ST. MARY'S UNIVERSITY SCHOOL OF LAW

ESTATES AND TRUSTS *FINAL EXAMINATION*
Fall Semester 1992 *Professor Haddock*

PROBLEMS

INSTRUCTIONS

1. This examination consists of eight Problems, printed on three pages, preceded by these two pages of instructions. Most of the Problems are based on documents labeled "Factual Information" (four pages and one page of instructions) and "Statutory Appendix" (21 pages). Those documents were distributed during the last two weeks of class. Additional information is included with some of the Problems. Please adhere to the following assumptions:

a. The Factual Information and Statutory Appendix referred to above apply as appropriate to all Problems except as indicated in the Problems.

b. Additional information included with the Problems pertain only to the Problem in which that information appears.

c. All named persons are alive unless otherwise indicated.

2. This is a "take-home" examination. The Problems and your responses must be turned in to an appropriate individual (a secretary or receptionist in the Law Faculty building, or other individual by special arrangement) no later than 24 hours after you check out the Problems. During the 24-hour period in which you are writing your responses, you are allowed to use any printed or written material you wish, including the text, your notes and your outlines. You are not allowed, of course, to get help from other persons during that period; your responses to the Problems must be your own work, composed and written during the 24-hour examination period. Estimates indicating the approximate time necessary to write good responses are included with each Problem; these estimates total 220 minutes.

3. The permissible length of your responses to the examination Problems is limited as follows:

> Bluebooks: If your responses are handwritten, you are limited to one "bluebook," both sides of the page if you skip lines, one side of the page if you don't skip lines.
>
> Typewritten or Printed: If your responses are typewritten or printed, you are limited to thirteen pages, double-spaced, or six and a half pages, single-spaced.

These limits are based on average handwriting (seven words per line, bluebooks with 25 lines per page, 18 pages, 36 sides) and typewriting or printing (8½" x 11" paper, 250 words per page, double-spaced). If your writing or print is very small, you should check your averages and limit yourself to approximately 3300 words.

4. St. Mary's University School of Law prohibits the disclosure of information that might aid a professor in identifying the author of an examination. Any attempt by a student to identify herself or himself in an examination is a violation of this policy and of the Code of Student Conduct.

5. After reading the following oath, place your exam number in the space below. If you are prevented by the oath from placing your exam number in the space below, notify the appropriate person of your reason when you turn in the examination.

> I HAVE NEITHER GIVEN NOR RECEIVED UNAUTHORIZED AID IN TAKING THIS EXAMINATION, NOR HAVE I SEEN ANYONE ELSE DO SO.

_____
Exam Number

Estates and Trusts Final Examination
Problems

Fall Semester 1992 *Professor Haddock*

Problem #1
(Suggested Time: 90 minutes)

Assume that you are a lawyer and that you have been consulted by Georgina and her son Frank. They are concerned about some of the arrangements Gary and Georgina have made concerning their property. More specifically, they ask you about the trust referred to in paragraphs 10 and 11, and the testamentary "Trust D," referred to in paragraph 16 of the Factual Information. Frank and Georgina inform you that one of Georgina's grandchildren, Seth, has just started law school and that both Sally and Samantha would like to attend college starting next year. They would like to use trust income to finance the college education of the grandchildren, but the Last National Trust Company has informed them that will not be possible at this time. Frank has indicated that Seth's law school expenses this year will exceed $20,000 and that college expenses for Seth, Sally and Samantha next year might exceed $50,000.

Assuming that the trust referred to in paragraph 10 is a revocable trust, write a memorandum discussing the reluctance of the Trust Company to disburse any funds to the grandchildren and advising Frank and Georgina concerning what should be done. Include in your response an evaluation of the dispositive provisions of both trusts (¶¶ 10 and 16) and discussion of any and all pertinent issues you think should be addressed; also include reference to any questions you might want to discuss with Georgina and Frank. If your advice involves new drafting, include suggestions as to the form and substance of any new documentation. Also assume that it is clear that Georgina wants to fund the college education of all her grandchildren.

Problem #2
(Suggested Time: 20 minutes)

Assume that Frank and Elizabeth (¶¶ 4, 7 and 17) have moved back to Texas, intending to establish a home here. Discuss whether the will Frank executed in 1980 (¶ 17) could be admitted to probate in a Texas court in the event of Frank's death.

Problem #3
(Suggested Time: 15 minutes)

Assume that Gary and Florence have now died, in that order, survived by all other family members except Francine. If Florence died without a will, who would be entitled to her estate? Explain.

Problem #4
(Suggested Time: 15 minutes)

Discuss the interests created by testamentary Trust A, referred to in paragraph 13 of the Examination Facts, assuming that Gary has died. Also assume that Mario Olivares is alive and has two children, age 14 and 12, neither of whom has attended college.

Problem #5
(Suggested Time: 30 minutes)

a. Discuss the interests created by testamentary Trust B, referred to in paragraph 14 of the Examination Facts, assuming that Gary has died. Also assume that Julia Morgan is alive and has three children and no grandchildren.

b. Now assume that Julia Morgan has died. During her lifetime, Julia was aware of paragraph 14 of Gary Grant's will, and she had agreed with her youngest child to leave the benefits under that trust to her (the youngest child). Julia's will, however, provides as follows: "All property over which I have a power of appointment under the will of Gary Grant I hereby leave in trust for my children for life, remainder to my grandchildren in fee." How should the funds in Gary's testamentary Trust B be distributed? Explain.

Problem #6
(Suggested Time: 20 minutes)

Discuss the purposes of the two sentences beginning "Each beneficiary hereunder" in paragraph 15 of the Examination Facts and comment on whether those sentences are and should be enforceable.

The following two problems are not based on the Factual Information distributed during the course, but the Texas statutes in the Statutory Appendix are applicable to Problem #7.

Problem #7
(Suggested Time: 15 minutes)

Maurice Jones died in 1958. He devised Blackacre "to Alice Smith for life and then to the heirs of Alice Smith." Alice is still living and is now 70 years of age. She has three adult children and four grandchildren. She wants to sell Blackacre to you and you want to buy it. Discuss whether you should proceed with the transaction.

Problem #8
(Suggested Time: 15 minutes)

Oliver transferred a fund in trust "to pay the income to Alice Adams for life, then to distribute the principal to the children of Benito Belize who reach the age of 21, and in the meantime the children of Benito Belize who are eligible to receive, but have not yet received, a share of the principal are to receive the income." Assume now that the following events have occurred in sequence: Alice dies, survived by Benito and Benito's wife and one child (C1), age 10; two years later, C2 is born to Benito and his wife; nine years after the birth of C2, C1 celebrates his 21st birthday; one year after C1's 21st birthday, C3 is born to Benito and his wife; eleven years after C3 is born, C2 is 21; ten years after C2's 21st birthday, C3 turns 21 years of age. How should the income and principal from the trust be distributed during this period of time from Alice's death to the present?

ST. MARY'S UNIVERSITY SCHOOL OF LAW

ESTATES AND TRUSTS — *FINAL EXAMINATION*
Fall Semester 1992 — *Professor Haddock*

FACTUAL INFORMATION AND STATUTORY APPENDIX

INSTRUCTIONS

1. Most, if not all, of the problems on your Final Examination will refer to the following Factual Information, consisting of four pages and seventeen numbered paragraphs. The paragraphs are numbered for reference purposes. Some additional facts will be included with the problems, but the information given here will give you general background and numerous clues as to problems that might be presented in the Examination.

2. Also included here is a 21-page "Statutory Appendix," containing statutes that will be applicable on the Examination. You should be somewhat familiar with these statutes and the topics they cover from your readings and class discussion. The fact that a statute is included in the Appendix does not necessarily mean that it will be pertinent to the Examination. You are not required to be familiar with statutes not included here.

3. Prior to taking the Examination, you are allowed to get assistance from whatever resources you desire, including the text, your notes, and your colleagues, in studying and reviewing the Factual Information and Statutory Appendix. You are encouraged to study this information individually and in groups, and to analyze questions you anticipate from studying and reviewing the course.

4. This will be a "take-home" examination. You will be permitted to check out the examination problems anytime during the two-week examination period, subject to qualifications discussed in class. The problems and your responses must be turned in no later than 24 hours after you check out the problems. During the Examination itself, you will be allowed to use any printed or written material you wish, including the text, your notes and your outlines. You are not allowed, of course, to get help from other persons during the Examination; your responses to the Examination problems must be your own work, composed and written during the 24-hour Examination period.

Estates and Trusts Final Examination
Factual Information

Fall Semester 1992 *Professor Haddock*

A. The Family

[1] Georgina and Gary Grant are 72 and 75 years of age. They have been life-long residents of Texas. Georgina practiced medicine for much of her adult life but retired two years ago. Gary taught high school for a few years in the 1940's and he and Georgina were married in 1943. After the wedding, Gary embarked on a career selling insurance. Gary retired in 1985. He had planned to keep working until 1988, but he was apparently afflicted with Alzheimer's disease in the early 1980's and was unable to manage his work by 1985. Georgina, on the other hand, is in excellent health, both physically and mentally. Gary's condition has, however, taken its toll on Georgina. As he became less and less capable of taking care of himself, pressures on Georgina mounted. In 1990, after discussions with their children, Georgina decided to place Gary in a nursing home. He no longer recognizes Georgina or his children most of the time, although he seems to have occasional lucid moments. Georgina visits him faithfully every day and he is receiving good, but expensive, care.

[2] During their careers, Georgina and Gary accumulated a fair amount of wealth. As of today, they own the following assets:

Asset	Current Value
Texas residence	$350,000 (no mortgage)
Condominium in Colorado	120,000 ($50,000 mortgage)
Cadillac automobile	20,000
Household Furniture	130,000
Checking Account	6,000
Savings Account	140,000
Certificates of deposit	170,000
Stocks	130,000
Life Insurance on Georgina	300,000 death benefit; no cash surrender value
Life Insurance on Gary	300,000 death benefit; $220,000 cash surrender value
Gary's retirement plan	250,000; Gary receives $2,000 per month
Inter vivos Trust (See ¶ 10)	100,000

[3] Gary and Georgina had three children, Frank, Francine, and Florence, but one of them passed away in 1972. Frank was born in 1947, Francine in 1950 and Florence in 1952.

[4] Frank is married to Elizabeth and they have three children, Seth, Sally and Sean, age 23, 18, and 12, respectively. Seth is married to Sara and Sally is married to Sergio. Neither Seth nor Sally have any children.

[5] Francine was married in 1968 to Fred. They had one child, Samantha, born in 1970. In 1972 Francine was killed in an automobile accident. Fred married Felicia in 1977, and in 1980, Felicia adopted Samantha. Fred and Felicia also have two children from their marriage, Scott, born in 1983, and Sarita, born in 1985. In 1991 Samantha was married to Sam. They have no children.

[6] The third child of Gary and Georgina, Florence, has never been married. She has a very close relationship with all of her nieces and nephews.

[7] For the first few years of their marriage, Frank and Elizabeth resided in Texas. In 1975 they moved to Minnesota and have been domiciled in that state for the past 17 years. They have visited their relatives in Texas frequently, however, and Seth and Sara are now living in Houston, Texas. The rest of Gary and Georgina's family have resided in Texas at all pertinent times, except for periods of a few years when Seth and Samantha attended colleges in other states.

B. The Transactions

[8] Suspicious of lawyers, Georgina and Gary each wrote their own "Last Will and Testament" in 1962. The documents were very simple, two-sentence documents:

> I, Georgina Grant, being of sound mind, do hereby leave all of my estate to my husband Gary Grant. If my husband does not survive me, then I leave all of my estate in trust for my children.

Gary's 1962 will was a mirror-image of Georgina's, meaning that the provisions were the same except that the parties were reversed.

[9] In 1973, however, the Grants became good friends with Lance Lexus, a lawyer who defended Georgina against a malpractice claim. Because of the trust that had developed during that relationship, Georgina and Gary consulted Lance about their estate and what steps they should take to transmit their wealth effectively to their family as they got older. With the help of another lawyer in his firm, Lance assisted the Grants, resulting in the following transactions (Paragraphs 10-16).

[10] Georgina and Gary transferred to the Last National Trust Company $100,000 in stock in several different companies. This transaction took place on October 13, 1973. The Trust Company was directed by the trust instrument "to pay income from the trust to the settlors (Georgina and Gary) for as long as they or either of them should live." Another paragraph provided that after the death of both Georgina and Gary, income "shall be paid to our grandchildren for the purpose of procuring for them the best college education available." Finally, "When the last of our grandchildren has graduated from college, this trust shall terminate and the trust property shall be conveyed to our then living grandchildren, share and share alike."

[11] Beneficiary designations under the insurance policies on the lives of Georgina and Gary (paragraph 2) were changed by adding the trust referred to in paragraph 10 as an alternative beneficiary, the primary beneficiary in each case being the spouse, identified by name (Gary Grant in the policy on Georgina's life and Georgina Grant in the policy on Gary's life).

[12] Lance Lexus also drafted new wills for Gary and Georgina. Those wills included numerous provisions, including some setting up testamentary trusts for various friends and relatives, including the following provisions in Gary's will:

[13] Trust A, funded with the certificates of deposit described in paragraph 2: "Income to be paid to my good friend Mario Olivares, as long as he lives, and then to such of his children as have graduated from college as long as they shall live; upon the death of the last of Mario's children to graduate from college, the trust shall be terminated and all funds in the trust account shall be paid in equal shares to my then living descendants who were alive at my death."

[14] Trust B, funded with the stocks referred to in paragraph 2: "Income to be paid to my niece, Julia Morgan for life, and upon her death this trust shall terminate and the principal shall be paid to such of Julia Morgan's children as she may direct and appoint by her last will and testament, and in default of said appointment, to my heirs."

[15] Trust C, funded with a bequest of $50,000: "Income to be paid to my children as long as they live, and then to my grandchildren until the youngest grandchild reaches age 21; at that time, this trust shall end and the principal shall be divided equally among my grandchildren." As to this trust, the will also contained the following language:

> Each beneficiary hereunder is hereby restrained from alienating, anticipating, encumbering, or in any manner assigning his or her interest or estate, either in principal or income, and is without power to do so. Such interest or estate shall not be subject to said beneficiary's liabilities or obligations nor to judgment or other legal process, bankruptcy proceedings or claims of creditors or others.

[16] Trust D, funded with a bequest of $100,000: "Income is to be accumulated until my oldest grandchild reaches the age of 18. At that time, the trustee shall pay to or for any of my grandchildren as much of the income as is necessary for the grandchild's college education, but in no event shall the trustee pay any benefits to any grandchild who has not attained the age of 18 and enrolled in college."

[17] In 1980, Frank and Elizabeth decided they ought to make some arrangements in the event of their death. Having acquired a healthy suspicion of lawyers from his parents, Frank insisted that they could draft their own wills. The couple typed two documents, labeled "Last Will and Testament of Frank Grant" and "Last Will and Testament of Elizabeth Grant." Each document purports to appoint Florence Grant as guardian of any minor children of Frank and Elizabeth. She is also named as "trustee" and each will states that all of the estate "which I own at my death is hereby given to my spouse, if she survives me, and if not, in trust for the care, education and support of my children until they are 25 years of age."

Estates and Trusts Final Examination
Statutory Appendix

Fall Semester 1991 *Professor Haddock*

For purposes of the Examination, you are to assume that the following statutes are in force in the jurisdictions indicated. Except as stated to the contrary in the statutes themselves, you are also to assume that these statutes were in force in the respective jurisdictions at all pertinent times. The applicable Texas statutes referred to and reproduced below are actual provisions of current Texas law; the statutes listed for Minnesota are taken primarily from the 1983 version of the Uniform Probate Code and are not necessarily the law of any particular state. Minnesota is not a "community property" state.

Except as modified by the statutes reproduced here, you are to assume that the general common law of estates and trusts, as studied in class, is in force in both Texas and Minnesota. (In fact, there is in the Texas Property Code a Texas Trust Code, containing numerous statutory provisions, some of which are codifications of the common law. Except for section 112.035 of the Texas Property Code, which is included in this Appendix, you need not be familiar with the Texas Trust Code or apply its provisions for purposes of this Examination.)

EXCERPTS FROM TEXAS PROBATE CODE

CHAPTER I. GENERAL PROVISIONS

Section 3. Definitions and Use of Terms

When used in this Code, unless otherwise apparent from the context:

. . .

(h) "Devise," when used as a noun, includes a testamentary disposition of real or personal property, or of both. When used as a verb, "devise" means to dispose of real or personal property, or of both, by will.

(i) "Devisee" includes legatee.

. . .

(s) "Legacy" includes any gift or devise by will, whether of personalty or realty. "Legatee" includes any person entitled to a legacy under a will.

. . .

(ff) "Will" includes codicil; it also includes a testamentary instrument which merely:

(1) appoints an executor or guardian;

(2) directs how property may not be disposed of; or

(3) revokes another will.

CHAPTER II. DESCENT AND DISTRIBUTION

Section 37. Passage of Title Upon Intestacy and Under a Will

When a person dies, leaving a lawful will, all of his estate devised or bequeathed by such will, and all powers of appointment granted in such will, shall vest immediately in the devisees or legatees of such estate and the donees of such powers; and all the estate of such person, not devised or bequeathed, shall vest immediately in his heirs at law; subject, however, to the payment of the debts of the testator or intestate, except as such is exempted by law, and subject to the payment of court-ordered child support payments that are delinquent on the date of the person's death; and whenever a person dies intestate, all of his estate shall vest immediately in his heirs at law, [subject to the aforestated exceptions] . . . .

Section 38. Persons Who Take Upon Intestacy

(a) Intestate Leaving No Husband or Wife. Where any person, having title to any estate, real, personal or mixed, shall die intestate, leaving no husband or wife, it shall descend and pass in parcenary to his kindered, male and female, in the following course:

1. To his children and their descendants.

2. If there be no children nor their descendants, then to his father and mother, in equal portions. But if only the father or mother survive the intestate, then his estate shall be divided into two equal portions, one of which shall pass to such survivor, and the other half shall pass to the brothers and sisters of the deceased, and to their descendants; but if there be none such, then the whole estate shall be inherited by the surviving father or mother.

3. If there be neither father nor mother, then the whole of such estate shall pass to the brothers and sisters of the intestate, and to their descendants.

4. [In the event none of the aforesaid kindred are alive, this paragraph provides for two moieties, which pass to paternal and maternal grandparents, respectively, and\or their descendants.]

(b) Intestate Leaving Husband or Wife. Where any person having title to any estate, real, personal or mixed, other than a community estate, shall die intestate as to such estate, and shall leave a surviving husband or wife, such estate os such intestate shall descend and pass as follows:

1. If the deceased have a child or children, or their descendants, the surviving husband or wife shall take one-third of the personal estate, and the balance of such personal estate shall go to the child or children of the deceased and their descendants. The surviving husband or wife shall also be entitled to an estate for life, in one-third of the land of the intestate, with remainder to the child or children of the intestate and their descendants.

2. If the deceased have no child or children, or their descendants, then the surviving

husband or wife shall be entitled to all the personal estate, and to one-half of the lands of the intestate, without remainder to any person, and the other half shall pass and be inherited according to the rules of descent and distribution; provided, however, that if the deceased has neither surviving father nor mother nor surviving brothers or sisters, or their descendants, then the surviving husband or wife shall be entitled to the whole of the estate of such intestate.

Section 43. Determination of Per Capita and Per Stirpes Distribution

When the intestate's children, descendants, brothers, sisters, uncles, aunts, or any other relatives of the deceased standing in the first or same degree alone come into the distribution upon intestacy, they shall take per capita, namely: by persons; and, when a part of them being dead and a part living, the descendants of those dead shall have right to distribution upon intestacy, such descendants shall inherit only such portion of said property as the parent through whom they inherit would be entitled to if alive.

Section 44. Advancement Brought Into Hotchpotch

Where any of the heirs of a person dying intestate shall have received from such intestate in his lifetime any real, personal or mixed estate by way of advancement, and shall choose to come into the partition and distribution of the estate with the other distributees, such advancement shall be brought into hotchpotch with the whole estate, and such party returning such advancement shall thereupon be entitled to his proper portion of the whole estate; provided that it shall be sufficient to account for the value of the property so brought into hotchpotch at the time it was advanced. Every gratutitous inter vivos transfer is deemed to be an absolute gift and not an advancement unless proved to be an advancement. . . .

Section 45. Community Estate

Upon the dissolution of the marriage relation by death, all property belonging to the community estate of the husband and wife shall go to the survivor, if there be no child or children of the deceased or their descendants; but if there be a child or children of the deceased, or descendants of such child or children, then the survivor shall be entitled to one-half of said property, and the other half shall pass to such child or children, or their descendants. But such descendants shall inherit only such portion of said property to which they would be entitled under Section 43 of this code. In every case, the community estate passes charged with the debts against it.

CHAPTER IV. EXECUTION AND REVOCATION OF WILLS

Section 57. Who May Execute a Will

Every person who has attained the age of eighteen years, or who is or has been lawfully married, or who is a member of the armed forces of the United States or of the auxiliaries thereof or of the maritime service at the time the will is made, being of sound mind, shall have the right and power to make a last will and testament, under the rules and limitations prescribed by law.

Section 58a. Devises or Bequests to Trustees

By a will duly executed pursuant to the provisions of this Code, a testator may devise or bequeath property to the trustee of any trust (including an unfunded life insurance trust, even though the trustor has reserved any or all rights of ownership in the insurance contracts) the terms of which are evidenced by a written instrument in existence before or concurrently with the execution of such will and which is identified in such will, even though such trust is subject to amendment, modification, revocation or termination. The property so devised or bequeathed shall be added to the corpus of such trust to be administered as a part thereof and shall thereafter be governed by the terms and provisions of the instrument establishing such trust, including written amendments or modifications thereto made before the death of the testator. An entire revocation of the trust prior to the testator's death shall cause the devise or bequest to lapse.

Section 59. Requisites of a Will

(a) Every last will and testament, except where otherwise provided by law, shall be in writing and signed by the testator in person or by another person for him by his direction and in his presence, and shall, if not wholly in the handwriting of the testator, be attested by two or more credible witnesses above the age of fourteen years who shall subscribe their names thereto in their own handwriting in the presence of the testator. [In the remainder of paragraph (a) and paragraph (b), the statute permits and sets forth the procedure for "self-proved" wills.]

(c) A self-proved will may be admitted to probate without the testimony of any subscribing witness, but otherwise it shall be treated no differently than a will not self-proved. In particular and without limiting the generality of the foregoing, a self-proved will may be contested, or revoked or amended by a codicil in exactly the same fashion as a will not self-proved.

Section 59A. Contracts Concerning Succession

(a) A contract to make a will or devise, or not to revoke a will or devise, if executed or entered into on or after September 1, 1979, can be established only by provisions of a will stating that a contract does exist and stating the material provisions of the contract.

(b) The execution of a joint will or reciprocal wills does not by itself suffice as evidence of the existence of a contract.

Section 60. Exception Pertaining to Holographic Wills

Where the will is written wholly in the handwriting of the testator, the attestation of the subscribing witnesses may be dispensed with. Such a will may be made self-proved at any time during the testator's lifetime by the attachment or annexation thereto of an affidavit by the testator to the effect that the instrument is his last will; that he was at least eighteen years of age when he executed it (or, if under such age, was or had been lawfully married, or was then a member of the armed forces of the United States or of an auxiliary thereof or of the Maritime Service); that he was of sound mind; and that he has not revoked such instrument.

Section 61. Bequest to Witness

Should any person be a subscribing witness to a will, and also be a legatee or devisee therein, if the will cannot be otherwise established, such bequest shall be void, and such witness shall be allowed and compelled to appear and give his testimony in like manner as if no such bequest had been made. But, if in such case the witness would have been entitled to a share of the estate of the testator had there been no will, he shall be entitled to as much of such share as shall not exceed the value of the bequest to him in the will.

Section 63. Revocation of Wills

No will in writing, and no clause thereof or devise therein, shall be revoked, except by a subsequent will, codicil, or declaration in writing, executed with like formalities, or by the testator destroying or canceling the same, or causing it to be done in his presence.

Section 67. Pretermitted Child

(a) Whenever a pretermitted child of a testator, as herein defined, is neither provided for nor in any way mentioned in the testator's will, the pretermitted child shall succeed to

a portion of the testator's estate as herein provided:

(1) If the testator has one or more children living when he executes his last will, and:

(A) No provision is made therein for any such child, a pretermitted child succeeds to the portion of the testator's separate and community estate to which the pretermitted child would have been entitled pursuant to Section 38(a) of this code had the testator died intestate without a surviving spouse owning only that portion of his estate not devised or bequeathed to the parent of the pretermitted child.

(B) Provision is made therein for one or more of such children, a pretermitted child is entitled to share in the testator's estate as follows:

(i) The portion of the testator's estate to which the pretermitted child is entitled ;is limited to the disposition made to children under the will.

(ii) The pretermitted child shall receive such share of the testator's estate, as limited in Subparagraph (i), as he would have received had the testator included all pretermitted children with the children upon whom benefits were conferred under the will, and given an equal share of such benefits to such child.

(iii) To the extent that it is feasible, the interest of the pretermitted child in the testator's estate shall be of the same character, whether an equitable or legal life estate or in fee, as the interest that the testator conferred upon his children under the will.

(2) If the testator has no child living when he executes his last will, the pretermitted child succeeds to the portion of the testator's separate and community estate to which the pretermitted child would have been entitled pursuant to Section 38(a) of this code had the testator died intestate without a surviving spouse owning only that portion of his estate not devised or bequeathed to the parent of the pretermitted child.

(b) The pretermitted child may recover the share of the testator's estate to which he is entitled either from the other children under Subsection (a)(1)(B) or the testamentary beneficiaries under Subsections (a)(1)(A) and (a)(2) other than the parent of the pretermitted child, ratably, out of the portions of such estate passing to such persons under the will. In abating the interests of such beneficiaries, the character of the testamentary plan adopted by the testator shall be preserved to the maximum extent possible.

(c) A "pretermitted child," as used in this section, means a child of a testator who, during the lifetime of the testator, or after his death, is born or adopted after the execution of the will of the testator.

Section 68. Prior Death of Legatee

(a) If a devisee who is a descendant of the testator or a descendant of a testator's parent is deceased at the time of the execution of the will, fails to survive the testator, or is treated as if the devisee predeceased the testator by Section 47 of this code [Simultaneous Death Act] or otherwise, the descendants of the devisee who survived the testator take the devised property in place of the devisee. The property shall be divided into as many shares as there are surviving descendants in the same degree of kinship or surviving descendants of deceased persons in the same degree as the testator, with each surviving descendant in

the nearest degree receiving one share and the share of each deceased person in the same degree divided among his descendants in the same manner. For purposes of this section, a person who would have been a devisee under a class gift if the person had survived the testator is treated as a devisee.

(b) Except as provided by Subsection (a) of this section, if a devise or bequest, other than a residuary devise or bequest, fails for any reason, the devise or bequest becomes a part of the residuary estate.

(c) Except as provided by Subsection (a) of this section, if the residuary estate is devised to two or more persons and the share of one of the residuary devisees fails for any reason, the residuary devisee's share passes to the other residuary devisees, in proportion to the residuary devisee's interest in the residuary estate.

. . .

(e) This section applies unless the testator's last will and testament provides otherwise.

Section 69. Voidness Arising From Divorce

(a) If the testator is divorced after making a will, all provisions in the will in favor of the testator's spouse so divorced, or appointing such spouse to any fiduciary capacity under the will or with respect to the estate or person of the testator's children, shall be null and void and of no effect.

(b) A person who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, the person is married to the decedent at the time of death.

CHAPTER V. PROBATE, GRANT OF ADMINISTRATION, AND GUARDIANSHIP

PART 2. PROCEDURE PERTAINING TO FOREIGN WILLS

Section 95. Probate of Foreign Will Accomplished by Filing and Recording

. . .

(e) Effect of Foreign Will on Local Property. If a foreign will has been admitted to probate or established in the jurisdiction in which the testator was domiciled at the time of his death, such will, when probated as herein provided, shall be effectual to dispose of both real and personal property in this State irrespective of whether such will was executed with the formalities required by this Code.

EXCERPTS FROM TEXAS PROPERTY CODE

Section 5.003. Partial Conveyance

. . .

(b) Neither the alienation by deed or will of an estate on which a remainder depends nor the union of the estate with an inheritance by purchase or descent affects the remainder.

Section 5.042. Abolition of Common-Law Rules

(a) The common-law rules known as the rule in Shelley's case, the rule forbidding a remainder to the grantor's heirs, and the doctrine of worthier title do not apply in this state.

(b) A deed, will, or other conveyance of property in this state that limits an interest in the property to a particular person or to a class such as the heirs, heirs of the body, issue, or next of kin of the conveyor or of a person to whom a particular interest in the same property is limited is effective according to the intent of the conveyor.

(c) Status as an heir or next of kin of a conveyor or the failure of a conevyor to describe a person in a conveyance other than as a member of a class does not affect a person's right to take or share in an interest as a conveyee.

(d) Subject to the intention of a conveyor, which controls unless limited by law, the membership of a class described in this section and the participation of a member in a property interest conveyed to the class are determined under this state's laws of descent and distribution.

(e) This section does not apply to a conveyance taking effect before January 1, 1964.

Section 5.043. Reformation of Interests Violating Rule Against Perpetuities

(a) Within the limits of the rule against perpetuities, a court shall reform or construe an interest in real or personal property that violates the rule to effect the ascertainable general intent of the creator of the interest. A court shall liberally construe and apply this provision to validate an interest to the fullest extent consistent with the creator's intent.

(b) The court may reform or construe an interest under Subsection (a) of this section according to the doctrine of cy pres.

(c) If an instrument that violates the rule against perpetuities may be reformed or construed under this section, a court shall enforce the provisions of the instrument that do not violate the rule and shall reform or construe under this section a provision that violates or might violate the rule.

(d) This section applies to legal and equitable interests conveyed by an inter vivos instrument or a will that takes effect on or after September 1, 1969, and this section applies to an appointment made on or after that date regardless of when the power was created.

Section 112.035. Spendthrift Trusts

(a) A settlor may provide in the terms of the trust that the interest of a beneficiary in the income or in the principal or in both may not be voluntarily or involuntarily transferred before payment or delivery of the interest to the beneficiary by the trustee.

. . .

(d) If the settlor is also a beneficiary of the trust, a provision restraining the voluntary or involuntary transfer of his beneficial interest does not prevent his creditors from satisfying claims from his interest in the trust estate.

EXCERPTS FROM THE PROBATE CODE OF MINNESOTA

Article I
GENERAL PROVISIONS, DEFINITIONS AND PROBATE JURISDICTION OF COURT

Part 2
DEFINITIONS

Section 1-201. General Definitions

. . .

(9) "Descendant" of an individual means all of his or her descendants of all generations . . . .

(10) "Devise," when used as a noun, means a testamentary disposition of real or personal property and, when used as a verb, means to dispose of real or personal property by will.

(11) "Devisee" means a person designated in a will to receive a devise. In the case of a devise to an existing trust or trustee, or to a trustee on trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

. . .

(53) "Trust" includes an express trust, private or charitable, with additions thereto, wherever and however created. The term also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. The term excludes other constructive trusts and excludes resulting trusts, conservatorships, personal representatives, trust accounts as defined in Article VI, . . . and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind . . . .

. . .

(56) "Will" includes codicil and any testamentary instrument that merely appoints an executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession.

Article II
INTESTACY, WILLS, AND DONATIVE TRANSFERS

Part 1
INTESTATE SUCCESSION

Section 2-101. Intestate Estate.

(a) Any part of a decedent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs as prescribed in this Code, except as modified by the decedent's will.

(b) A decedent by will may expressly exclude or limit the right of an individual or class to succeed to property of the decedent passing by intestate succession. If that individual or a member of that class survives the decedent, the share of the decedent's intestate estate to which that individual or class would have succeeded passes as if that individual or each member of that class had disclaimed his or her intestate share.

Section 2-102. Share of the Spouse.

but the decedent is survived by a parent

The intestate share of the surviving spouse is:

(1) if there is no surviving issue or parent of the decedent, the entire intestate estate;

(2) if there is no surviving issue ~~all of whom are issue of the surviving spouse also~~, the first $50,000, plus one-half of the balance of the intestate estate;

(3) if there are surviving issue all of whom are issue of the surviving spouse also, the $50,000, plus one-half of the balance of the intestate estate;

(4) if there are surviving issue one or more of whom are not issue of the surviving spouse, one-half of the intestate estate.

Section 2-103. Shares of Heirs Other Than Surviving Spouse.

The part of the intestate estate not passing to the surviving spouse under Section 2-102, or the entire intestate estate if there is no surviving spouse, passes as follows:

(1) to the issue of the decedent; if they are all of the same degree of kinship to the decedent they take equally, but if of unequal degree, then those of more remote degree take by representation;

(2) if there is no surviving issue, to his parent or parents equally;

(3) if there is no surviving issue or parent, to the issue of the parents or either of them by representation;

(4) if there is no surviving issue, parent of issue of a parent, but the decedent is survived by one or more grandparents or issue of grandparents, half of the estate passes to the paternal grandparents if both survive, or to the surviving paternal grandparent, or to the

issue of the paternal grandparents if both are deceased, the issue taking equally if they are all of the same degree of kinship to the decedent, but if of unequal degree those of more remote degree take by representation; and the other half passes to the maternal relatives in the same manner; but if there by be no surviving grand-parent or issue of grandparent on either the paternal or the maternal side, the entire estate passes to the relatives on the other side of the same manner as the half.

Section 2-104. Requirement That Heir Survive Decedent For 120 Hours.

Any person who fails to survive the decedent by 120 hours is deemed to have predeceased the decedent for purposes of homestead allowance, exempt property and intestate succession, and the decedent's heirs are determined accordingly. If the time of death of the decedent or of the person who would otherwise be an heir, or the times of death of both, cannot be determined, and it cannot be established that the person who would otherwise be an heir has survived the decedent by 120 hours, it is deemed that the person failed to survive for the required period. This section is not to be applies where its application would result in a taking of intestate estate by the state under Section 2-105.

Section 2-105. No Taker.

If there is no taker under the provisions of this Article, the intestate estate passes to the state.

Section 2-106. Representation.

If representation is called for by this Code, the estate is divided into as many shares as there are surviving heirs in the nearest degree of kinship and deceased persons in the same degree who left issue who survive the decedent, each surviving heir in the nearest degree receiving one share and the share of each deceased person in the same degree being divided among his issue in the same manner.

Section 2-110. Advancements.

If a person dies intestate as to all his estate, property which he gave in his lifetime to an heir is treated as a n advancement against the latter's share of the state only if declared in a contemporaneous writing by the decedent or acknowledged in writing by the heir to be an advancement. For this purpose the property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of death of the decedent, whichever first occurs. If the recipient of the property fails t survive the decedent,

the property is to taken into account in computing the intestate share to be received by the recipient's issue, unless the declaration or acknowledgement provided otherwise.

PART 3
SPOUSE AND CHILDREN UNPROVIDED FOR IN WILLS

Section 2-301. Omitted Spouse.

(a) If a testator fails to provide by will for his surviving spouse who married the testator after the execution of the will, the omitted spouse shall receive the same share of the estate he would have received if the decedent left no will unless it appears from the will that the omission was intentional or the testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.

(b) In satisfying a share provided by this section, the devises made by the will abate as provided in Section 3-902.

Section 2-302. Pretermitted Children.

(a) If a testator fails to provide in his will for nay of his children born or adopted after the execution of his will, the omitted child receives a share in the estate equal in value to that which he would have received if the testator had died intestate unless:

(1) it appears from the will that the omission was intentional;

(2) when the will was executed the testator had one or more children and devised substantially all his estate to the other parent of the omitted child; or

(3) the testator provided for the child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.

(b) If at the time of execution of the will the testator fails to provide in his will for a living child solely because he believes the child to be dead, the child receives a share in the estate equal in value to that which he would have received if the testator had died intestate.

(c) In satisfying a share provided by this section, the devises made by the will abate as provided in Section 3-902.

PART 5

WILLS

Section 2-502. Execution; Witnessed Wills; Holographic Wills.

(a) Except as provided in subsection (b) and in Sections 2-503, 2-506, and 2-513, a will must be

(1) in writing;

(2) signed by the testator or in the testator's name by some other person in the testator's conscious presence and by the testator's direction; and

(3) signed by at least two individuals, each of whom signed within a reasonable time after he or she witnessed either the signing of the will as described in paragraph (2) or the testator's acknowledgment of that signature or acknowledgment of the will.

(b) A will that does not comply with subsection (a) is valid as a holographic will, whether or not witnessed, if the signature and material portions are in the handwriting of the testator.

(c) Intent that the document constitute the testator's will can be established by extrinsic evidence, including, for holographic wills, portions of the document that are not in the testator's handwriting.

Section 2-503. Writings Intended as Wills, Etc.

Although a document or writing added upon a document was not executed in compliance with Section 2-502, the document or writing is treated as if it had been executed in compliance with that section if the proponent of the document or writing establishes by clear and convincing evidence that the decedent intended the document or writing to constitute (i) the decedent's will, (ii) a partial or complete revocation of the will, (iii) an addition to or an alteration of the will, or (iv) a partial or complete revival of his or her formerly revoked will or of a formerly revoked portion of the will.

Section 2-505. Who May Witness.

(a) Any person generally competent to be witness may act as a witness to a will.

(b) A will or nay provision thereof is not invalid because that will is signed by an interested witness.

Section 2-506. Choice of Law as to Execution.

A written will is valid if executed in compliance with Section 2-502 or 2-503 or if its execution complies with the law at the time of execution of the place where the will is executed, or of the law of the place where at the time of execution or at the time of death the testator is domiciled, has a place of abode or is a national.

Section 2-507. Revocation by Writing or by Act.

A will or any part thereof is revoked

(1) by a subsequent will which revokes the prior will or part expressly or by inconsistency; or

(2) by being burned, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking it by the testator or by another person in his presence and by his direction.

Section 2-508. Revocation by Divorce; No Revocation by Other Changes of Circumstances.

If after executing a will the testator is divorced or his marriage annulled, the divorce or his marriage annulled, the divorce or annulment revokes any disposition or appointment of property made by the will to the former spouse, any provision conferring a general or special power of appointment on the former spouse, and any nomination of the former spouse as executor, trustee, conservator, or guardian, unless the will expressly provides otherwise. Property prevented from passing to a former spouse because of revocation by divorce or annulment passes as if the former spouse failed to survive the decedent, and other provisions conferring some power or office on the former spouse are interpreted as if the spouse failed to survive the decedent. If provisions are revoked solely by this section, they are revived by testator's remarriage to the former spouse. For purposes of this section, divorce or annulment means any divorce or annulment which would exclude the spouse as a surviving spouse within the meaning of Section 2-902(b). A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section. No change of circumstances other than as described in this section revokes a will.

Section 2-509. Revival of Revoked Will.

(a) If a second will which, had it remained effective at death, would have revoked the first will in whole or in part, is thereafter revoked by acts under Section 2-507, the first will is revoked in whole or in part unless it is evident from circumstances of the revocation of the second will or from testator's contemporary or subsequent declarations that he intended the first will to take effect as executed.

(b) If a second will which, had it remained effective at death, would have revoked the first will in whole or in part, is thereafter revoked by a third will, the first will is revoked in whole or in part, except to the extent it appears from the terms of the third will that the testator intended the first will to take effect.

Section 2-510. Incorporation by Reference.

Any writing in existence when a will is executed my be incorporated by reference if the language of the will manifests this intent and describes the writings sufficiently to permit its identification.

Section 2-511. Testamentary Additions to Trusts.

A devise or bequest, the validity of which is determinable by the law of this state, may be made by a will to the trustee of a trust established or to be established by the testator or by the testator and some other person or by some other person (including a funded or unfunded life insurance trust, although the trustor has reserved any or all rights of ownership of the insurance contracts if the trust is identified in the testator's will and its terms are set forth in a written instrument (other than a will) executed before or concurrently with the execution of the testator's will or in the valid last will of a person who has predeceased the testator (regardless of the existence, size, character of the corpus of the trust). The devise is not invalid because the trust is amendable or revocable, or because the trust was amended after the execution of the will or after the death of the testator. Unless the testator's will provides otherwise, the property so devised (1) is not deemed to be held under a testamentary trust of the testator but becomes a part of the trust to which it is given and (2) shall be administered and disposed of in accordance with the provisions of the instrument or will setting forth the terms of trust, including any amendments thereto made before the death of the testator (regardless of whether made before or after the execution of the testator's will), and, if the testator's will so provides, including any amendments to the trust made after the death of the testator. A revocation or termination of the trust before the death of the testator causes the devise to lapse.

Section 2-512. Events of Independent Significance.

A will may dispose of property by reference to acts and events which have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death. The executioner revocation of a will of another person is such an event.

Section 2-513. Separate Writing Identifying Bequest of Tangible Property.

Whether or not the provisions relating to holographic wills apply, a will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money, evidences of indebtedness, documents of title, and securities, and property used in trade or business. To be admissible under this section as evidence of the intended disposition, the writing must either be in the handwriting of the testator or be signed by him and must describe the items and the devisee with reasonable certainty. The writing may be referred to as one to be in existence at the time of the testator's death; it may be prepared before or after the execution of the will; it may be altered by the testator after its preparation; and it may be a writing which has no significance apart from its effect upon the dispositions made by the will.

PART 6
RULES OF CONSTRUCTION

Section 2-601. Requirement That Devisee Survive Testator by 120 Hours.

A devisee who does not survive the testator by 120 hours is tested as if he predeceased the testator, unless the will of decedent contains some language dealing explicitly with simultaneous deaths or deaths in a common disaster, or requiring that the devisee survive the testator or survive the testator for a stated period in order to take under the will.

Section 2-602. Choice of Law as to Meaning and Effect of Wills.

The meaning and legal effect of a disposition in a will shall be determined by the local law of a particular state selected by the testator in his instrument unless the application of that law is contrary to the provisions relating to the elective share described in Part 2 of this Article, the provisions relating to exempt property and allowances described in Part 4 of this Article, or any other public policy of the State otherwise applicable to the disposition.

Section 2-603. Rules of Construction and Intention.

The intention of a testator as expressed in his will controls the legal effect of his dispositions. The rules of construction expressed in the succeeding sections of this Part apply unless a contrary intention is indicated by the will.

Section 2-605. Construction That Will Pass All Property; After-Acquired Property.

A will is construed to pass all property which the testator owns at his death including property acquired after the execution of the will.

Section 2-605. Anti-lapse; Deceased Devisee; Class Gifts.

If a devisee who is a grandparent or a lineal descendent of a grandparent of the testator is dead at the time of execution of the will, fails to survive the testator, or is treated as if he predeceased the testator, the issue of the deceased devisee who survive the testator by 120 hours take in place of the deceased devisee and if they are all of the same degree of kinship to the devisee they take equally, but if of unequal degree than those of more remote degree take by representation. One who would have been a devisee under a class gift if he had survived the testator is treated as a devisee for purposes of this section whether his death occurred before or after the execution of the will.

Section 2-606. Failure of Testamentary Provision.

(a) Except as provided in Section 2-605 if a devise other than a residuary devise fails for any reason, it becomes a part of the residue.

(b) Except as provided in Section 2-605 if the residue is devised to two or more persons and the share of one of the residuary devisee fails for any reason, his share passes to the other residuary devisee, or to other residuary devisee in proportion to their interests in the residue.

Section 2-607. Change in Securities; Accessions; Non-ademption.

(a) If the testator intended a specific devise of certain securities rather than the equivalent value thereof, the specific devisee is entitled only to:

(1) as much of the devised securities as is a part of the estate at time of the testator's death;

(2) any additional or other securities of the same entity owned by the testator by reason of action initiated by the entity excluding any acquired by exercise of purchase options;

(3) securities of another entity owned by the testator as a result of a merger, consolidation, reorganization or other similar action initiated by the entity; and

(4) any additional securities of the entity owned by the testator as a result of a plan of reinvestment.

(b) Distributions prior to death with respect to a specifically devised security not provided for in subsection (a) are not part of the specific devise.

Section 2-609. Non-Exoneration.

A specific devise passes subject to any mortgage interest existing at the date of death, without right of exoneration, regardless of a general directive in the will to pay debts.

Section 2-610. Exercise of Power of Appointment.

A general residuary clause in a will, or a will making general disposition of all the testator's property, does not exercise a power of appointment held by the testator unless specific reference is made to the power or there is some other indication of intention to include the property subject to the power.

Section 2-612. Ademption by Satisfaction.

Property which a testator gave in his lifetime to a person is treated as a satisfaction of a devise to that person in whole or in part, only if the will provides for deduction of the lifetime gift, or the testator declares in a contemporaneous writing that the gift is to be deducted from the devise or is in satisfaction of the devise, or the devisee acknowledges in writing that the gift is in satisfaction. For purpose of partial satisfaction, property given during lifetime is value as of the time the devisee came into possession or enjoyment of the property or as of the time of death of the testator, whichever occurs first.

PART 7
CONTRACTUAL ARRANGEMENTS RELATING TO DEATH

Section 2-701. Contracts Concerning Secession.

A contract to make a will or devise, or not to revoke a will or devise, or to die intestate, if executed after the effective date of this Act, can be established only by (1) provisions f a will stating material provisions of the contract; (2) an express reference in a will to a contract and extrinsic evidence proving the terms of the contract; or (3) a writing signed by the decedent evidencing the contract. The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills.

PART 8
GENERAL PROVISIONS

Section 2-801. Renunciation of Succession.

(a) A person or the representative of an incapacitated or protected person, who is an heir, devisee, person succeeding to a renounced interest, beneficiary under a testamentary instrument, or appointee under a power of appointment exercised by a testamentary instrument, may renounce in whole or in part the right of succession to any property or interest therein, including a future interest, by filing a written renunciation under this Section. The right to recant does not survive the death of the person having it. The instrument shall (1) describe the property f interest renounced, (2) declare the renunciation and extent thereof, and (3) be signed by the person renouncing.

(b)(1) An instrument renouncing a present interest shall be filed not later than 9 months after the death of the decedent or the donee of the power.

(2) An instrument renouncing a future interest may be filed not later than 9 months after the event determining that the taker of the property or interest is finally ascertained and his interest is indefeasibly vested.

. . .

(c) Unless the decedent or donee of the power has otherwise provided, the property or interest renounced devolves as though the person renouncing had predeceased the decedent or, if the person renouncing is designated to take under a power of appointment exercised by a testamentary instrument, as though the person renouncing had predeceased the donee of the power. A future interest that takes effect in possession or enjoyment after the termination of the estate or interest renounced takes effect as though the person renouncing had predeceased the decedent or the donee of the power. A renunciation relates back for all purposes to the date of the death of the decedent or the donee of the power.

. . .

Section 2-802. Effect of Divorce, Annulment, and Decree of Separation.

(a) A person who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, he is married to the decedent at the time of death. A decree of separation which does not terminated the status of husband and wife is not a divorce for purposes of this section.

(b) For purposes of Parts 1, 2, 3 & 4 of this Article, and of Section 3-203, a surviving spouse does not include:

(1) a person who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgement is not recognized as valid in this state, unless they subsequently participate in a marriage ceremony purporting to marry each to the other, or subsequently live together as man and wife.

(2) a person who, following a decree or judgement of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a third person; or

(3) a person who was party to a valid proceeding concluded by an other purporting to terminate all martial property rights.

ARTICLE VI
PART 2
PROVISIONS RELATING TO EFFECT OF DEATH

Section 6.201. Provisions for Payment or Transfer at Death.

(a) Any of the following provisions in an insurance policy, contract of employment, bond, mortgage, promissory note, deposit agreement, pension plan, trust agreement, conveyance or any other written instrument effective as a contract, gift, conveyance or nay other written instrument effective as contract, gift, conveyance, or trust is deemed to be nontestamentary, and this Code does not invalidate the instrument or any provision:

(1) that money or other benefits theretofore due to, controlled or owned by a decedent shall be paid after his death to a person designed by the decedent in either the instrument or a separate writing, including a will, executed at the same time as the instrument or subsequently;

(2) that any money due or to become due under the instrument shall cease to be payable in event of the death of the promise or the promissor before payment or demand; or

(3) that any property which is the subject of the instrument shall pass to a person designated by the decedent in either the instrument or a separate writing, including a will, executed at the same time as instrument or subsequently.

(b) Nothing in this section limits the rights of creditors under other laws of this date.