

Fall 2006 Newsletter

Message from the Chair

E. Gary Spitko (Santa Clara University)

I am looking forward to seeing many of you at the AALS Annual Meeting in Washington, D.C. in January. Our Section's panel discussion is scheduled for Friday, January 5 at 1:30 p.m. **Tom Gallanis (Washington & Lee)** has put together this year's program (on "New Perspectives on the Law of Trusts"), which he describes below. In addition, the Section will conduct a business meeting immediately following the panel discussion. If you would like to raise an issue for discussion concerning our Section's programs or activities, please come to the business meeting, or feel free to contact any of the Section Executive Committee members. Our email addresses: Gary Spitko - gspitko@scu.edu, Tom Gallanis - gallanist@wlu.edu, Ray Madoff - madoffr@bc.edu, Robert Sitkoff - robert.sitkoff@nyu.edu, and Ron Chester - rchester@faculty.nesl.edu.

The Section's program at the AALS Annual Meeting is a prominent way in which the Section supports scholarship in the donative transfers field. The Section also has a mentoring program to assist relatively new professors with their scholarship and teaching. Mentors are available to review drafts of scholarship and to answer questions that are likely to come up as one is preparing a new course. **Wendy Gerzog (Baltimore)** has administered the program since 1999. She reports that, in that time, more than twenty new teachers have taken advantage of the program and that many of the "mentees" have reported back to her that their mentors have been incredibly helpful and generous with their time. I found the program to be of great use to me when I began teaching, and I urge all new professors in the Section to take advantage of the program. Finally, our Section also maintains an email listserv for members of the Section. To subscribe, visit http://lists.washlaw.edu/mailman/listinfo/donative_transfers/. (And while on line subscribing to the listserv, check out the Wills, Trusts, and Estates Blog, http://lawprofessors.typepad.com/trusts_estates_prof/, which **Gerry Beyer (Texas Tech)** maintains as part of the Law Professors Blog Network.)

Another organization that strongly supports our scholarship is the American College of Trust and Estate Counsel Foundation. The ACTEC Foundation, which is the grant-making foundation arm of the American College of Trusts and Estate Counsel, welcomes proposals for grants to support scholarship and teaching in trusts and estates. Further information,

including application criteria and deadlines, is available on the Foundation's webpage, <http://www.actecfoundation.org>. Also, the ACTEC Foundation sponsors the SSRN journal "Wills, Trusts, & Estates Law Abstracts" edited by **Robert Sitkoff (NYU)** (see <http://hq.ssrn.com/jourInvite.cfm?link=wills-trusts-estates>). The Wills, Trusts, & Estates Law Abstracts "welcomes abstracts of working papers, forthcoming articles, and recently published articles dealing with issues concerning wills, trusts, and estates (including cognate fiduciary and tax subjects)."

Message from the Program Chair Tom Gallanis (Washington & Lee)

Everyone is warmly encouraged to attend the Section's panel discussion at the AALS Annual Meeting. The discussion is scheduled for **Friday, January 5, 2007, from 1:30 pm to 3:15 pm**. The topic is "**New Perspectives on the Law of Trusts**."

The aim of the panel is to encourage interdisciplinary work in our field by showing what we can learn about the law of trusts from different interdisciplinary perspectives. The panelists are:

- Gregory Alexander (Cornell), on legal history;
- Tanya Hernandez (Rutgers-Newark), on critical race theory;
- Jeffrey Schoenblum (Vanderbilt), on comparative/transnational perspectives; and
- Robert Sitkoff (NYU), on law and economics.

Each panelist will highlight a few of the insights from that interdisciplinary perspective and offer advice for other T&E scholars who might be interested in working from that perspective but have not yet done so. There will be ample opportunities for Q&A, so please come join the discussion.

Members' News

Martin Begleiter (Drake) reports that he has joined the seventh edition of "Decedents' Estates and Trusts" with **Eugene Scoles (Illinois/Oregon)**, **Edward Halbach (Berkeley)**, and **Patricia Gilchrist Roberts (Wake Forest)**. In addition, **Jeff Kahn (Penn State)**, **Dick Kaplan (Illinois)**, and **Wendy Gerzog (Baltimore)** recently spoke at a panel discussion on "Looking a 'Gift' Horse in the Mouth: When a 'Gift' Is Not a Gift" moderated by Begleiter at the Joint meeting of the ABA Sections on Real Property, Probate, and Trusts, and on Taxation.

Gerry Beyer (Texas Tech) published *Wills, Trusts, and Estates for Legal Assistants* (Aspen 2d ed. 2006) (co-authored with John C. Hanft) and *Fundamentals of Multiple-Party Accounts* (Estate Planning Studies, July 2006). Beyer also received a Certificate of Appreciation "for dedication of meritorious service to the community" from Legal Aid of

NorthWest Texas (Feb. 17, 2006) and won the Outstanding Professor Award from the Sam Rayburn Chapter (Texas Tech University) of Phi Alpha Delta.

Ira Bloom (Albany) reports that his 300 page chapter, *The Marital Deduction*, was published in his two volume co-authored work, *Klipstein and Bloom, Drafting New York Wills* (LexisNexis).

Paul Caron (Cincinnati) organized and moderated “Bloggership: How Blogs Are Transforming Legal Scholarship” at Harvard Law School. Caron also published *The Long Tail of Legal Scholarship*, 116 *Yale L.J. Pocket Part* 38 (2006); *Dead Poets and Academic Progenitors: The Next Generation of Law School Rankings*, 81 *Ind. L.J.* 1 (2006) (with **Rafael Gely (Cincinnati)**); *The Role of SSRN in Measuring Scholarly Performance and Impact*, 81 *Ind. L.J.* 83 (2006) (with **Bernard S. Black (Texas)**); *Teaching with Technology in the 21st Century Law School Classroom*, in *The Future of Law Libraries* (Thomson-West 2006); and *The Top 10 Tax Stories of 2005*, 110 *Tax Notes* 169 (2006).

Tom Gallanis (Washington and Lee, visiting at UNC-Chapel Hill) reports that **Larry Waggoner (Michigan)**, **Greg Alexander (Cornell)**, **Mary Lou Fellows (Minnesota)**, and he have published the fourth edition of their casebook, “*Family Property Law: Cases and Materials on Wills, Trusts, and Future Interests*” (Foundation 2006), along with teacher’s manual. Gallanis is publishing “*The Trustee’s Duty to Inform*” in 85 *N.C. L. Rev.* ___ (forthcoming 2007).

Susan Gary (Oregon) has been asked to join the Board of Advisors of the National Center on Philanthropy and the Law and is a member of the Executive Committee of the newly formed AALS Section on Nonprofit Law and Philanthropy. She will present a paper on donor intent as part of a panel titled “*Charitable Donors and the Legal Construction and Enforcement of Donor Intent*” at the 2006 Conference of the Association for Research on Nonprofit Organizations and Voluntary Actions.

Wendy Gerzog (Baltimore) reports that she has published *Buder: The Extent of Equitable Recoupment*, 110 *Tax Notes* 1361 (Mar. 20, 2006); *The Collision Between CRTs and The UPC Elective Share*, 111 *Tax Notes* 583 (May 1, 2006); *Focardi: Cook-ed not Schott*, 111 *Tax Notes* 1057 (May 29, 2006); *Conservation Easements Under Turner and Glass*, 112 *Tax Notes* 179 (July 10, 2006); and *Amlie Feud*, 112 *Tax Notes* 877 (Sep. 4, 2006).

Ray Madoff (Boston College) reports that *CCH* should be coming out any day now with the 2007 *Practical Guide to Estate Planning*, for which Madoff is the lead author with **Cornelia Tenney** and **Martin Hall**. Madoff has also received a contract from Yale University Press for her new book, “*Immortality and the Law: The Rising Power of the American Dead.*”

Philip Manns has joined the faculty of the **Liberty University School of Law** in Lynchburg, VA, following 15 years on the faculty at **California Western School of Law** in San Diego. He will continue to teach *Estate and Gift Tax*, *Trusts and Estates*, and *Estate Planning*.

Paula Monopoli (Maryland, visiting GW) spoke about “Nonmarital Children and Inheritance: Establishing the Parent-Child Relationship in an Era of Readily Available Genetic Testing” at a panel on “New Research in Trusts and Estates” organized by **Tom Gallanis** at the Southeastern Association of Law Schools (SEALS) conference in Palm Beach, Florida this past July. Monopoli’s commentary, “Gender and Constitutional Design,” was just published in 115 Yale L.J. 2643 (2006).

Mary Radford (Georgia State) gave a presentation in September at the ACTEC Rocky Mountain Regional Meeting in Santa Fe on “Recognizing and Representing Clients with Diminishing Capacity.” Radford currently serves as a member of the Executive Committee of the Board of Regents of ACTEC and has been elected to the Board of Directors of the ACTEC Foundation. In addition, Radford will be a visiting professor in the Spring and Fall semesters of 2007 at the new **Phoenix School of Law**. In the meantime, Radford is the reporter for the Trust Code Revision Committee of the Fiduciary Law Section of the State Bar of Georgia.

Gail Levin Richmond (Nova Southeastern) reports that Carolina Academic Press is publishing Florida Wills, Trusts, and Estates, a casebook authored by her and four of her Nova Southeastern colleagues: **Donna Litman, Elena Marty-Nelson, Jani Maurer, and Eloisa Rodriguez-Dod**. The book should be ready for spring classes. Richmond also serves as Associate Dean for Academic Affairs.

Laura Rosenbury (Washington University) published “Two Ways to End a Marriage: Divorce or Death,” 2005 Utah L. Rev. 1227.

Randy Roth (Hawaii) published a book, “Broken Trust,” about the Bishop estate fiasco (co-authored with Samuel P. King). Background information and major sources can be found at www.brokentrustbook.com. Complimentary copies are available for T&E professors, if you are interested email Randy at rroth@hawaii.edu.

Max Schanzenbach (Northwestern) was promoted to Professor of Law. He and **Robert Sitkoff (NYU)** are publishing their latest empirical study, “Did Reform of Prudent Trust Investment Laws Change Trust Portfolio Allocation?,” in 27 J.L. & Econ. (forthcoming 2007).

Gary Spitko (Santa Clara) reports that **Patricia A. Cain (Iowa)** and he have published “Wills, Trusts, and Estates: Exam Pro” (Thomson West).

Mentors Available, Mentors Wanted Wendy Gerzog (University of Baltimore)

Mentors are available to help with questions about teaching and scholarship. If you are interested in being matched with a mentor, or if you are an experienced professor who is willing to mentor, please e-mail Professor Gerzog (wgerzog@ubalt.edu) with your name,

email address, and the area(s) in which you would like a mentor or are available to be a mentor (e.g., wills, trusts, and estates, estate and gift tax, estate planning, etc.).

**Status Report:
ALI and NCCUSL Projects of Note***

Restatement (Third) of Property (Wills and Other Donative Transfers), Larry Waggoner (Michigan): Progress continues on the Restatement (Third) of Property. The third volume, which should be published in 2007, will cover class gifts and powers of appointment. The volume is basically ready to go to press, except that a couple of sections in the class gift material are under review and will probably be revised somewhat before they can be finalized. Preliminary work has also begun on the fourth and final volume. That volume will cover future interests and perpetuities. Some recent cases that have followed Restatement positions are *Sieh v. Sieh*, 713 N.W.2d 194 (Iowa 2006) (revocable inter vivos trust subjected to the spouse's elective share); *University of Southern Indiana v. Baker*, 843 N.E.2d 528 (Ind. 2006) (distinction between patent and latent ambiguities abandoned); and *Estate of Herceg*, 747 N.Y.S.2d 901 (Sur. Ct. 2002) (omission from will corrected by reformation).

Restatement (Third) of Trusts, Ed Halbach (Berkeley): Since the 1992 publication of the preliminary Prudent Investor Rule volume, regular Volumes 1 and 2 of the Restatement Third of Trusts project have been published in hardcover (both in 2003, with a huge, combined softcover volume shortly thereafter). The content of Volume 3 was approved last year (2005), is now being prepared for publication, and will include not only new chapters 14-16 on the duties and powers of trustees, but also chapter 17 incorporating the prudent-investor rule material in "normal" order, as sections 90-92. These sections had initially been published under the earlier (Trusts 2d) section numbers (227-229), with partial modification of some other prior sections that are now fully revised in chapters 14-16. Existing sections 227-229 will be unchanged substantively in 90-92 but with user "guidance," adapted cross-references, modestly updated reporter's notes and a bit of interim history. Only Volume 4, essentially on trustee, beneficiary and third-party liabilities and on principal-income accounting and rights, remains and is currently under way—with much of the burden being carried by two new associate reporters (**Jeff Pennell (Emory)** and **Randy Roth (Hawaii)**) and a contemplated completion date of 2008.

Uniform Anatomical Gift Act (UAGA), Sheldon Kurtz (Iowa): The Commissioners on Uniform State Laws have adopted the Uniform Anatomical Gift Act (2006). The newly revised act updates the prior versions in many ways. Among other things, it allows agents under a health care power, parents, and guardians to make an anatomical gift for a donor that becomes effective upon the donor's death and permits minors otherwise entitled to apply for a driver's license to make anatomical gifts. It also (1) allows agents, grandchildren and close friends to make an anatomical gift of a deceased donor's organs if the

* The Executive Board thanks the reporters of each of these projects for supplying these one-paragraph statements. —Ed.

decedent was not already a donor at death, (2) coordinates the provisions of the act with federal policies relating to the procurement and allocation of organs, (3) provides for the creation of a donor registry to be used for the making of anatomical gifts in addition to the driver's license which is commonly used today, (4) provides for more cooperation between medical examiners and procurement organizations, and (5) incorporates strengthened language to deny families the right to overturn a lifetime decision of a donor to be a donor (which they currently can do in about half the states that only enacted the 1968 version of the act).

Uniform Power of Attorney Act (UPOAA), Linda S. Whitton (Valparaiso): The UPOAA supersedes the Uniform Durable Power of Attorney Act, the Uniform Statutory Form Power of Attorney Act, and Article 5, Part 5 of the Uniform Probate Code. Unlike the Uniform Durable Power of Attorney Act, which was very brief and focused primarily on how one creates an agency relationship that survives incapacity, the UPOAA presumes that powers of attorney are durable unless stated otherwise and focuses on the many substantive issues implicated by the use of durable powers. The Act balances two competing policy objectives: (1) preservation of durable powers as a low-cost, flexible, and private form of surrogate decision making, and (2) prevention and redress of financial abuse of incapacitated principals. In furtherance of the first objective, the Act provides clear safe harbors for third persons who accept powers of attorney as well as liability for unreasonable refusals. The Act also recognizes the portability of powers of attorney validly created under the laws of other jurisdictions. With respect to protection of the principal, the Act provides explicit mandatory and default agent fiduciary duties, liability provisions for agent misconduct, a broad standing provision for judicial review of an agent's conduct, and the requirement of express language to grant certain authority that could significantly dissipate the principal's property or alter the principal's estate plan. The Act also contains an optional statutory form.

Uniform Probate Code, Larry Waggoner (Michigan): The Uniform Law Commission is in the process of amending the Uniform Probate Code. The draft amendments are not nearly as comprehensive as the 1990 revisions, but many are significant nevertheless. The project is going forward on three fronts: (1) amending the intestacy (and class gift) provisions relating to the status of children, including children of assisted reproduction; (2) amending the elective share; and (3) a group of miscellaneous amendments (for want of a better term). Please send an e-mail to waggoner@umich.edu if you want to be added to a list to receive drafts. Your comments/reactions are very welcome and will be forwarded to the relevant drafting committees for consideration. The deliberations on these amendments are in their very early stages. The amendments will probably not be finalized for two or three years, so there is plenty of time to get your two cents in. Also, if you have an idea for an amendment that is not in the current drafts, you are invited to send that in, too.

Uniform Prudent Management of Institutional Funds Act (UPMIFA), Susan Gary (Oregon): In July 2006, after four years of work by the Drafting Committee, NCCUSL approved the Uniform Prudent Management of Institutional Funds Act. UPMIFA revises UMIFA, an Act first promulgated in 1972 and adopted in most jurisdictions. UPMIFA updates the rules for the investment and management of funds held by charities, incorporating language from the Uniform Prudent Investor Act. UPMIFA also provides new rules for

endowment spending. UPMIFA removes the old rule that a charity not spend below “historic dollar value,” defined as the amounts contributed to an endowment fund. Under the new Act, a charity can spend the amount it determines to be prudent in order to maintain the purchasing power of the endowment fund on a permanent basis and to provide for annual distributions for the purposes for which the fund was established. UPMIFA provides detailed guidance to aid managers making this determination. Finally, UPMIFA incorporates the rules of deviation and cy pres from the Uniform Trust Code, making the rules explicitly applicable to charities organized as nonprofit corporations. And UPMIFA permits a charity to apply cy pres to a small and old fund, after notice to the Attorney General and without court approval. State legislatures will begin considering UPMIFA this winter.

Uniform Statutory Trust Entity Act (USTEA), Robert Sitkoff (NYU): A draft Uniform Statutory Trust Entity Act was read at this summer’s NCCUSL meeting and a proposed final draft will be read at next summer’s meeting. Since the 1980s, statutory business trust entities have thrived in a variety of niches, particularly in the mutual fund industry and the practice of asset securitization. Unlike a common law trust, which arises from private action, a statutory trust is formed by making a filing with a state official. Once created, a statutory trust is a juridical entity with the power to sue, be sued, and transact over property in its own name. Increasing use of statutory trusts as a mode of business organization led to a recognition that in many states the status of such trusts is uncertain and that much of the existing legislation is out of date or incomplete. The USTEAs validate the statutory trust as a permissible form of business organization and brings the disparate and often inadequate existing approaches into uniformity. In drafting the substantive provisions of the USTEAs, the drafting committee was influenced primarily by the Delaware Statutory Trust Entity Act, which is the most popular of the state business trust statutes. However, the USTEAs also contain several innovations including specification of mandatory rules; prohibition of statutory trusts with a prevailingly donative purpose; clearer guidance on the relationship of ordinary trust law to statutory trusts; and clearer guidance on the relationship between common law trusts and statutory trusts.

Uniform Transfer-on-Death Real Property Act, Tom Gallanis (Washington and Lee): NCCUSL has approved the formation of a drafting committee to prepare a new uniform act to facilitate the transfer-on-death of real property outside probate. The committee will be chaired by Nat Sterling (California Law Revision Commission) and Tom Gallanis will be the Reporter. The drafting committee’s first meeting will be held in Spring 2007.

* * *

Michelle W. Clayton (Legislative Counsel, NCCUSL) reports that the **Uniform Trust Code** has been enacted in 19 jurisdictions (including Alabama, Florida, Ohio and Pennsylvania in 2006). **David English (Missouri)** was the reporter. To be added to the distribution list for the bi-annual electronic publication of *UTC Notes*, send Michelle an email at mclayton@nccusl.org. Other UTC information, including all of the previous newsletters and more detailed enactment information, can be found at www.utcproject.org

Recent Cases of Note

Ronald R. Volkmer (Creighton)

The steady diet of what the author regards as “run of the mill” cases continue; a listing of recent *significant* cases of note for the preceding year is a real challenge for your compiler. The past year has produced few, if any, candidates for inclusion in any casebook. (Having said that, you can check the compiler’s bi-monthly column in *Estate Planning* magazine to see the compiler’s studied attempts over the past year to note *significant* appellate court decisions. After that shameless plug, the compiler needs to call your attention to a more up to date compiler of significant cases: the blog run by Prof. Gerry Beyer. [http://lawprofessors.typepad.com/trusts_estates_prof/].) With that “hat tip,” the compiler moves on to his purely arbitrary listing, with a couple of remnants of 2005 thrown in for good measure:

Tennessee Div. of United Daughters of the Confederacy v. Vanderbilt University, 174 S.W.3d 98 (Tenn. App. 2005) (Is the Civil War over? Not when it comes to renaming “Confederate Memorial Hall” “Memorial Hall”)

In re Lock Revocable Living Trust, 123 P.3d 1241 (Hawaii 2005); **In re Estate of Damon**, 128 P.3d 815 (Hawaii 2006) (more than you (or the Hawaii Supreme Court) would ever like to know about stirpital distribution, spiced up by the concurrence in *Lock* discussing the effect of “unilateral mistake”)

In re Chase Manhattan Bank, 809 N.Y.S.2d 360 (App. Div. 2006) (excessive concentration of Kodak stock in the trustee’s portfolio? Is this *Estate of Janes* (N.Y. 1997) revisited? Apparently not, according to the Appellate Division)

Hines v. Department of Public Aid, 850 N.E.2d 148 (Ill. 2006); **Pohlmann ex rel Pohlmann v. Nebraska Dept. of Health and Human Services**, 710 N.W.2d 639 (Neb. 2006); **I.G. v. Department of Human Services**, 900 A.2d 840 (N.J. Super. 2006) (Medicaid qualification issues that illustrate the “real world” of estate planning for senior citizens) (more details on each case may be found in the pages of *Estate Planning*)

Belt v. Oppenheimer, Blend, Harrison & Tate, Inc., 192 S.W.3d 780 (Tex. 2006) (the refinement of the *Barcelo* holding; must reading for anyone interested in the malpractice liability of estate planning lawyers)

In re Calamoris, 894 A.2d 408 (D.C. 2006) (arbitration provision in trust not governed by the Uniform Arbitration Act; George Washington is turning over in his grave as his will contained a similar provision)

Sieh v. Sieh, 713 N.W.2d 194 (Iowa 2006) (fraud on the widow’s share lands in the lap of the Iowa court with predictable result, given what the Iowa legislature had done in the interim)

In re Estate of Saueressig, 136 P.3d 201 (Cal. 2006) (“postdeath subscription” to “will” not permissible under California Probate Code; a comprehensive review of the law replete with a dissent)

Barboza v. McLeod, 853 N.E.2d 192 (Mass. 2006) (choice of law determination regarding joint bank account)

In re Heller, 849 N.E.2d 262 (N.Y. 2006) (New York unitrust conversion statute construed)

And finally, to the delight of the “widow” (a/k/a Anna Nicole Smith), the United States Supreme Court did manage to get its arms around the thorny question of the “probate exception” rule regarding federal district court jurisdiction of probate matters. ***Marshall v. Marshall***, 126 S. Ct. 1735 (2006) (forget “Girls Gone Wild”; how about “probate court jurisdiction goes wild”?)

Selected Publications

Aalberts, Robert J. and Poon, Percy S. Derivatives and the modern Prudent investor rule: too risky or too necessary? 67 Ohio St. L.J. 525 (2006).

Alexander, Gregory S. Trust protectors: who will watch the watchmen? 27 Cardozo L. Rev. 2807 (2006).

Appleton, Susan Frelich. Presuming women: revisiting the presumption of legitimacy in the same-sex couples era. 86 B.U. L. Rev. 227 (2006).

Boxx, Karen E. Distinguishing trustees and protecting beneficiaries: a response to Professor Leslie. 27 Cardozo L. Rev. 2753 (2006).

Calabresi, Steven G. The Terri Schiavo case: in defense of the special law enacted by Congress and President Bush. 100 Nw. U. L. Rev. 151 (2006).

Champine, Pamela. Expertise and instinct in the assessment of testamentary capacity, 51 Vill. L. Rev. 25 (2006).

Chester, Ronald. Improving enforcement mechanisms in the charitable sector: can increased disclosure of information be utilized effectively? 40 New Eng. L. Rev. 447 (2006).

Cooper, Ilene Sherwyn. Posthumous paternity testing: a proposal to amend EPTL 4-1.2(a)(2)(D). 69 Alb. L. Rev. 947-967 (2006).

Cooper, Jeffrey A. Interstate competition and state death taxes: a modern crisis in historical perspective. 33 Pepp. L. Rev. 835 (2006).

Crawford, Bridget J. The profits and perils of kinship: conflicting meanings of family in estate tax law. 3 Pitt. Tax Rev. 1 (2005).

Danforth, Robert T. Article Five of the UTC and the future of creditors' rights in trusts. 27 Cardozo L. Rev. 2551 (2006).

Dobris, Joel C. Undoing repeal of the rule against perpetuities: federal and state tools for breaking dynasty trusts. 27 Cardozo L. Rev. 2537 (2006).

Eason, John K. Policy, logic, and persuasion in the evolving realm of trust asset protection. 27 Cardozo L. Rev. 2621 (2006).

Ezer, Tamar. Inheritance law in Tanzania: the impoverishment of widows and daughters. 7 Geo. J. Gender & L. 599 (2006).

Fellows, Mary Louise and Alexander, Gregory S. Forty years of codification of estates and trusts law: lessons for the next generation. 40 Ga. L. Rev. 1049 (2006).

Fellows, Mary Louise. Why the generation-skipping transfer tax sparked perpetual trusts. 27 Cardozo L. Rev. 2511 (2006).

French, Susan F. Perpetual trusts, conservation servitudes, and the problem of the future. 27 Cardozo L. Rev. 2523 (2006).

Hammerle, Christine A. Note. Free will to will? A case for the recognition of intestacy rights for survivors to a same-sex marriage or civil union. 104 Mich. L. Rev. 1763 (2006).

Hartnett, Elizabeth A. Estates and trusts. 56 Syracuse L. Rev. 793 (2006).

Hasseler, Victoria. Trustee-beneficiaries, creditors, and New York's EPTL: the surprises that result and how the UTC solves them. 69 Alb. L. Rev. 1169 (2006).

Hill, Linda Kelly. No-fault death: wedding inheritance rights to family values. 94 Ky. L.J. 319 (2005-2006).

Hirsch, Adam J. Fear not the asset protection trust. 27 Cardozo L. Rev. 2685 (2006).

Jones, Thomas L. Richard Vance Wellman. 40 Ga. L. Rev. 1087 (2006).

Knaplund, Kristine S. Grandparents raising grandchildren and the implications for inheritance. 48 Ariz. L. Rev. 1-22 (2006).

Knauer, Nancy J. The September 11 relief efforts and surviving same-sex partners: reflections on relationships in the absence of uniform legal recognition. 26 Women's Rts. L. Rep. 79 (2005).

Kuran, Timur. The Absence of the Corporation in Islamic Law: Origins and Persistence. 53 Am. J. Comp. L. 785 (2005).

Kusmin, Ben. Swing low, sweet chariot: abandoning the disinterested witness requirement for advance directives. 32 Am. J.L. & Med. 93 (2006).

Langbein, John H. Richard Wellman and the reform of American probate law. 40 Ga. L. Rev. 1093 (2006).

Leslie, Melanie B. Common law, common sense: fiduciary standards and trustee identity. 27 Cardozo L. Rev. 2713 (2006).

Mensel, Robert E. Right feeling and knowing right: insanity in testators and criminals in nineteenth century american law. 58 Okla. L. Rev. 397 (2005).

Newman, Alan. Spendthrift and discretionary trusts: alive and well under the uniform trust code. 40 Real Prop. Prob. & Tr. J. 567 (2005).

Richards, Abena. Don't take your organs to heaven Heaven knows we need them here: another look at the required response system. 26 N. Ill. U. L. Rev. 365 (2006).

Rosenbury, Laura A. Two ways to end a marriage: divorce or death. 2005 Utah L. Rev. 1227.

Rounds, Charles E., Jr. The case for a return to mandatory instruction in the fiduciary aspects of agency and trusts in the American law school, together with a model fiduciary relations course syllabus. 18 Regent U. L. Rev. 251 (2005-2006).

Sandefur, Timothy. Why the rule against perpetuities matters in *Pleasants v. Pleasants*. 40 Real Prop. Prob. & Tr. J. 667 (2006).

Scalise, Jr., Ronald J. New developments in United States succession law. 54 Am. J. Comp. L. 103 (2006).

Schanzenbach, Max M. and Sitkoff, Robert H. Perpetuities or taxes? Explaining the rise of the perpetual trust. 27 Cardozo L. Rev. 2465 (2006).

Schiavo, Frank L. Does the use of "request," "wish," or "desire" create a precatory trust or not? 40 Real Prop. Prob. & Tr. J. 647 (2006).

Schoenblum, Jeffrey A. In search of a unifying principle for Article V of the Uniform Trust Code: a response to Professor Danforth. 27 Cardozo L. Rev. 2609 (2006).

Scoles, Eugene F. Care and maintenance of our legal system: Richard V. Wellman –academic lawyer. 40 Ga. L. Rev. 1097 (2006).

Sherman, Jeffrey G. Prenuptial agreements: a new reason to revive an old rule. 53 Clev. St. L. Rev. 359 (2005-2006).

Sitkoff, Robert H. The lurking rule against accumulations of income. 100 Nw. U. L. Rev. 501 (2006).

Spica, James P. A practical look at springing the Delaware tax trap to avert generation skipping tax. 41 Real Prop. Prob. & Tr. J. 165 (2006)

Stake, Jeffrey Evans. A brief comment on trust protectors. 27 Cardozo L. Rev. 2813 (2006).

Steiner, Shelly. Incentive conditions: the validity of innovative financial parenting by passing along wealth and values. 40 Val. U. L. Rev. 897 (2006).

Sterk, Stewart E. Trust protectors, agency costs, and fiduciary duty. 27 Cardozo L. Rev. 2761 (2006).

Storrow, Richard F. Judicial discretion and the disappearing distinction between will interpretation and construction. 56 Case W. Res. L. Rev. 65 (2005).

Turnipseed, Terry L. Why shouldn't I be allowed to leave my property to whomever I choose at my death? (or how I learned to stop worrying and start loving the french). 44 Brandeis L.J. 737 (2006).

Vaughan, Ashley. You can't take it with you: property rights after death and rethinking the rule against perpetuities. 47 S. Tex. L. Rev. 615 (2006).

Waggoner, Lawrence W. Dick Wellman—a personal remembrance. 40 Ga. L. Rev. 1105 (2006).

Wendel, Peter. Inheritance rights and the step-partner adoption paradigm: shades of the discrimination against illegitimate children. 4 Hofstra L. Rev. 351 (2005).

Whitty, Michael D. Heresy or prophecy: the case for limiting estate tax inclusion of GRATs to the annuity payment right. 41 Real Prop. Prob. & Tr. J. 381 (2006).

Wilson, Darryl C. Waltzing to R.A.P. 39 Creighton L. Rev. 129 (2005).

This Newsletter is a forum for the exchange of points of view. Opinions expressed herein are not necessarily those of the Section and do not necessarily represent the position of the Association of American Law Schools.*

* Except for this disclaimer, which the AALS requires. –Ed.