.1. Consideration Not Necessary for Declaration of Trust .... 156
§ 3.3.2. Consideration Not Necessary for Transfer in Trust ....... 158
§ 3.3.3. Consideration for Promise to Create a Trust ............... 159

§ 3.4. Active and Passive Trusts .............................................. 161
§ 3.4.1. The Statute of Uses .................................................... 162
§ 3.4.2. Active Trusts ............................................................ 164
§ 3.4.3. When Active Trust Becomes Passive .......................... 167
§ 3.4.4. Trusts of Personal Property ...................................... 170
CHAPTER 4
THE INTENTION TO CREATE A TRUST ........................ 175

§ 4.1. Requirement of Manifestation of Intention ............... 175
§ 4.2. Mode of Manifestation of Intention ..................... 179
§ 4.2.1. Trust and Successive Legal Estates ............. 185
§ 4.2.2. Communication of Intention .................. 188
§ 4.3. Precatory Words .................................. 190
§ 4.3.1. The Earlier View .............................. 191
§ 4.3.2. The Modern View .............................. 193
§ 4.3.3. Family Purposes ............................... 198
§ 4.4. No Intention to Create a Present Trust ............. 200
§ 4.4.1. Postponement of Enjoyment ................... 204
§ 4.4.2. When Some of the Elements of the Trust Are to Be Determined in the Future ...... 204
§ 4.4.3. After-Acquired Property ....................... 206
§ 4.4.4. Promisee as Trustee ........................... 207
§ 4.4.5. Whether Trust Subsequently Arises .............. 208
§ 4.5. Parol Evidence Rule ................................... 209
§ 4.6. Fraud, Undue Influence, Duress, or Mistake ........ 215
§ 4.6.1. Fraud ........................................ 216
§ 4.6.2. Undue Influence or Duress .................... 217
§ 4.6.3. Mistake .................................... 221
§ 4.6.4. When Power of Rescission or Right To Reformation Is Lost .................. 225

CHAPTER 5
THE TRANSFER OF PROPERTY TO THE TRUSTEE .... 227

§ 5.1. Lifetime Gifts (Not in Trust) ......................... 227
§ 5.1.1. Stashes .................................... 237
§ 5.1.2. Transfers for Consideration ................... 241
§ 5.1.3. Change of Position ........................... 241
§ 5.1.4. Effect of Donor's Death ....................... 242
§ 5.2. Lifetime Transfers in Trust ........................... 242
§ 5.2.1. No Intent to Make Present Transfer .......... 243
§ 5.2.2. Transfer Incomplete for Lack of Delivery ........ 244
§ 5.2.3. Transfer Incomplete for Lack of Trustee ........................................... 250
§ 5.2.4. When Settlor Declares Himself or Herself Trustee ................................... 254
§ 5.3. Testamentary Trusts ....................................................................................... 255
§ 5.3.1. When Trust Fails for Lack of Trustee ..................................................... 257
§ 5.4. Multiple Trustees ......................................................................................... 258
§ 5.5. Notice to and Acceptance by Trustee ............................................................. 258
§ 5.5.1. When Refusal to Accept Prevents Transfer .............................................. 262
§ 5.5.2. When Trust Fails for Want of Trustee ...................................................... 263
§ 5.5.3. Disclaimer by One of Several Trustees ..................................................... 264
§ 5.5.4. Disclaimer by Trustee of Contract Right .................................................. 264
§ 5.6. Notice to and Acceptance by Beneficiaries .................................................... 265
§ 5.6.1. Effect of Disclaimer by Beneficiary .......................................................... 267
§ 5.7. Reservation and Creation of Powers .............................................................. 272

CHAPTER 6
THE STATUTE OF FRAUDS ................................................................. 275
§ 6.1. Writing Not Required at Common Law ....................................................... 276
§ 6.2. The Statute of Frauds ................................................................................... 277
§ 6.2.1. American Statutes .................................................................................... 279
§ 6.2.2. An interest in Land .................................................................................. 282
§ 6.3. In Case of Declaration of Trust, When Must Settlor Sign? ......................... 283
§ 6.3.1. Prior to Declaration .................................................................................. 283
§ 6.3.2. After Declaration ..................................................................................... 283
§ 6.4. In Case of Transfer in Trust, Who Must Sign and When? ......................... 284
§ 6.4.1. Settlor—Prior to or at Time of Transfer .................................................. 285
§ 6.4.2. Trustee—Prior to or at Time of Transfer ............................................... 286
§ 6.4.3. Trustee—After Transfer ......................................................................... 287
§ 6.4.4. When Trustee Signs Writing Declaring Different Trust ......................... 291
§ 6.5. What the Writing Must Contain .................................................................... 292
§ 6.6. Intent of Person Who Signs Writing ............................................................. 294
§ 6.7. Writing Consisting of More Than One Document ....................................... 295
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§6.8</td>
<td>Loss or Destruction of Writing</td>
<td>296</td>
</tr>
<tr>
<td>§6.9</td>
<td>Performance of Oral Trust</td>
<td>297</td>
</tr>
<tr>
<td>§6.10</td>
<td>Declaration of Trust Not Evidenced by Writing</td>
<td>297</td>
</tr>
<tr>
<td>§6.11</td>
<td>Transfer in Trust Not Evidenced by Writing</td>
<td>298</td>
</tr>
<tr>
<td>§6.11.1</td>
<td>Transfer Wrongfully Obtained</td>
<td>307</td>
</tr>
<tr>
<td>§6.11.2</td>
<td>Transferee in Confidential Relationship with Transferor</td>
<td>309</td>
</tr>
<tr>
<td>§6.11.3</td>
<td>Transfer Made as Security</td>
<td>317</td>
</tr>
<tr>
<td>§6.11.4</td>
<td>Transfer in Contemplation of Death</td>
<td>318</td>
</tr>
<tr>
<td>§6.11.5</td>
<td>Involuntary Transfer</td>
<td>319</td>
</tr>
<tr>
<td>§6.12</td>
<td>Transfer “in Trust”</td>
<td>323</td>
</tr>
<tr>
<td>§6.13</td>
<td>Part Performance of Oral Trust</td>
<td>325</td>
</tr>
<tr>
<td>§6.14</td>
<td>Who Can Take Advantage of Failure to Comply with Statute of Frauds</td>
<td>330</td>
</tr>
<tr>
<td>§6.15</td>
<td>Trust of Property Other Than Interest in Land</td>
<td>332</td>
</tr>
<tr>
<td>§6.15.1</td>
<td>Trust of Proceeds of Land</td>
<td>334</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>§7.1</td>
<td>Using a Will to Create or Fund a Trust at Death</td>
<td>339</td>
</tr>
<tr>
<td>§7.1.1</td>
<td>Incorporation by Reference</td>
<td>341</td>
</tr>
<tr>
<td>§7.1.2</td>
<td>Independent Significance</td>
<td>344</td>
</tr>
<tr>
<td>§7.1.3</td>
<td>Pour-Over Wills</td>
<td>345</td>
</tr>
<tr>
<td>§7.1.4</td>
<td>Disposition in Accordance with Directions of Third Person</td>
<td>355</td>
</tr>
<tr>
<td>§7.2</td>
<td>Secret Trusts</td>
<td>359</td>
</tr>
<tr>
<td>§7.2.1</td>
<td>Agreement by Devisee</td>
<td>360</td>
</tr>
<tr>
<td>§7.2.2</td>
<td>Agreement Made After Execution of Will</td>
<td>365</td>
</tr>
<tr>
<td>§7.2.3</td>
<td>Agreement by Heir or Next of Kin</td>
<td>366</td>
</tr>
<tr>
<td>§7.2.4</td>
<td>Designation of Beneficiary</td>
<td>367</td>
</tr>
<tr>
<td>§7.2.5</td>
<td>No Agreement by Devisee</td>
<td>368</td>
</tr>
<tr>
<td>§7.2.6</td>
<td>When Intention to Create Trust Appears in Will</td>
<td>370</td>
</tr>
<tr>
<td>§7.2.7</td>
<td>General Observations On Effect of Statute of Frauds and Statute of Wills</td>
<td>377</td>
</tr>
</tbody>
</table>
CHAPTER 8
TRUSTS CREATED DURING LIFETIME: INTER VIVOS TRUSTS ................................................................. 381

§ 8.1. Creating a Trust During Life ......................... 382
§ 8.1.1. Transfer Incomplete at Settlor’s Death .... 385
§ 8.1.2. Trust Property Not Designated Until Settlor’s Death .......................... 390
§ 8.1.3. Trustee Not Designated Until Settlor’s Death ........................................ 391
§ 8.1.4. Beneficiaries Not Designated Until Settlor’s Death ................................. 392
§ 8.1.5. Postponement of Enjoyment Until Settlor’s Death .................................. 395
§ 8.1.6. Declaration of Trust ................................. 396
§ 8.1.7. Probate of Written Instrument .................. 397
§ 8.1.8. Statute of Wills Inapplicable to Contracts ........................................... 397

§ 8.2. Settlor’s Reservation of Right to Revoke, Modify, or Control ....................... 401
§ 8.2.1. When Settlor Reserves Right to Revoke or Modify .................................. 402
§ 8.2.2. When Settlor Reserves Power to Control Administration .......................... 405
§ 8.2.3. Insurance Trusts ..................................... 410
§ 8.2.4. Power to Change Beneficiaries by Notice to Trustee ................................ 419
§ 8.2.5. Restrictions on Testamentary Disposition ............................................ 421
§ 8.2.6. Declaration of Trust .................................. 437

§ 8.3. Trusts of Bank Accounts: “Totten Trusts” .................................................. 439
§ 8.3.1. Intention of Depositor ................................ 439
§ 8.3.2. New York Doctrine of Tentative Trusts ................................................. 442
§ 8.3.3. Tentative Trusts and the Statute of Wills ............................................. 443
§ 8.3.4. Revocation of Tentative Trusts ............................................................. 452
§ 8.3.5. Restrictions on Testamentary Disposition ............................................ 459
CHAPTER 9
THE ELEMENTS OF A TRUST

§ 9.1. Trust Purposes—In General ........................................ 468
§ 9.2. When Performance Is Illegal ....................................... 471
§ 9.3. When Enforcement Is Contrary to Public Policy .......... 472
  § 9.3.1. Tendency to Induce Criminal or Tortious Acts .......... 474
  § 9.3.2. Tendency to Encourage Immorality ....................... 475
  § 9.3.3. Tendency to Encourage Divorce or Separation ........... 478
  § 9.3.4. Tendency to Encourage Neglect of Parental Duties ....... 481
  § 9.3.5. Tendency to Restrain Marriage .............................. 485
  § 9.3.6. Tendency to Restrain Religious Freedom .................. 490
  § 9.3.7. Tendency to Restrain Performance of Public Duties ...... 496
  § 9.3.8. Tendency to Influence Beneficiary’s Selection of Career or Personal Conduct ........................................ 497
  § 9.3.9. Remoteness—The Rule Against Perpetuities .............. 498
  § 9.3.10. The Rule Against Accumulations ........................... 512
  § 9.3.11. Restraints on Alienation .................................... 515
  § 9.3.12. Disposition of Property Detrimental To Community ........ 515
  § 9.3.13. Capricious Purposes ......................................... 516
§ 9.4. When the Purpose Is Fraudulent ............................... 521
  § 9.4.1. Defrauding the Government .................................... 525
  § 9.4.2. Other Fraudulent Transactions .............................. 527
  § 9.4.3. When the Settlor Is Not the Beneficiary .................... 528
§ 9.5. When the Consideration Is Illegal ............................ 530
  § 9.5.1. When the Beneficiary Is Innocent ........................... 531
FIFTH EDITION CONTENTS

§ 9.5.2. When the Trust Property Has Been Acquired Illegally ........................................... 532

§ 9.6. The Consequences of Provisions That Are Illegal or Contrary to Public Policy .................. 532
  § 9.6.1. Separability of Valid and Invalid Provisions .......................................................... 533
  § 9.6.2. Unenforceable Conditions Subsequent ................................................................. 535
  § 9.6.3. Unenforceable Conditions Precedent ................................................................. 536

§ 9.7. When Performance Is Impossible ................................................................. 539

§ 9.8. When the Terms of the Trust Are Indefinite ................................................................. 542

CHAPTER 10
THE TRUST PROPERTY ................................................................. 549

§ 10.1. The Necessity of Trust Property ................................................................. 550
  § 10.1.1. What Can Be Held in Trust ................................................................. 551
  § 10.1.2. When the Trust Property Ceases To Exist ................................................. 552

§ 10.2. Nonexistent Interests ................................................................. 553

§ 10.3. Indefinite Subject Matter ................................................................. 553

§ 10.4. Limited Interests in Definite Subject Matter ................................................................. 557

§ 10.5. The Necessity That Property Be Transferable ................................................................. 558
  § 10.5.1. Nontransferable Property ................................................................. 559
  § 10.5.2. Limited Transferability ................................................................. 560
  § 10.5.3. Seats on Exchanges ................................................................. 562
  § 10.5.4. Property Nontransferable for Reasons Inapplicable to Declaration of Trust ................................................................. 562
  § 10.5.5. Nontransferable Interest Created in Trust Accruing to Trustee ................................................................. 564

§ 10.6. Intangibles ................................................................. 565

§ 10.7. Equitable Interests ................................................................. 567

§ 10.8. Interests Subject to Divestment ................................................................. 569
  § 10.8.1. Insurance Trusts ................................................................. 570

§ 10.9. Contingent Interests ................................................................. 571

§ 10.10. After-Acquired Property ................................................................. 572
  § 10.10.1. Expectancies ................................................................. 575
  § 10.10.2. Future Earnings ................................................................. 578
  § 10.10.3. Future Crops and Unborn Animals ................................................................. 579
  § 10.10.4. Other After-Acquired Property ................................................................. 580

§ 10.11. Obligor as Trustee ................................................................. 580
§ 10.11.1. Life Insurance Companies Are Generally Not Trustees ............... 582
§ 10.11.2. Settlor’s Promissory Note ........................................... 590
§ 10.11.3. Settlor’s Check ....................................................... 590
§ 10.12. Extent and Nature of Trustee’s Estate .................................. 593
§ 10.12.1. Why the Extent and Nature of the Trustee’s Estate Matter .......... 596

CHAPTER 11
THE TRUSTEE ................................................................. 599

§ 11.1. Capacity to Be Trustee ..................................................... 600
§ 11.1.1. Minors ................................................................. 602
§ 11.1.2. Incompetent Persons .................................................. 603
§ 11.1.3. Aliens ................................................................. 604
§ 11.1.4. Nonresidents .......................................................... 606
§ 11.1.5. The United States or a State ........................................ 607
§ 11.1.6. Corporations ............................................................ 608
§ 11.1.6.1. Municipal Corporations ........................................... 610
§ 11.1.6.2. Banks and Trust Companies ...................................... 611
§ 11.1.6.3. Foreign Corporations .............................................. 614
§ 11.1.6.4. Merger and Consolidation ........................................ 615
§ 11.1.7. Unincorporated Associations ......................................... 617
§ 11.1.8. Partnerships ........................................................... 618

§ 11.2. Beneficiary as Trustee ..................................................... 619
§ 11.2.1. When There Are Several Beneficiaries or Several Trustees .......... 622
§ 11.2.2. One of Several Beneficiaries Can Be One of Several Trustees ........ 623
§ 11.2.3. One of Several Beneficiaries Can Be the Sole Trustee ................. 624
§ 11.2.4. The Sole Beneficiary Can Be One of Several Trustees ................. 629
§ 11.2.5. The Group of Beneficiaries and the Group of Trustees Can Be Identical .... 629

§ 11.3. The Settlor as Trustee .................................................... 631

§ 11.4. Failure of the Trustee .................................................... 632
§ 11.4.1. When the Trust May Fail For Want of a Trustee ...................... 633
§ 11.5. Disclaimer by Trustee ........................................ 635
  § 11.5.1. Conduct Indicating Disclaimer or Acceptance .......... 636
  § 11.5.2. Effect of Inaction ...................................... 638
  § 11.5.3. Effect of Acceptance or Disclaimer .................... 639
  § 11.5.4. Partial Disclaimer ...................................... 640
§ 11.6. Death of One of Several Trustees .............................. 642
  § 11.6.1. Corporation and Individual As Co-Trustees ............... 642
§ 11.7. Death Intestate of Sole Trustee ................................ 643
§ 11.8. Death Testate of Sole Trustee .................................. 646
§ 11.9. Resignation of Trustee ....................................... 648
  § 11.9.1. Resignation in Accordance with Terms of Trust ........... 650
  § 11.9.2. Resignation by Consent of Beneficiaries ................ 651
  § 11.9.3. Resignation upon Terms Approved by Court ............... 652
  § 11.9.4. Resignation by Consent of Settlor of Revocable Trust .... 654
§ 11.10. Removal of Trustee ......................................... 654
  § 11.10.1. Removal of Trustee Selected by Settlor ................. 667
  § 11.10.2. Removal in Accordance with Terms of Trust .............. 671
  § 11.10.3. Removal by Beneficiaries ............................... 672
§ 11.11. Appointment of New Trustee .................................. 673
  § 11.11.1. Appointment of Co-Trustees ............................. 674
  § 11.11.2. Appointment by Court .................................... 677
  § 11.11.3. Appointment by Third Person ............................. 683
  § 11.11.4. Appointment by Beneficiaries ............................ 686
§ 11.12. Vesting of Title in New Trustee upon Appointment by Court ............................... 687
§ 11.13. Vesting of Title in New Trustee upon Non-Judicial Appointment ............................................. 689
CHAPTER 12
THE BENEFICIARIES ........................................ 693

§ 12.1. Definite Beneficiary Necessary .......................... 694
§ 12.1.1. Unborn Beneficiaries ................................. 698
§ 12.1.2. Corporation Not Yet Organized ....................... 701
§ 12.1.3. Deceased Beneficiary ................................. 701

§ 12.2. Several Beneficiaries .................................. 704
§ 12.2.1. Sole Beneficiary ..................................... 704

§ 12.3. The Settlor as Beneficiary .............................. 705

§ 12.4. Trustee as Beneficiary ................................ 706

§ 12.5. Capacity to Be Beneficiary ............................... 706
§ 12.5.1. Corporations ......................................... 707
§ 12.5.2. Aliens ................................................ 709

§ 12.6. Unincorporated Associations ............................ 712

§ 12.7. Members of a Definite Class ............................ 717
§ 12.7.1. Members of Someone’s “Family” ...................... 721

§ 12.8. Relatives ................................................ 722

§ 12.9. Members of Indefinite Class ............................. 724

§ 12.10. Indefinite or General Purposes ......................... 735

§ 12.11. Specific Noncharitable Purposes ....................... 744
§ 12.11.1. The Rule Against Perpetuities ....................... 747
§ 12.11.2. Tombs, Monuments, and Graves ...................... 749
§ 12.11.3. Animals ............................................. 754
§ 12.11.4. Masses .............................................. 758
§ 12.11.5. Trust for Maintenance of Building ................. 760
§ 12.11.6. Other Purposes ..................................... 762
§ 12.11.7. Capricious Purposes ................................ 763
§ 12.11.8. Inter Vivos Arrangements That Have No
Definite Beneficiary .......................................... 765

§ 12.12. Unrestricted Power of Disposition .................... 766

§ 12.13. Incidental Beneficiary ................................ 769
§ 12.13.1. The Settlor’s Creditors .............................. 773
§ 12.13.2. Debts Arising During Trust
Administration ............................................. 776
§ 12.13.3. Direction To Employ Someone ....................... 776

§ 12.14. Who Are Beneficiaries ................................ 781
§ 12.14.2. Whether Someone Other Than Settlor
Is Sole Beneficiary .......................................... 790
FIFTH EDITION CONTENTS

§ 12.14.3. Trust for Designated Individual and His or Her Family 795
§ 12.14.4. Class Gifts 797

PART 4
THE NATURE OF A BENEFICIAL INTEREST

CHAPTER 13
THE NATURE AND EXTENT OF A BENEFICIAL INTEREST 803

§ 13.1. The Nature of the Beneficiary’s Interest 803
§ 13.1.1. Whether Beneficiary’s Interest Is Real or Personal Property 813
§ 13.2. Extent of the Beneficiary’s Interest 817
§ 13.2.1. Words of Inheritance 819
§ 13.2.2. Disposition of Income and Principal 820
§ 13.2.3. Discretionary Trusts 824
§ 13.2.4. Trusts for Support 826
§ 13.2.5. Trust for Benefit of Designated Individual and His or Her Family 835
§ 13.2.6. Personal Trusts 835
§ 13.2.7. Invasion of Principal 836
§ 13.2.8. Annuities and Unitrusts 842
§ 13.2.9. Whether an Interest Is Conditional on Beneficiary’s Survival 847
§ 13.3. Definiteness of Extent of Beneficiary’s Interest 852

CHAPTER 14
THE TRANSFER OF A BENEFICIAL INTEREST 855

§ 14.1. Power to Make Voluntary Transfers 856
§ 14.1.1. Testamentary Disposition of Beneficial Interest 859
§ 14.1.2. Transfer of Claim for Breach of Trust 859
§ 14.2. Capacity to Make or Receive a Transfer 860
§ 14.3. Intention to Transfer 861
§ 14.3.1. Authorization to Receive Trust Property 862
§ 14.3.2. Authorization or Direction to Trustee to Convey 863
§ 14.4. Consideration ................................................. 863
§ 14.5. Notice to and Consent of Trustee .......................... 864
§ 14.6. Notice to and Acceptance by Transferee ............... 865
§ 14.7. Writing ....................................................... 866
§ 14.8. Grounds for Reformation or Rescission ................. 868
§ 14.9. Effect of Successive Conveyances of a Beneficial
        Interest by a Beneficiary ................................. 869
§ 14.10. Disposition of Beneficial Interest upon Death of
         Beneficiary .................................................. 872
        § 14.10.1. When Beneficial Interest Does Not End at
                    Beneficiary’s Death .................................. 875
        § 14.10.2. Estate pur Autre Vie .............................. 876
        § 14.10.3. Death of Beneficiary Without Heirs .......... 877
        § 14.10.4. Disappearance of Beneficiary ................. 879
        § 14.10.5. Surviving Spouse’s Elective Share .......... 881
        § 14.10.6. Community Property .............................. 882
§ 14.11. Creditors .................................................. 883
        § 14.11.1. Bankruptcy of Beneficiary ...................... 885
        § 14.11.2. Methods of Reaching Beneficiary’s
                    Interest .............................................. 886
        § 14.11.3. Creditors of Donee of Power of
                    Appointment .......................................... 888
        § 14.11.4. Exemptions ......................................... 892

CHAPTER 15
RESTRICTIONS ON THE TRANSFER OF A BENEFICIAL
INTEREST .............................................................. 893
§ 15.1. Forfeiture Provisions ....................................... 894
        § 15.1.1. Forfeiture Provisions Relating to Settlor
                    as Beneficiary ...................................... 897
§ 15.2. Spendthrift Trusts .......................................... 898
        § 15.2.1. Direct Restraints on the Alienation of a
                    Beneficial Interest .................................. 900
        § 15.2.2. Bankruptcy of Beneficiary ...................... 910
        § 15.2.3. Whether It Is Necessary to Restrain Both
                    Voluntary and Involuntary Alienation ............ 912
        § 15.2.4. Intent to Restrain Alienation .................. 913
        § 15.2.5. Extent of Restraint on Alienation of
                    Income Interest ...................................... 919
PART 5
TRUST ADMINISTRATION

CHAPTER 16
TRUST ADMINISTRATION: GENERAL PRINCIPLES 1021

§ 16.1. Duties and Powers of the Trustee 1021
§ 16.2. Impossibility 1025
SCOTT AND ASCHER ON TRUSTS

§ 16.3. Illegality ................................................. 1028
§ 16.4. Change of Circumstances ............................... 1032
  § 16.4.1. Deviation Without Court Authorization ........... 1044
  § 16.4.2. Liability for Failure to Apply to the Court for Authorization .................................. 1047
§ 16.5. Effect of Power of Revocation .......................... 1048
§ 16.6. Effect of Presently Exercisable General Power of Appointment or Right of Withdrawal ............. 1052
§ 16.7. Effect of Power to Direct or Control Trustee ......... 1055
§ 16.8. Application for Instructions ........................... 1070

CHAPTER 17
THE TRUSTEE'S DUTIES ............................................. 1075

§ 17.1. Duty to Administer the Trust ............................ 1077
§ 17.2. Duty of Loyalty .......................................... 1077
  § 17.2.1. Sale of Trust Property to Trustee
    Individually ................................................. 1086
  § 17.2.1.1. Remedies ............................................ 1089
  § 17.2.1.2. When Trustee Does Not Fix Sale Price ............ 1091
  § 17.2.1.3. Sale to Third Person for Trustee’s Benefit .......... 1095
  § 17.2.1.4. When Trustee Has Personal Interest In Purchase .......... 1100
  § 17.2.1.5. When Purchaser Is No Longer Trustee .................. 1102
  § 17.2.2. Purchase of Trustee’s Own Property by Trust ......... 1104
  § 17.2.3. Use of Trust Property for Trustee’s Own Benefit ........ 1107
  § 17.2.4. When Trustee Borrows Trust Funds .................. 1109
  § 17.2.5. Deposit by Individual Trustee in Bank in Which Trustee Has an Interest .................. 1113
  § 17.2.6. Loan by Trustee to the Trust ........................ 1114
  § 17.2.7. Purchase of Adverse Interest from Third Person .......... 1115
  § 17.2.8. Bonus, Commission, or Other Compensation ............ 1122
  § 17.2.9. Competition with the Trust ......................... 1126
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 17.2.10</td>
<td>Other Situations Implicating the Duty of Loyalty</td>
<td>1133</td>
</tr>
<tr>
<td>§ 17.2.11</td>
<td>The Terms of the Trust</td>
<td>1136</td>
</tr>
<tr>
<td>§ 17.2.12</td>
<td>Court Approval</td>
<td>1140</td>
</tr>
<tr>
<td>§ 17.2.13</td>
<td>When the Beneficiaries Consent</td>
<td>1143</td>
</tr>
<tr>
<td>§ 17.2.14</td>
<td>Corporate Trustees</td>
<td>1146</td>
</tr>
<tr>
<td>§ 17.2.14.1</td>
<td>Deposit by Corporate Trustee in its Own Banking Department</td>
<td>1152</td>
</tr>
<tr>
<td>§ 17.2.14.2</td>
<td>Mortgage Participations</td>
<td>1157</td>
</tr>
<tr>
<td>§ 17.2.14.3</td>
<td>Common Trust Funds</td>
<td>1159</td>
</tr>
<tr>
<td>§ 17.2.14.4</td>
<td>Proprietary Mutual Funds</td>
<td>1159</td>
</tr>
<tr>
<td>§ 17.2.14.5</td>
<td>Investment in Shares of Stock of Corporate Trustee</td>
<td>1159</td>
</tr>
<tr>
<td>§ 17.2.14.6</td>
<td>General Observations on Conflicts of Interest on Part of Corporate Trustees</td>
<td>1169</td>
</tr>
<tr>
<td>§ 17.2.15</td>
<td>Duty of Trustee Under Separate Trusts</td>
<td>1172</td>
</tr>
<tr>
<td>§ 17.3</td>
<td>The Trustee's Duty in Respect of Delegation</td>
<td>1173</td>
</tr>
<tr>
<td>§ 17.3.1</td>
<td>Delegation of Entire Administration</td>
<td>1175</td>
</tr>
<tr>
<td>§ 17.3.2</td>
<td>Delegation of Authority to Do Particular Acts</td>
<td>1177</td>
</tr>
<tr>
<td>§ 17.3.3</td>
<td>Power to Cooperate With Others</td>
<td>1184</td>
</tr>
<tr>
<td>§ 17.3.4</td>
<td>Delegation by Corporate Trustees</td>
<td>1184</td>
</tr>
<tr>
<td>§ 17.4</td>
<td>Duty to Keep and Render Accounts</td>
<td>1186</td>
</tr>
<tr>
<td>§ 17.5</td>
<td>Duty to Furnish Information</td>
<td>1196</td>
</tr>
<tr>
<td>§ 17.6</td>
<td>Duty to Exercise Reasonable Care and Skill</td>
<td>1205</td>
</tr>
<tr>
<td>§ 17.7</td>
<td>Duty to Take and Keep Control</td>
<td>1212</td>
</tr>
<tr>
<td>§ 17.8</td>
<td>Duty to Preserve Trust Property</td>
<td>1215</td>
</tr>
<tr>
<td>§ 17.9</td>
<td>Duty to Enforce Claims</td>
<td>1220</td>
</tr>
<tr>
<td>§ 17.10</td>
<td>Duty to Defend Actions</td>
<td>1224</td>
</tr>
<tr>
<td>§ 17.11</td>
<td>Duty to Keep Trust Property Separate</td>
<td>1227</td>
</tr>
<tr>
<td>§ 17.11.1</td>
<td>Duty Not to Mingle Trust Property With Trustee's Own Property</td>
<td>1228</td>
</tr>
<tr>
<td>§ 17.11.2</td>
<td>Duty Not to Mingle Funds of Separate Trusts</td>
<td>1230</td>
</tr>
<tr>
<td>§ 17.11.3</td>
<td>Duty to Earmark Trust Property</td>
<td>1233</td>
</tr>
<tr>
<td>§ 17.11.4</td>
<td>Taking Title in the Name of a Third Person</td>
<td>1237</td>
</tr>
</tbody>
</table>
§ 17.12. Duty with Respect to Bank Deposits ........................................... 1241
§ 17.12.1. Negligent Selection ......................................................... 1241
§ 17.12.2. Deposit in Personal Account .............................................. 1242
§ 17.12.3. Leaving Funds on Deposit for an Unreasonable Time .................. 1244
§ 17.12.4. Restrictions on Withdrawals .............................................. 1245
§ 17.13. Duty to Make the Trust Property Productive .............................. 1248
§ 17.14. Duty to Distribute or Apply Income and Principal in Accordance with Terms of Trust .......................................................... 1253
§ 17.14.1. When Beneficiary Is Under Incapacity .................................. 1254
§ 17.15. Duty of Impartiality .............................................................. 1257
§ 17.16. Duty with Respect to Co-Trustees ........................................... 1262

CHAPTER 18
THE TRUSTEE’S POWERS ................................................................. 1265

§ 18.1. The Extent of a Trustee’s Powers .............................................. 1266
§ 18.1.1. Conditional Powers .......................................................... 1273
§ 18.1.2. Power to Incur Expenses .................................................... 1273
   § 18.1.2.1. Preservation of the Trust Property .................................. 1275
   § 18.1.2.2. Repairs and Improvements .......................................... 1276
   § 18.1.2.3. Employment of Agents .............................................. 1279
   § 18.1.2.4. Expenses of Judicial Proceedings .................................. 1283
   § 18.1.2.5. Expenses of Management .......................................... 1293
   § 18.1.2.6. When Trustee Improperly Incurs Expense ......................... 1294
§ 18.1.3. Power to Lease ................................................................. 1295
   § 18.1.3.1. Reasonableness of Leases .......................................... 1297
   § 18.1.3.2. Duration of Leases ................................................. 1298
   § 18.1.3.3. The Terms of the Trust .......................................... 1300
   § 18.1.3.4. Building Leases .................................................... 1302
   § 18.1.3.5. Oil, Gas, and Mining Leases ...................................... 1303
§ 18.1.4. Power of Sale ................................................................. 1304
   § 18.1.4.1. The Terms of the Trust .......................................... 1305
   § 18.1.4.2. Power of Court to Authorize Sale .................................. 1309
   § 18.1.4.3. Consent of Beneficiaries ......................................... 1311
§ 18.1.4.4. Manner of Sale .................. 1312
§ 18.1.4.5. Power to Sell On Credit ... 1313
§ 18.1.4.6. Power to Sell Options ..... 1314
§ 18.1.4.7. Power to Exchange ............ 1315
§ 18.1.5. Power to Mortgage ...................... 1317
§ 18.1.5.1. Power to Purchase Property
Subject to Mortgage ...................... 1321
§ 18.1.5.2. Power to Borrow Without
Security .................................. 1321
§ 18.1.6. Power to Compromise, Arbitrate, and
Abandon Claims ............................ 1322
§ 18.1.7. Power to Disclaim or Make Gifts
or Other Transfers of Trust Property
Without Consideration ................. 1325
§ 18.1.8. Powers With Respect to Shares
of Stock .................................. 1327
§ 18.1.8.1. Duty of Trustee In Voting
Shares .................................. 1329
§ 18.1.8.2. When Trustee Has
Controlling Interest ..................... 1332
§ 18.1.8.3. Voting by Proxy .................. 1335
§ 18.1.8.4. Deposit of Shares With
Protective Committee ................. 1338

§ 18.2. Control of Discretionary Powers .................. 1338
§ 18.2.1. Methods of Control .................. 1347
§ 18.2.2. When Trustee Fails to Use Judgment ........ 1350
§ 18.2.3. When Trustee Acts Dishonestly ............ 1352
§ 18.2.4. Improper Motive ...................... 1354
§ 18.2.5. Trustee With Discretionary Power to
Distribute to Self ....................... 1356
§ 18.2.6. Reasonableness of Trustee’s Exercise
of a Power .............................. 1361

§ 18.3. When Powers Are Exercisable by Several
Trustees .................................... 1367

§ 18.4. When Powers Are Exercisable by Surviving
Trustees .................................... 1375

§ 18.5. When Powers Are Exercisable by Successor
Trustees .................................... 1378
CHAPTER 19
THE INVESTMENT OF TRUST FUNDS .................................. 1385

§ 19.1. The Trustee’s Investment Duties—In General .......... 1386
 § 19.1.1. Trust Investments in England ......................... 1386
 § 19.1.2. Trust Investments in the United States ............... 1387
 § 19.1.3. Requirement of Care .................................. 1396
 § 19.1.4. Requirement of Skill .................................. 1398
 § 19.1.5. Requirement of Caution ................................ 1399
 § 19.1.6. Kinds of Investments .................................. 1400
 § 19.1.7. Selection of Investments ................................ 1405
 § 19.1.8. Questions Relating to Life Insurance ................. 1408
 § 19.1.9. Combining Trust Funds in Making
 Investments ................. 1411
 § 19.1.10. Mutual Funds .................................. 1416
 § 19.1.11. Investments Outside the State ......................... 1418
 § 19.1.12. Terms of the Trust .................................. 1419
 § 19.1.13. Moral Considerations in Investing .................... 1423

§ 19.2. The Duty to Diversify .................................. 1427
 § 19.2.1. Extent of Liability .................................. 1434

§ 19.3. Duty With Respect to Initial Trust Assets ............. 1435
 § 19.3.1. Time of Disposal .................................. 1439
 § 19.3.2. Diversification .................................. 1441
 § 19.3.3. Terms of the Trust .................................. 1446
 § 19.3.4. Duty to Wind up Testator’s Business ................. 1448

§ 19.4. Investments That Subsequently Become
 Inappropriate ................. 1450
 § 19.4.1. Diversification .................................. 1452
 § 19.4.2. Changes in Trust Investments ......................... 1457

CHAPTER 20
PRINCIPAL AND INCOME ............................................. 1461

§ 20.1. Impartiality Between Successive Beneficiaries .......... 1462

§ 20.2. Allocation of Receipts and Expenses to Principal or
 Income ......................... 1469
 § 20.2.1. Receipts .................................. 1472
 § 20.2.2. Expenses .................................. 1476
 § 20.2.3. Terms of the Trust .................................. 1490

§ 20.3. When Income Begins .................................. 1494
 § 20.3.1. Specific Bequest .................................. 1496
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 20.3.2.</td>
<td>General Bequest</td>
<td>1496</td>
</tr>
<tr>
<td>§ 20.3.3.</td>
<td>Residuary Bequest</td>
<td>1499</td>
</tr>
<tr>
<td>§ 20.3.4.</td>
<td>Income From Property Used in Paying Bequests, Debts, and Expenses</td>
<td>1500</td>
</tr>
<tr>
<td>§ 20.3.5.</td>
<td>Bequest of Share of Residuary Estate</td>
<td>1503</td>
</tr>
<tr>
<td>§ 20.4.</td>
<td>Apportionment of Receipts and Disbursements at Beginning of Trust or Income Interest</td>
<td>1504</td>
</tr>
<tr>
<td>§ 20.5.</td>
<td>Apportionment When Income Interest Ends</td>
<td>1508</td>
</tr>
<tr>
<td>§ 20.5.1.</td>
<td>Annuities and Unitrusts</td>
<td>1513</td>
</tr>
<tr>
<td>§ 20.6.</td>
<td>Receipts From Shares of Stock</td>
<td>1515</td>
</tr>
<tr>
<td>§ 20.6.1.</td>
<td>Ordinary Cash Dividends</td>
<td>1515</td>
</tr>
<tr>
<td>§ 20.6.2.</td>
<td>Extraordinary Distributions, Including Stock Dividends</td>
<td>1517</td>
</tr>
<tr>
<td>§ 20.6.3.</td>
<td>Distributions of Property Other Than Cash or Corporation's Own Shares</td>
<td>1530</td>
</tr>
<tr>
<td>§ 20.6.4.</td>
<td>Dividends on Preferred Stock</td>
<td>1531</td>
</tr>
<tr>
<td>§ 20.6.5.</td>
<td>Subscription Rights</td>
<td>1532</td>
</tr>
<tr>
<td>§ 20.6.6.</td>
<td>Distributions From Mutual Funds</td>
<td>1533</td>
</tr>
<tr>
<td>§ 20.6.7.</td>
<td>Undistributed Earnings</td>
<td>1535</td>
</tr>
<tr>
<td>§ 20.6.8.</td>
<td>Allocating Distributions at Beginning or End of Income Interest</td>
<td>1536</td>
</tr>
<tr>
<td>§ 20.6.9.</td>
<td>Terms of the Trust</td>
<td>1539</td>
</tr>
<tr>
<td>§ 20.6.10.</td>
<td>Effect of Rules Relating to Principal and Income on Investments by Trustee</td>
<td>1540</td>
</tr>
<tr>
<td>§ 20.7.</td>
<td>Wasting or Overproductive Property</td>
<td>1542</td>
</tr>
<tr>
<td>§ 20.7.1.</td>
<td>Terms of the Trust</td>
<td>1544</td>
</tr>
<tr>
<td>§ 20.7.2.</td>
<td>Bonds Purchased at Premium</td>
<td>1546</td>
</tr>
<tr>
<td>§ 20.7.3.</td>
<td>Minerals and Other Natural Resources</td>
<td>1547</td>
</tr>
<tr>
<td>§ 20.7.4.</td>
<td>Timber</td>
<td>1553</td>
</tr>
<tr>
<td>§ 20.7.5.</td>
<td>Depreciation</td>
<td>1554</td>
</tr>
<tr>
<td>§ 20.7.6.</td>
<td>Liquidating Assets</td>
<td>1557</td>
</tr>
<tr>
<td>§ 20.8.</td>
<td>Unproductive or Underproductive Property</td>
<td>1559</td>
</tr>
<tr>
<td>§ 20.8.1.</td>
<td>Terms of the Trust</td>
<td>1562</td>
</tr>
<tr>
<td>§ 20.8.2.</td>
<td>Discount Bonds</td>
<td>1563</td>
</tr>
<tr>
<td>§ 20.9.</td>
<td>Allocation of Sales Proceeds Upon Delayed Conversion</td>
<td>1565</td>
</tr>
<tr>
<td>§ 20.9.1.</td>
<td>Mortgages in Default</td>
<td>1573</td>
</tr>
</tbody>
</table>
FIFTH EDITION CONTENTS

CHAPTER 23
ACCOUNTING .................................................. 1645

§23.1. The Settlement of Accounts ......................... 1645

PART 6
THE LIABILITIES OF THE TRUSTEE AND THE
BENEFICIARIES TO EACH OTHER AND TO THE TRUST

CHAPTER 24
THE TRUSTEE'S LIABILITIES TO THE
BENEFICIARIES AND TO THE TRUST ..................... 1651

§24.1. The Nature of the Beneficiary's Remedies—Historical
Background .................................................. 1654
§ 24.1.1. Action at Law in Tort .......................... 1655
§ 24.1.2. Action at Law for Breach of Contract ....... 1656
§24.2. The Beneficiary's Legal Remedies .................. 1659
§ 24.2.1. When Money Is Due to Beneficiary ............ 1660
§ 24.2.2. When Trustee Is Under Duty to Convey
Personal Property to Beneficiary ....................... 1662
§ 24.2.3. Whether Legal Remedy Is Exclusive .......... 1662
§24.3. The Beneficiary's Equitable Remedies .............. 1664
§ 24.3.1. Specific Enforcement of Trust ................. 1664
§ 24.3.2. Injunction ...................................... 1665
§ 24.3.3. Redress for Breach of Trust ................... 1666
§ 24.3.4. Appointment of Receiver ....................... 1666
§ 24.3.5. Removal of Trustee ............................. 1667
§24.4. Persons Other Than the Beneficiaries .............. 1667
§ 24.4.1. The Settlor and the Settlor's Successors
in Interest ............................................... 1670
§ 24.4.2. Co-Trustees and Successor Trustees .......... 1671
§ 24.4.3. Transferee of Beneficiary's Interest .......... 1673
§ 24.4.4. Court Acting on its Own Motion ............... 1674
§24.5. What Constitutes a Breach of Trust ................ 1675
§24.6. Following Trust Property into its Product ........ 1681
§24.7. Accountability for Profits in the Absence of a Breach
of Trust ................................................... 1682
§24.8. Nonliability for Loss in the Absence of a Breach of
Trust ...................................................... 1684
§24.9. Liability in the Case of a Breach of Trust .......... 1685
§ 24.9.1. When Loss Would Have Occurred in Absence of Breach of Trust ............... 1695
§ 24.9.2. Power of Court to Excuse Breach of Trust ..................................... 1700
§ 24.9.3. Liability for Interest ................................................................. 1701
§ 24.10. Liability for Breach of Duty of Loyalty ......................................... 1707
§ 24.11. Liability for Breach of Trust by Selling Trust Property .............................. 1711
§ 24.11.1. Value at Time of Suit ............}
§ 24.22. Discharge of Liability by Release or Contract ........................................... 1770
§ 24.23. Discharge of Liability by Ratification or Subsequent Affirmance .............................. 1772
§ 24.24. Laches and Statutes of Limitations .......................................................... 1776
§ 24.24.1. Laches .................................................. 1777
§ 24.24.2. Statutes of Limitations .................................................... 1785
§ 24.25. Judicial Discharge .............................................................................. 1789
§ 24.26. Trustee’s Discharge in Bankruptcy ......................................................... 1793
§ 24.27. Exculpatory Provisions .................................................................... 1798
§ 24.27.1. Distinction Between Exculpatory Provisions and Provisions that Enlarge the Trustee’s Powers .................................................. 1801
§ 24.27.2. Exculpatory Provisions Strictly Construed ........................................... 1804
§ 24.27.3. Extent to Which Exculpatory Provisions Are Against Public Policy ................. 1805
§ 24.27.4. Exculpatory Provision Improperly Inserted ........................................... 1808
§ 24.28. Liability of Successor Trustee ................................................................. 1810
§ 24.28.1. When Successor Trustee Permits Continuation of Breach ......................... 1811
§ 24.28.2. When Successor Trustee Fails to Compel Predecessor to Delivery Trust Property .................................................... 1811
§ 24.28.3. When Successor Trustee Fails to Compel Predecessor to Redress Breach of Trust ..................................................... 1811
§ 24.29. Liability for Co-Trustee’s Breach of Trust ............................................. 1813
§ 24.30. Liability for Acts of Agents .................................................................. 1820
§ 24.31. Liability for Incorrect Distributions ....................................................... 1823
§ 24.31.1. Liability for Distributions Under Invalid, Amended, Revoked, or Ineffective Trust Instruments .................................................. 1829
§ 24.32. Contribution or Indemnity From Co-Trustee ........................................ 1832
§ 24.32.1. Trustees Not Equally at Fault ....................................................... 1834
§ 24.32.2. Benefit to One Trustee ................................................................. 1836
§ 24.32.3. Breach of Trust Commited in Bad Faith ............................................ 1837
THE BENEFICIARIES' LIABILITIES TO THE TRUSTEE, THE TRUST, AND EACH OTHER ........................................ 1839

§ 25.1. Liability of Beneficiary to Trustee
Individually .................................................. 1840

§ 25.2. Liability of Beneficiary to Trust Estate .......... 1842

§ 25.2.1. Beneficiary's Indebtedness to
Settlor .................................................. 1843

§ 25.2.2. Contractual Obligations to Trust .............. 1844

§ 25.2.3. Beneficiary Who Deals Wrongfully with
Trust Property ........................................... 1845

§ 25.2.4. Beneficiary Who Receives
Overpayment ............................................. 1847

§ 25.2.4.1. Change of Position .............. 1850

§ 25.2.4.2. Rights of Trustee and Other
Beneficiaries ........................................... 1851

§ 25.2.5. Beneficiary Who Receives Advance or
Loan of Trust Funds ................................. 1853

§ 25.2.5.1. Advances to Beneficiary of
Spendthrift Trust .................................... 1855

§ 25.2.6. Beneficiary Who Consents to Or
Participates in Breach of Trust .......... 1857

§ 25.2.6.1. When Consenting
Beneficiary Profits from
Breach of Trust ................................... 1858

§ 25.2.6.2. When Consenting
Beneficiary Agrees to
Indemnify Trustee ............................... 1859

§ 25.2.6.3. Participation by Beneficiary
in Breach of Trust .................................. 1860

§ 25.2.7. Impounding Trustee-Beneficiary's
Share .................................................. 1860

§ 25.2.7.1. Spendthrift Trust ............. 1862

§ 25.2.7.2. Trustee-Beneficiary's
Creditors ........................................... 1864

§ 25.2.7.3. Transfer of Trustee-
Beneficiary's Interest ..................... 1864

§ 25.3. Beneficiary's Duty to Other Beneficiaries .......... 1866
PART 7
THE RIGHTS OF THIRD PARTIES

CHAPTER 26
THE RIGHTS OF THIRD PARTIES AGAINST THE TRUSTEE OR THE TRUST PROPERTY

§ 26.1. The Trustee’s Liability—in General

§ 26.2. Contractual Liability
§ 26.2.1. Terms of the Trust
§ 26.2.2. Implied Warranty
§ 26.2.3. Personal Liability of Trustee to Creditor
   When Trustee is Liable to Trust Estate

§ 26.3. Tort Liability

§ 26.4. Liability as Owner of Trust Property
§ 26.4.1. Taxes
§ 26.4.2. Assessments on Shareholders
§ 26.4.3. Environmental Cleanup Costs
§ 26.4.4. Other Liabilities
§ 26.4.5. When Trust Estate Is Insufficient to Indemnify Trustee

§ 26.5. The Power of a Creditor to Reach the Trust Property
§ 26.5.1. When Trustee Is Entitled to Exoneration
   § 26.5.1.1. When Trustee Is Not Entitled to Exoneration
   § 26.5.1.2. Priority Over Trustees’ Personal Creditors
§ 26.5.2. When Trust Estate Has Benefitted
§ 26.5.3. When Terms of Trust Provide for Liability of Trust Estate
§ 26.5.4. When Contract Binds Trust Estate
§ 26.5.5. When Equity Requires

§ 26.6. Specific Enforcement of Duties to Third Persons
§ 26.6.1. Specific Performance of Contracts
§ 26.6.2. Injunction Against Torts

§ 26.7. Protection of Third Party’s Interest Trust Property
CHAPTER 27
THE RIGHTS OF THIRD PARTIES AGAINST THE BENEFICIARIES ........................................ 1917

§ 27.1. The Beneficiaries' Liability to Third Parties ........ 1917

PART 8
THE LIABILITIES OF THIRD PARTIES

CHAPTER 28
PARTIES ACTING ADVERSELY TO THE TRUSTEE ...... 1925

§ 28.1. Actions by the Trustee .................................. 1925
§ 28.1.1. How the Trustee Sues ......................... 1932
§ 28.1.2. Joinder of the Beneficiaries ................. 1933
§ 28.1.3. Successor Trustees ......................... 1936

§ 28.2. Actions by the Beneficiaries .................. 1937
§ 28.2.1. When the Trustee Fails to Sue ............ 1944
§ 28.2.2. When the Trustee Is Not Subject to Jurisdiction ................. 1947
§ 28.2.3. Disposition of Proceeds Recovered ...... 1948
§ 28.2.4. Several Beneficiaries .......... 1948

CHAPTER 29
TRANSFEEREES OF TRUST PROPERTY ..................... 1949

§ 29.1. General Principles ................................. 1951
§ 29.1.1. Bona Fide Purchaser .................... 1952
§ 29.1.2. Conveyance of Equitable Interest ...... 1957
§ 29.1.3. Creation of Equitable Interest in Trust Property ................. 1962
§ 29.1.4. Transfer by Transferee to Bona Fide Purchaser ............................... 1967
§ 29.1.5. Transferee with Notice .................... 1968
§ 29.1.6. Donee ........................................ 1971
§ 29.1.6.1. Devolution on Death of Trustee ......................... 1974
§ 29.1.7. Transferee in an Illegal Transaction ...... 1975
§ 29.1.8. Extent of Liability of Transferee With Notice ............................... 1977
§ 29.1.8.1. Restitution of Trust Property ................. 1977
§ 29.1.8.2. Recovery of Value of Trust Property .................................. 1978
§ 29.1.8.3. Recovery of Proceeds of Trust Property .............................. 1980
§ 29.1.8.4. Lien on Property or Its Proceeds ...................................... 1981
§ 29.1.8.5. Credit for Purchase Price .............................................. 1981
§ 29.1.8.6. Credit for Expenditures to Improve Trust Property .............. 1982
§ 29.1.8.7. Choice of Remedies ...................................................... 1984
§ 29.1.8.8. Election by Beneficiaries to Affirm .................................. 1984
§ 29.1.8.9. When Trust Funds Are Used to Improve Property of Another ............... 1984
§ 29.1.9. Extent of Liability of Donee .............................................. 1985
§ 29.1.9.1. Gratuitous Transfer by Donee Before Notice .......................... 1987
§ 29.1.9.2. Trust Money Spent by Donee Before Notice .......................... 1988
§ 29.1.9.3. Transfer by Donee After Notice ....................................... 1989
§ 29.1.9.4. Credit for Expenditures to Improve Trust Property .............. 1990
§ 29.1.9.5. When Trust Funds Are Used to Improve Property of Another .......... 1990
§ 29.1.10. Extent of Liability of Transferee in an Illegal Transaction .............. 1991
§ 29.1.11. Who Can Maintain Action ................................................. 1994
§ 29.1.11.1. Suit by Beneficiary .................................................. 1994
§ 29.1.11.2. Suit by Trustee ........................................................ 1996
§ 29.1.11.3. Suit by Co-Trustee .................................................. 1998
§ 29.1.11.4. Suit by Successor Trustee ......................................... 1999
§ 29.1.12. Choice of Remedies Against Trustee and Transferee .................... 1999
§ 29.2. Notice to the Transferee of Trust Property .................................. 2002
§ 29.2.1. Notice Under Recording Statutes ....................................... 2008
§ 29.2.2. When Transferee Is Chargeable with Notice of Breach of Trust .................. 2010
§ 29.2.3. Notice of Existence of Trust .................. 2010
§ 29.2.4. Notice of Terms of Trust .................. 2016
§ 29.2.5. Notice of Deviation from Terms of Trust .................. 2017
§ 29.2.6. Negotiable Instruments .................. 2021
§ 29.2.7. Debts Incurred During Trust Administration .................. 2023
§ 29.2.8. Notice to Transferee’s Agent .................. 2024
§ 29.2.9. Purchase in Trustee’s Name .................. 2025
§ 29.3. Value .................................................. 2026
§ 29.3.1. Present Value .................. 2027
§ 29.3.2. Payment of Value Prior to Transfer .................. 2030
§ 29.3.3. Payment of Value After Transfer .................. 2031
§ 29.3.4. Payment of Value After Notice .................. 2031
§ 29.3.5. Promise as Value .................. 2032
§ 29.3.6. Partial Payment .................. 2038
§ 29.3.7. Satisfaction of Antecedent Debt as Value .................. 2039
§ 29.3.8. Security for Antecedent Debt as Value .................. 2045
§ 29.3.9. Assignee for Creditors .................. 2048
§ 29.3.10. Trustee in Bankruptcy .................. 2049
§ 29.3.11. Creditors of Trustee .................. 2050
§ 29.3.12. Purchaser at Judicial Sale .................. 2053
§ 29.4. Transfer of Title to Trust Property .................. 2055
§ 29.4.1. Contract to Transfer Trust Property .................. 2055
§ 29.4.2. Transfer After Notice .................. 2056
§ 29.4.3. Notice Before Transfer but After Trustee Has Completed Breach of Trust .................. 2057
§ 29.5. Estoppel of Beneficiaries .................. 2059
§ 29.5.1. Rights of Creditors When Beneficiaries Are Estopped .................. 2060
§ 29.5.2. Rights of Equitable Claimants When Beneficiaries Are Estopped .................. 2062
§ 29.5.3. Rights of Transferee When Beneficiaries Consent to Transfer .................. 2064
§ 29.6. Transfer by Bona Fide Purchaser .................. 2065
§ 29.6.1. Transferee from Bona Fide Purchaser .................. 2065
FIFTH EDITION CONTENTS

§ 29.6.2. Retransfer by Bona Fide Purchaser to Trustee ............................... 2067
§ 29.6.3. Retransfer by Bona Fide Purchaser to Transferee with Notice ............ 2067
§ 29.6.4. Retransfer by Bona Fide Purchaser to Donee ............................... 2068
§ 29.6.5. Retransfer by Bona Fide Purchaser on a New Trust ....................... 2068
§ 29.7. Transfer in Restitution for a Wrong ........................................... 2070

CHAPTER 30
PARTICIPATION IN BREACH OF TRUST OTHER THAN BY RECEIVING TRANSFER ............... 2079

§ 30.1. Misapplication of Payments Made to Trustee .................................. 2079
§ 30.1.1. Payment with Notice ......................................................... 2082
§ 30.1.2. Payment to One of Several Trustees ....................................... 2083
§ 30.2. Release of Claim Against Third Person by Trustee ............................ 2084
§ 30.3. Set-Off of Claim of Third Person Against Trustee ............................ 2086
§ 30.4. Depositories of Trust Funds ...................................................... 2087
§ 30.4.1. Deposit in Trust Account ..................................................... 2088
§ 30.4.2. Deposit in Personal Account .................................................. 2090
§ 30.4.3. Permitting Withdrawals ....................................................... 2093
§ 30.4.4. Application of Deposit to Depositor’s Individual Indebtedness to Bank .... 2099
§ 30.5. Registration of Transfer of Securities Held by Trustee ....................... 2104
§ 30.6. Others Dealing with the Trustee .................................................. 2110
§ 30.6.1. Sales to Trust Estate ............................................................ 2111
§ 30.6.2. Brokers ................................................................................. 2113
§ 30.6.3. Directors and Officers of Corporate Trustee ................................... 2116
§ 30.6.4. Attorneys and Other Agents ..................................................... 2121
§ 30.6.5. Others Dealing with Trustee ..................................................... 2125
§ 30.6.6. General Observations .............................................................. 2128
CHAPTER 31
EFFECT OF LACHES AND STATUTES OF LIMITATIONS .......................................... 2131
§ 31.1. Rights of Beneficiaries When Trustee Is Barred by Laches or Statute of Limitations ........................................ 2131
§ 31.1.1. Persons Acting Adversely to Trustee .......... 2131
§ 31.1.2. Transferees of Trust Property ............... 2134

CHAPTER 32
DISCHARGE BY BENEFICIARY AND SET-OFF OF CLAIM AGAINST BENEFICIARY ............................................. 2139
§ 32.1. Discharge by Beneficiary of Claim Against Third Person .................................................. 2139
§ 32.2. Set-Off of Claim of Third Person Against Beneficiary .................................................. 2143

PART 9
TERMINATION AND MODIFICATION

CHAPTER 33
TERMINATION AND MODIFICATION: GENERAL PRINCIPLES ............................................. 2149
§ 33.1. Termination Pursuant to the Terms of the Trust .......... 2149
§ 33.1.1. Termination or Modification by Trustee ........................................... 2156
§ 33.1.2. Termination or Modification by Beneficiary ........................................... 2162
§ 33.1.3. Termination or Modification by Third Person ........................................... 2163
§ 33.1.4. Termination or Modification by Settlor ........... 2164
§ 33.2. When Accomplishment of Trust Purposes Is Impossible or Illegal ........................................... 2164
§ 33.3. When Continuing Trust Administration Becomes Uneconomic ........................................... 2168
§ 33.4. Termination or Modification on Account of Unanticipated Circumstances ........................................... 2171
§ 33.5. Termination or Modification to Save Taxes ........... 2188
§ 33.6. Loosening the Standards for Termination and Modification ........................................... 2200
CHAPTER 34
TERMINATION AND MODIFICATION BY CONSENT ........................................... 2203

§ 34.1. Consent of Beneficiaries ................................................................. 2204
§ 34.1.1. Successive Beneficiaries .............................................................. 2209
§ 34.1.2. Spendthrift Trusts ...................................................................... 2213
§ 34.1.3. Postponement of Enjoyment ....................................................... 2217
§ 34.1.4. Support Trusts and Discretionary Trusts ........................................ 2223
§ 34.1.5. When Beneficiary Is Under Disability That Subsequently Ceases ....... 2224
§ 34.1.6. Compromise Agreement .............................................................. 2225
§ 34.1.7. Partial Termination ...................................................................... 2230

§ 34.2. Consent of Beneficiaries and Settlor ................................................. 2234

§ 34.3. When Settlor Is Sole Beneficiary ...................................................... 2240

§ 34.4. When Some of the Beneficiaries Do Not or Cannot Give Binding Consent ................................................................. 2243
§ 34.4.1. Contingent Interests That Are Certain Never to Vest .................... 2255
§ 34.4.2. Partial Termination ...................................................................... 2259

§ 34.5. Merger ......................................................................................... 2261
§ 34.5.1. Acquisition of Legal Title by Beneficiary of Spendthrift Trust .......... 2262
§ 34.5.2. When Sole Beneficiary Does Not Become Sole Trustee .................. 2264

§ 34.6. Conveyance by Trustee to or at the Direction of the Beneficiaries .......... 2265
§ 34.6.1. Spendthrift Trusts ...................................................................... 2266

§ 34.7. Conveyance by Beneficiary to Trustee .............................................. 2270

CHAPTER 35
TERMINATION AND MODIFICATION PURSUANT TO SETTLOR'S POWER TO REVOKE OR MODIFY ........... 2275

§ 35.1. Revocation by Settlor ..................................................................... 2275
§ 35.1.1. When No Method of Revocation Is Specified .................................. 2283
§ 35.1.2. When Method of Revocation Is Specified ...................................... 2285

xxxvii
§ 35.1.3. When Power to Revoke Is Subject to Consent of Beneficiaries 2292
§ 35.1.4. When Power to Revoke Is Subject to Consent of Trustee 2293
§ 35.1.5. When Power to Revoke Is Subject to Consent of Third Person 2294
§ 35.1.6. Partial Revocation 2295
§ 35.1.7. When Creation of Trust Is Incomplete 2296
§ 35.1.8. Assignment for Benefit of Creditors 2298
§ 35.1.9. Trust for Particular Creditor 2298
§ 35.1.10. Trust with Multiple Settlors 2300

§ 35.2. Modification by Settlor 2302
§ 35.2.1. Whether Power to Revoke Includes Power to Modify 2312
§ 35.2.2. Whether Power to Modify Includes Power to Revoke 2313

§ 35.3. Power of Revocation or Modification Omitted by Mistake 2315

Chapter 36
Administration After Termination 2321
§ 36.1. Power and Duties of Trustee on Termination of Trust 2321
§ 36.2. Duty of Trustee to Transfer Title or Possession on Termination of Trust 2326
§ 36.2.1. Delay in Making Conveyance 2329
§ 36.2.2. Trustee’s Lien 2330
§ 36.2.3. To Whom Trustee Should Convey 2331
§ 36.3. Direction To Convert 2331
§ 36.4. Mode of Distribution 2336
§ 36.4.1. Specific Provisions in Trust Instrument 2337
§ 36.4.2. No Specific Provisions in Trust Instrument 2339
§ 36.4.3. Land 2341
§ 36.4.4. Personal Property 2342
§ 36.4.5. Termination of Trust in Part 2345
§ 36.4.6. When Property Is to Be Distributed to Several Trusts 2347
PART 10
CHARITABLE TRUSTS

CHAPTER 37
CHARITABLE TRUSTS: GENERAL PRINCIPLES .......... 2351

§ 37.1. The Definition of a Charitable Trust .............. 2352
§ 37.1.1. Charitable Corporations ...................... 2355
§ 37.1.2. History of Charitable Trusts in
England ............................................ 2366
§ 37.1.3. Charitable Trusts in the United States .... 2369
§ 37.1.4. Collateral Consequences of Charitable
Dispositions ........................................ 2373

§ 37.2. The Creation of a Charitable Trust ................. 2377
§ 37.2.1. Methods of Creating a Charitable
Trust .............................................. 2377
§ 37.2.2. Intention to Create a Trust .................... 2378
§ 37.2.3. Necessity of Transfer .......................... 2384
§ 37.2.4. Creation of Charitable Trust by Will ........ 2385
§ 37.2.4.1. Secret Charitable Trusts .................. 2391
§ 37.2.5. When Settlor Reserves Power to Revoke,
Modify, or Control Inter Vivos Charitable
Trust ................................................. 2393

§ 37.2.6. Restrictions on the Creation of
Charitable Trusts .................................. 2394
§ 37.2.6.1. Restrictions in England on the
Holding of Land by Corporations .................. 2395
§ 37.2.6.2. Restrictions in England on
Devises of Land to Corporations .................. 2396
§ 37.2.6.3. Restrictions in England on
Devises for Charitable Purposes .................... 2397
§ 37.2.6.4. Statutory Restrictions in the
United States ..................................... 2398
§ 37.2.6.5. Agreement by Devisee or Heir to Hold upon
Charitable Trust ................................. 2401
§ 37.2.6.6. When Settlor Retains Power to Revoke or Modify ........................................ 2402

§ 37.3. The Administration of a Charitable Trust ......................................................... 2403
§ 37.3.1. The Duties of the Trustee ................................................................. 2403
§ 37.3.1.1. Whether Trustee May Convey to or Form Charitable Corporation ....................... 2407
§ 37.3.2. Extent of Trustee’s Powers ............................................................... 2410
§ 37.3.3. Deviation From Terms of the Trust ...................................................... 2410
§ 37.3.4. Control of Discretionary Powers ......................................................... 2419
§ 37.3.5. Several Trustees ............................................................................. 2420
§ 37.3.6. Removal of Trustee ........................................................................ 2421
§ 37.3.7. Appointment of New Trustees ............................................................ 2422
§ 37.3.8. Investments .................................................................................... 2423
§ 37.3.9. Trustee’s Compensation ..................................................................... 2430
§ 37.3.10. Who Can Enforce a Charitable Trust ................................................. 2431
§ 37.3.11. Actions Against Third Persons ............................................................ 2456
§ 37.3.12. Judicial Instructions ...................................................................... 2457
§ 37.3.13. Liability in Tort ............................................................................. 2459
§ 37.3.13.1. Proprietary Institutions ............................................................ 2471
§ 37.3.13.2. Unincorporated Charities ............................................................. 2473
§ 37.3.14. Liability in Contract ................................................................. 2475

§ 37.4. The Duration of Charitable Trusts ................................................................. 2476
§ 37.4.1. Indefinite Duration ........................................................................ 2476
§ 37.4.2. Revocation and Modification .............................................................. 2478
§ 37.4.2.1. Revocation of Charitable Trust ..................................................... 2480
§ 37.4.2.2. Modification of Charitable Trust .................................................... 2481
§ 37.4.2.3. Modification of Charitable Trusts by the Legislature ................. 2484
§ 37.4.2.4. Termination of Charitable Trust ....................................................... 2485

Chapter 38
The Nature of Charitable Purposes ............................................................... 2493

§ 38.1. What Purposes Are Charitable ................................................................. 2494
§ 38.1.1. The Statute of Charitable Uses ......................................................... 2498
FIFTH EDITION CONTENTS

§ 38.1.2. The Law Relating to Charitable Purposes in America ........................................... 2500

§ 38.2. Relief of Poverty .................................................. 2503
§ 38.2.1. General Trusts for the Poor ....................... 2504
§ 38.2.2. Words Indicating Purpose of Relieving Poverty .............................................. 2504
§ 38.2.3. Destitution Unnecessary .............................. 2506
§ 38.2.4. Incidental Benefit to Others ..................... 2508
§ 38.2.5. Limited Classes of Beneficiaries .................. 2509

§ 38.3. Advancement of Knowledge or Education .............. 2515
§ 38.3.1. General Trusts to Promote Education .......... 2524
§ 38.3.2. Physical Training ........................................ 2524
§ 38.3.3. Training for Citizenship ......................... 2526
§ 38.3.4. Dissemination of Beliefs and Doctrines ...... 2527
§ 38.3.5. Public and Private Institutions ................. 2528
§ 38.3.6. Limited Classes of Beneficiaries ................. 2530

§ 38.4. Advancement of Religion ................................... 2532
§ 38.4.1. Methods of Advancing Religion ................ 2534
§ 38.4.2. General Trusts for Religion ...................... 2538
§ 38.4.3. Words Indicating Religious Purposes .......... 2539
§ 38.4.4. The Legality of the Purpose ....................... 2541
§ 38.4.5. Masses ..................................................... 2543
§ 38.4.6. When Class Is Too Narrow ......................... 2545

§ 38.5. Promotion of Health ......................................... 2546
§ 38.5.1. Proprietary Institutions ......................... 2551
§ 38.5.2. Limited Classes of Beneficiaries ................. 2551

§ 38.6. Governmental or Municipal Purposes ................. 2552
§ 38.6.1. General Trusts for Public Purposes ............. 2556
§ 38.6.2. Relieving Burdens of Government ................. 2558

§ 38.7. Promotion of Other Purposes Beneficial to the Community ........................................ 2559
§ 38.7.1. Promotion of Temperance .............................. 2559
§ 38.7.2. Relief of Animals ....................................... 2561
§ 38.7.3. Trusts for Persons of Limited Opportunities .............................................. 2564
§ 38.7.4. Humanitarian Purposes .............................. 2568
§ 38.7.5. Patriotic Purposes ..................................... 2569
§ 38.7.6. Unpopular Causes ..................................... 2570
§ 38.7.7. Improving Government ............................... 2573
§ 38.7.8. Political Objects ....................................... 2573

xli
§ 38.7.9. Changes in Existing Law ..................... 2578
§ 38.7.10. Monuments and Tombs ..................... 2581
§ 38.7.11. Community Purposes ....................... 2588
§ 38.7.12. Promotion of Sports ....................... 2591
§ 38.7.13. Housing and Services for the Elderly and
            Handicapped ................................ 2592
§ 38.7.14. Charity Outside the State ................ 2595
§ 38.8.    Indefinite Beneficiaries .................. 2597
§ 38.9.    Definite Beneficiaries .................... 2599
§ 38.9.1.  When the Number of Recipients
            Is Limited ................................... 2600
§ 38.9.2.  When the Class to be Benefitted
            Is Limited ................................... 2602
§ 38.9.3.  Trusts for Relatives ....................... 2619
§ 38.10.   Private Profit ............................ 2623
§ 38.11.   Illegal Purposes ........................... 2630

CHAPTER 39
THE FAILURE OF CHARITABLE
TRUSTS—CY PRES ...................................... 2635
§ 39.1.    When Settlor Fails to State Charitable Purpose .... 2636
§ 39.2.    When Settlor Leaves to Trustee the Selection of
            Charitable Objects and the Trustee Makes
            the Selection ................................... 2639
§ 39.3.    Failure of Trustee .......................... 2645
§ 39.3.1.  Procedure on Failure of Trustee .............. 2651
§ 39.3.2.  Gift to Unincorporated Charitable
            Association .................................... 2654
§ 39.3.3.  Gift to Charitable Corporation ............... 2656
§ 39.3.4.  Power to Distribute Among Specified
            Charities ........................................ 2674
§ 39.3.5.  Power to Distribute Among Charitable
            and Other Valid Objects ....................... 2675
§ 39.4.    Charitable and Invalid Purposes ............... 2677
§ 39.4.1.  Indefinite Purposes Not Limited to
            Charity ......................................... 2677
§ 39.4.2.  Specified Objects .......................... 2689
§ 39.5.    Failure of Particular Charitable Purpose;
            Cy Pres ........................................ 2697
§ 39.5.1.  Judicial and Prerogative Cy Pres .............. 2705
FIFTH EDITION CONTENTS

§ 39.5.2. Exercise of Cy Pres Power .................. 2708
§ 39.5.3. Subsequent Failure of Particular
          Purpose ........................................ 2731
§ 39.5.4. When It Is Neither Unlawful Nor
          Impossible to Accomplish Particular
          Purpose ........................................ 2740
§ 39.5.5. Racial, Sexual, and Religious
          Restrictions ................................... 2749
§ 39.5.6. The Power of the Legislature ................. 2769
§ 39.6. Application of Surplus .......................... 2773
§ 39.7. Conditions and Limitations ...................... 2779
§ 39.7.1. No Reverter for Breach of Trust .............. 2780
§ 39.7.2. Conditions Subsequent ........................ 2782
§ 39.7.3. Limitations .................................. 2789
§ 39.7.4. Relief Against Forfeiture ..................... 2791
§ 39.7.5. Gift Over From Charity to Charity .......... 2795
§ 39.7.6. Gift Over From Charity to
          Non-Charity ................................... 2798
§ 39.7.7. Gift Over From Non-Charity
          to Charity ..................................... 2801
§ 39.7.8. Gift to Charity Without Intermediate
          Disposition .................................... 2804
§ 39.7.9. Provisions for Accumulation .................. 2808
§ 39.7.10. Illegal Condition Precedent .................. 2814

PART 11
RESULTING TRUSTS

CHAPTER 40
RESULTING TRUSTS: GENERAL PRINCIPLES ............... 2819

§ 40.1. When a Resulting Trust Arises .................... 2819
§ 40.1.1. Distinguishing Resulting Trusts From
          Express Trusts ................................. 2820
§ 40.1.2. Distinguishing Resulting Trusts From
          Constructive Trusts .......................... 2823
§ 40.2. Gratuitous Conveyance ............................ 2824
§ 40.3. Statute of Frauds ................................ 2830
§ 40.4. Transfer by Beneficiary ........................... 2832
§ 40.5. Transfer by Trustee ............................... 2833

xliii
§ 40.6. Laches; Statutes of Limitations ........................................ 2834
§ 40.7. Termination of Resulting Trust ........................................ 2837

Chapter 41
When an Express Trust Fails ........................................ 2839

§ 41.1. General Rule ......................................................... 2840
§ 41.1.1. Situations in Which Resulting Trusts Arise .................. 2842
§ 41.1.2. Partial Failure of Trust ........................................ 2843
§ 41.1.3. Resulting Trust When Testator Dies Without Heirs ......... 2845
§ 41.1.4. When Settlor Disposes of Entire Beneficial Interest ...... 2845
§ 41.1.5. Several Donors ..................................................... 2847
§ 41.1.6. Trust for Noncharitable Association .......................... 2849
§ 41.1.7. When Settlor Fails to Manifest Intent to Create a Trust Properly ........................................ 2849

§ 41.2. Rebutting the Resulting Trust .................................... 2851
§ 41.2.1. Acceleration ....................................................... 2854
§ 41.3. Failure of Charitable Trusts ....................................... 2862
§ 41.4. Trust for Members of Definite Class .............................. 2864
§ 41.5. Trust for Relatives .................................................. 2864
§ 41.6. Testamentary Disposition for Members of Indefinite Class ........................................ 2865
§ 41.7. Testamentary Disposition for Indefinite or General Purposes ........................................ 2866
§ 41.8. Testamentary Disposition for Specific Noncharitable Purposes ........................................ 2866
§ 41.9. Transfer Inter Vivos With No Definite Beneficiary .......... 2867
§ 41.10. Trust for Several Valid Objects .................................. 2870
§ 41.11. Charitable and Invalid Purposes .................................. 2871
§ 41.12. When Trust Fails for Illegality .................................. 2872
§ 41.12.1. When Resulting Trust Arises .................................. 2876
§ 41.12.2. When Imposing Resulting Trust Tends to Prevent Accomplishment of Illegal Purpose ........................................ 2877
§ 41.12.3. When Settlor and Trustee Are Not in Pari Delicto ......... 2878
§ 41.12.4. When Settlor Is Not Blameworthy .............................. 2879
§ 41.12.5. Whether Settlor Must Introduce Evidence of Illegality ........................................ 2880
§ 41.12.6. Transferees From Settlor .......................................................... 2881
§ 41.13. To Whom Trust Results ................................................................. 2882
§ 41.14. When Transferee Provides Consideration for Transfer in Trust ..................................... 2884
§ 41.15. When Third Person Provides Consideration for Transfer in Trust .................................... 2885
§ 41.16. When There is Consideration for Declaration of Trust ................................................. 2886
§ 41.17. Trust Created by Exercise of General Power of Appointment ........................................... 2887
§ 41.18. Trust Created by Exercise of Special Power of Appointment ............................................ 2891
§ 41.19. Trust Created by Beneficiary of Preexisting Trust ......................................................... 2893
§ 41.20. Parol Extinquishment ................................................................. 2894

CHAPTER 42
WHEN EXPRESS TRUST DOES NOT EXHAUST TRUST ESTATE ................................................. 2897
§ 42.1. General Rule ................................................................. 2897
§ 42.1.1. When Trust Instrument Does Not Dispose of Entire Beneficial Interest ............... 2898
§ 42.1.2. When There Is or Will Be a Surplus ............................................. 2900
§ 42.1.3. Several Donors ........................................................................ 2903
§ 42.1.4. Trust for Noncharitable Association .................................................. 2905
§ 42.2. Rebutting the Resulting Trust ......................................................... 2912
§ 42.3. Surplus in the Case of a Charitable Trust ...................................................... 2916
§ 42.4. When Transferee Provides Consideration for Transfer .................................................. 2918
§ 42.5. When Third Person Provides Consideration for Transfer ............................................. 2918
§ 42.6. When There is Consideration for Declaration of Trust .................................................. 2919
§ 42.7. Trust Created by Exercise of General Power of Appointment ........................................... 2920
§ 42.8. Trust Created by Exercise of Special Power of Appointment ............................................ 2920
§ 42.9. Trust Created by Beneficiary of Preexisting Trust ......................................................... 2921
§ 42.10. Parol Extinquishment ................................................................. 2921
§ 40.6.  Laches; Statutes of Limitations .......................... 2834
§ 40.7.  Termination of Resulting Trust ........................... 2837

CHAPTER 41
WHEN AN EXPRESS TRUST FAILS ............................... 2839

§ 41.1.  General Rule ............................................. 2840
§ 41.1.1. Situations in Which Resulting
          Trusts Arise ........................................... 2842
§ 41.1.2. Partial Failure of Trust ............................. 2843
§ 41.1.3. Resulting Trust When Testator Dies
          Without Heirs ........................................... 2845
§ 41.1.4. When Settlor Disposes of Entire Beneficial
          Interest ................................................. 2845
§ 41.1.5. Several Donors ....................................... 2847
§ 41.1.6. Trust for Noncharitable Association ............... 2849
§ 41.1.7. When Settlor Fails to Manifest Intent
          to Create a Trust Proper ................................ 2849

§ 41.2.  Rebutting the Resulting Trust .......................... 2851
§ 41.2.1. Acceleration ......................................... 2854

§ 41.3.  Failure of Charitable Trusts ............................ 2862
§ 41.4.  Trust for Members of Definite Class .................... 2864
§ 41.5.  Trust for Relatives ..................................... 2864
§ 41.6.  Testamentary Disposition for Members of Indefinite
          Class ................................................... 2865
§ 41.7.  Testamentary Disposition for Indefinite or General
          Purposes .................................................. 2866
§ 41.8.  Testamentary Disposition for Specific Noncharitable
          Purposes .................................................. 2866
§ 41.9.  Transfer Inter Vivos With No Definite
          Beneficiary .............................................. 2867
§ 41.10. Trust for Several Valid Objects .......................... 2870
§ 41.11. Charitable and Invalid Purposes .......................... 2871
§ 41.12. When Trust Fails for Illegality .......................... 2872
§ 41.12.1. When Resulting Trust Arises ........................ 2876
§ 41.12.2. When Imposing Resulting Trust Tends
          to Prevent Accomplishment of Illegal
          Purpose .................................................. 2877
§ 41.12.3. When Settlor and Trustee Are Not in Pari
          Delicto .................................................. 2878
§ 41.12.4. When Settlor Is Not Blameworthy ....................... 2879
FIFTH EDITION CONTENTS

§ 41.12.5. Whether Settlor Must Introduce Evidence of Illegality .................................. 2880
§ 41.12.6. Transferees From Settlor .................................................. 2881
§ 41.13. To Whom Trust Results ..................................................... 2882
§ 41.14. When Transferee Provides Consideration for Transfer in Trust ................................ 2884
§ 41.15. When Third Person Provides Consideration for Transfer in Trust ............................... 2885
§ 41.16. When There is Consideration for Declaration of Trust ............................................. 2886
§ 41.17. Trust Created by Exercise of General Power of Appointment ......................................... 2887
§ 41.18. Trust Created by Exercise of Special Power of Appointment ............................................ 2891
§ 41.19. Trust Created by Beneficiary of Preexisting Trust ....................................................... 2893
§ 41.20. Parol Extinguishment ............................................................ 2894

CHAPTER 42
WHEN EXPRESS TRUST DOES NOT EXHAUST TRUST ESTATE ............................................. 2897
§ 42.1. General Rule ................................................................. 2897
§ 42.1.1. When Trust Instrument Does Not Dispose of Entire Beneficial Interest ................. 2898
§ 42.1.2. When There Is or Will Be a Surplus ...................................... 2900
§ 42.1.3. Several Donors .............................................................. 2903
§ 42.1.4. Trust for Noncharitable Association ........................................ 2905
§ 42.2. Rebutting the Resulting Trust ............................................... 2912
§ 42.3. Surplus in the Case of a Charitable Trust ......................................................... 2916
§ 42.4. When Transferee Provides Consideration for Transfer ............................................... 2918
§ 42.5. When Third Person Provides Consideration for Transfer ........................................... 2918
§ 42.6. When There is Consideration for Declaration of Trust .............................................. 2919
§ 42.7. Trust Created by Exercise of General Power of Appointment ...................................... 2920
§ 42.8. Trust Created by Exercise of Special Power of Appointment ......................................... 2920
§ 42.9. Trust Created by Beneficiary of Preexisting Trust ..................................................... 2921
§ 42.10. Parol Extinguishment .......................................................... 2921
CHAPTER 43
PURCHASE-MONEY RESULTING TRUSTS ................. 2923

§ 43.1. General Rule ........................................... 2924
§ 43.1.1. Distinction Between Resulting Trusts and Constructive Trusts ................. 2931
§ 43.1.2. Statutes Abolishing Purchase-Money Resulting Trusts .................. 2935
§ 43.1.3. Statutes Expressly Permitting Purchase-Money Resulting Trusts .......... 2940
§ 43.1.4. General Observations ................................ 2941

§ 43.2. Rebutting the Resulting Trust ...................... 2942
§ 43.2.1. Enforceable Express Agreement by Grantee to Hold in Trust ................. 2946
§ 43.2.2. Unenforceable Express Agreement by Grantee to Hold in Trust .............. 2947
§ 43.2.3. Rebutting Resulting Trust in Part .................. 2948
§ 43.2.4. Purchase in Name of Payor and Another ........................................ 2950

§ 43.3. Purchase in the Name of a Relative ................. 2952

§ 43.4. Rebutting Presumption of Gift to Relative ............. 2966
§ 43.5. Illegal Purposes ....................................... 2973

§ 43.6. Payment by One Person for Another .................. 2982
§ 43.6.1. When Payment Is Loan to Transferee .............. 2982
§ 43.6.2. When Payment Is in Discharge of Debt to Transferee ....................... 2985
§ 43.6.3. When Payment Is Gift to Transferee ................ 2985
§ 43.6.4. When Transferee Pays Purchase Price as Loan to Another .................. 2986
§ 43.6.5. When Transferee Pays Purchase Price in Discharge of Debt to Another ..... 2989
§ 43.6.6. When Transferee Pays Purchase Price as Gift to Another ................... 2990
§ 43.6.7. When Payor Other Than Transferee Pays Purchase Price as Loan to Third Person .............................................. 2991
§ 43.6.8. When Payor Other Than Transferee Pays Purchase Price in Discharge of Debt to Third Person .............................................. 2992
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§43.6.9.</td>
<td>When Payor Other Than Transferee Pays Purchase Price as Gift to Third Person</td>
<td>2992</td>
</tr>
<tr>
<td>§43.7.</td>
<td>Payment of Part of Purchase Price</td>
<td>2996</td>
</tr>
<tr>
<td>§43.7.1.</td>
<td>Intention to Take More Than Pro Rata Share</td>
<td>3002</td>
</tr>
<tr>
<td>§43.7.2.</td>
<td>Intention to Take Less Than Pro Rata Share</td>
<td>3004</td>
</tr>
<tr>
<td>§43.7.3.</td>
<td>Intention to Take All of Part of Property</td>
<td>3005</td>
</tr>
<tr>
<td>§43.7.4.</td>
<td>Intention to Take Limited Estate</td>
<td>3006</td>
</tr>
<tr>
<td>§43.7.5.</td>
<td>Payment of Purchase Price by Several Persons</td>
<td>3007</td>
</tr>
<tr>
<td>§43.7.6.</td>
<td>Transfer to Two or More Persons</td>
<td>3009</td>
</tr>
<tr>
<td>§43.7.7.</td>
<td>Advances for Improvements or to Discharge Encumbrances</td>
<td>3011</td>
</tr>
<tr>
<td>§43.7.8.</td>
<td>When One Person Makes Part Payment for Another</td>
<td>3013</td>
</tr>
<tr>
<td>§43.8.</td>
<td>Payment Not in Money</td>
<td>3014</td>
</tr>
<tr>
<td>§43.9.</td>
<td>Purchase on Credit</td>
<td>3016</td>
</tr>
<tr>
<td>§43.9.1.</td>
<td>Purchase on Purchaser’s Credit</td>
<td>3016</td>
</tr>
<tr>
<td>§43.9.2.</td>
<td>Purchase on Grantee’s Credit, Purchaser Agreeing to Exonerate Grantee</td>
<td>3017</td>
</tr>
<tr>
<td>§43.10.</td>
<td>Payment Subsequent to Purchase</td>
<td>3020</td>
</tr>
<tr>
<td>§43.11.</td>
<td>Marital Home and Family Assets</td>
<td>3025</td>
</tr>
<tr>
<td>§43.11.1.</td>
<td>Cohabitation Without Marriage</td>
<td>3031</td>
</tr>
<tr>
<td>§43.12.</td>
<td>Burden of Proof</td>
<td>3042</td>
</tr>
<tr>
<td>§43.13.</td>
<td>Rights of Creditors of Trustee When Beneficiary Is Estopped</td>
<td>3047</td>
</tr>
<tr>
<td>§43.14.</td>
<td>Parol Extinguishment</td>
<td>3048</td>
</tr>
</tbody>
</table>

PART 12
TRUSTS AND THE CONFLICT OF LAWS

CHAPTER 44
TRUSTS AND THE CONFLICT OF LAWS: GENERAL PRINCIPLES

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§44.1.</td>
<td>Diversities in the Law of Trusts</td>
<td>3053</td>
</tr>
<tr>
<td>§44.2.</td>
<td>Movables and Immovables</td>
<td>3054</td>
</tr>
</tbody>
</table>
CHAPTER 45
TRUSTS OF MOVABLES AND THE CONFLICT
OF LAWS ......................................................... 3057

§ 45.1. Introduction .............................................. 3060
§ 45.2. Court Control Over Trusts of Movables .......... 3064
  § 45.2.1. The Requirement of Qualification .......... 3065
    § 45.2.1.1. Foreign Trust Companies ... 3068
    § 45.2.1.2. Nonresident Individual Trustees .......... 3078
    § 45.2.1.3. Foreign Charitable Corporations .......... 3081
    § 45.2.1.4. Qualification in the State of Administration .......... 3083
    § 45.2.1.5. Assets Situated at Testator's Death in the State of Administration .......... 3085
    § 45.2.1.6. Pouring Over by Will into Inter Vivos Trust .......... 3087
  § 45.2.2. Jurisdiction Over Trusts of Movables ...... 3088
    § 45.2.2.1. Jurisdiction of a Court in Which the Trustee Has Qualified .......... 3092
    § 45.2.2.2. Jurisdiction of a Court in Which the Trustee Has Not Qualified .......... 3094
    § 45.2.2.3. When a Court Does Not Have Jurisdiction Over Some or All of the Beneficiaries .......... 3095
    § 45.2.2.4. Whether a Court Will Exercise Jurisdiction .......... 3102
      § 45.2.2.4.1. Testamentary Trusts .......... 3102
      § 45.2.2.4.2. Inter Vivos Trusts .......... 3114
    § 45.2.2.5. Effect in Other States of a Judgment of a Court of Primary Supervision .......... 3122
§ 45.2.2.6. Effect in Other States of a Judgment of a Court Not of Primary Supervision 3125

§ 45.2.2.7. Registration of Trusts Under the Uniform Probate Code 3131

§ 45.2.2.8. Jurisdiction Over Trusts of Movables Under the Uniform Trust Code 3133

§ 45.3. Interpretation and Construction as to Trusts of Movables 3134

§ 45.3.1. Construction—Law Designated by the Settlor or Testator 3136

§ 45.3.2. Construction—No Designation of Applicable Law 3139

§ 45.3.3. Who Are the Testator’s Heirs? 3146

§ 45.3.4. Who Are the Heirs of a Beneficiary? 3147

§ 45.3.5. Construction—Inter Vivos Trusts 3151

§ 45.3.5.1. Inter Vivos Trust for the Settlor and the Settlor’s Heirs 3157

§ 45.3.5.2. Revocation and Amendment of Inter Vivos Trusts 3160

§ 45.3.6. Incidental Beneficiaries 3165

§ 45.3.7. Income Not Specifically Disposed Of 3166

§ 45.3.8. Principal Not Specifically Disposed Of 3167

§ 45.3.9. Disposition of Income on Death of Life Beneficiary 3168

§ 45.3.10. Allocation of Receipts and Expenses to Income or Principal 3169

§ 45.3.11. Allocation of Estate Taxes 3176

§ 45.4. Questions as to the Validity of Trusts of Movables 3181

§ 45.4.1. Validity of Testamentary Trusts of Movables 3181

§ 45.4.1.1. Validity of the Will 3182

§ 45.4.1.2. Validity of the Provisions of a Testamentary Trust 3199
§ 45.4.1.3. Validity of a Testamentary Trust—Law Designated by the Testator 3200

§ 45.4.1.4. Validity of a Testamentary Trust—No Designation of Applicable Law 3204

§ 45.4.1.5. Law Upholding a Testamentary Trust 3208

§ 45.4.1.6. Validity of a Charitable Trust 3214

§ 45.4.1.7. Validity of a Trust for Noncharitable Purposes 3219

§ 45.4.1.8. Public Policy of the Testator’s Domicil 3222

§ 45.4.1.9. Change of Domicil After Execution of the Will 3225

§ 45.4.2. Validity of Inter Vivos Trusts of Movables 3229

§ 45.4.2.1. Validity of an Inter Vivos Trust—Law Designated by the Settlor 3234

§ 45.4.2.2. Validity of an Inter Vivos Trust—No Designation of Applicable Law 3242

§ 45.4.2.3. Law Upholding an Inter Vivos Trust 3247

§ 45.4.2.4. Public Policy of the Settlor’s Domicil 3254

§ 45.4.2.5. Formalities in Creating an Inter Vivos Trust 3260

§ 45.4.2.6. The Settlor’s Capacity to Create an Inter Vivos Trust 3264

§ 45.5. Administration of Trusts of Movables 3265

§ 45.5.1. Administration of Testamentary Trusts of Movables 3266

§ 45.5.1.1. Administration of a Testamentary Trust—Law Designated by the Testator 3266
§ 45.5.1.2. Administration of a Testamentary Trust—No Designation of Applicable Law ............................ 3270
§ 45.5.1.3. Administration of a Charitable Trust ............................ 3277
§ 45.5.1.4. Pour-Over Wills ........................................ 3281
§ 45.5.2. Administration of Inter Vivos Trust of Movables ........................................ 3283
§ 45.5.2.1. Administration of an Inter Vivos Trust—Law Designated by the Settlor ............................. 3283
§ 45.5.2.2. Administration of an Inter Vivos Trust—No Designation of Applicable Law ........................ 3286
§ 45.5.3. Change of Place of Administration .................. 3291
§ 45.5.3.1. Permitting Change of Place of Administration ............................. 3292
§ 45.5.3.2. Whether to Permit a Change in the Applicable Law ............................. 3302
§ 45.6. Particular Issues as to Trusts of Movables ..................... 3307
§ 45.6.1. Compensation of the Trustee ............................. 3307
§ 45.6.2. Investment of Trust Funds .................................... 3310
§ 45.6.3. Powers and Duties of the Trustee ............................. 3315
§ 45.6.4. Liabilities of the Trustee .................................... 3319
§ 45.6.5. Termination of the Trust ..................................... 3320
§ 45.6.6. Matters of Administration that Cannot Be Controlled by the Terms of the Trust ............................. 3323
§ 45.6.6.1. Participation in a Breach of Trust ............................. 3325
§ 45.6.6.2. Charitable Immunity ..................................... 3329
§ 45.6.6.3. The Nature of the Beneficiary’s Interest ............................. 3336
§ 45.7. Spendthrift Trusts of Movables ............................. 3337
§ 45.7.1. Creditors of the Beneficiary ............................. 3338
§ 45.7.1.1. Testamentary Trusts ............................. 3339
§ 45.7.1.2. Inter Vivos Trusts ............................. 3349
§ 45.7.1.3. Bankruptcy of a Beneficiary .................................. 3355
§ 45.7.1.4. Tax Claims of the United States .............................. 3358
§ 45.7.2. Assignees of a Beneficiary’s Interest ....................... 3359
§ 45.7.3. General Observations ............................................. 3365

Chapter 46

Trusts of Interests in Land and the Conflict of Laws .......................... 3367

§ 46.1. Introduction ....................................................... 3368
§ 46.2. Court Control Over Trusts of Interests in Land ............... 3371
  § 46.2.1. Confirmation by a Court of the Appointment of a Trustee .... 3371
  § 46.2.2. Whether a Court Has and Will Exercise Jurisdiction ........ 3373
    § 46.2.2.1. Courts of the Situs ................................... 3373
    § 46.2.2.2. Courts Other Than Those of the Situs .................. 3376
  § 46.2.3. Effect in Other States of a Judgment ...................... 3382
    § 46.2.3.1. Judgment of a Court of the Situs ..................... 3382
    § 46.2.3.2. Judgment of a Court Other Than a Court of the Situs ... 3384

§ 46.3. Interpretation and Construction as to Interests in Land ........ 3390

§ 46.4. Validity of Trusts of Interests in Land ........................ 3401
  § 46.4.1. Validity of Testamentary Trusts of Interests in Land ..... 3402
    § 46.4.1.1. Validity of the Will .................................. 3402
    § 46.4.1.2. Validity of the Provisions of a Testamentary Trust .... 3418
  § 46.4.2. Validity of Inter Vivos Trusts of Interests in Land ....... 3422

§ 46.5. Immovables and Movables—Real Property and Personal Property .... 3427
  § 46.5.1. Equitable Conversion ........................................ 3430
    § 46.5.1.1. Equitable Conversion—Validity of the Will ............ 3436
§ 46.5.1.2. Equitable Conversion—Validity of Trust Provisions 3443
§ 46.5.2. Leasehold Interests in Land 3445
§ 46.5.3. Mortgages 3451
§ 46.6. Administration of Trusts of Interests in Land 3455
§ 46.7. Restraints on Alienation of Beneficiaries’ Interests in Trusts of Land; Spendthrift Trusts 3457
§ 46.8. Resulting Trusts 3458
§ 46.9. Conclusion 3462
Epilogue 3463