Administration of Wills, Trusts and Estates, Fourth Edition

GORDON BROWN & SCOTT MYERS
CHAPTER 10

Probate Courts and Uniform Laws

CHAPTER OUTLINE

§ 10.1 Probate Jurisdiction
§ 10.2 Probate Records
§ 10.3 Uniform Laws

CHAPTER OUTCOMES

• Recognize the courts that have jurisdiction in the field of probate law in your state.
• Identify the office in your state that is responsible for the care and custody of probate records.
• Name and describe uniform laws enacted in your state that deal with probate law.

JOB COMPETENCIES

• Be familiar with the courts in your state that have jurisdiction over probate matters.
• Be able to locate, in your law office library and on the Net, the uniform laws affecting probate that have been enacted in your state.
A DAY AT THE OFFICE . . .

Claude Vickers, a paralegal, had just returned from his lunch break when he was called into the office of Attorney Zielinski.

“Did you hear about that car accident that happened last night on the interstate, Claude?” Attorney Zielinski inquired.

“Do you mean that head-on collision with a drunk driver that killed two people?” Claude replied.

“Yes. That’s the one. The man who was killed had signed an organ donor card, but it wasn’t witnessed,” Attorney Zielinski continued. “Will you see what our state statute says about that?”

“Right away,” Claude responded. “I heard that the couple died instantly.”

“That’s right. They were both dead when the ambulance arrived at the scene. We have their estates to settle, and I’m on my way over to their house now to talk with the children’s grandparents.”

“How many children did they have?” Claude asked.

“The man who died, his name was Kenneth Blake, had a three-year-old daughter from a former marriage. The woman’s name was Leslie Johnson. She had a seven-year-old son from a former marriage. They were living together but weren’t married,” Attorney Zielinski explained.

“What a shame. Those poor children.”

“Neither parent had a will,” Attorney Zielinski continued. “They owned a house together as joint tenants, and they had a joint bank account. I’ve written some details here in the file. Kenneth owned his own car and a large amount of AT&T stock. Leslie owned her own car and quite a few U.S. savings bonds. Leslie was the beneficiary of Kenneth’s life insurance policy. I’d like you to check the simultaneous death statute to see who will inherit their property.”

“Okay,” Claude replied as Attorney Zielinski put on her coat, preparing to leave the office.

“And while you’re at it, see if our statute allows an estate to transfer money to minors,” Attorney Zielinski said as she walked out of her office. “Those children are going to inherit quite a bit of property.”

“I’ll look into that, too,” Claude replied, thinking about where he would begin his research.

Queries:

1. Assuming that each child will inherit from his and her parent, what will the daughter inherit? What will the son inherit? Who will receive the proceeds from the life insurance policy?
2. Under your state law, must an organ donor card be witnessed to be valid?
3. Under your state law, may an estate transfer money to minors?

Give statutory references to support your answers.
§ 10.1 PROBATE JURISDICTION

Probate paralegals must be familiar with the probate court systems in the states in which they work. In addition, they must be conversant with the probate law of their states, which may be based on various uniform laws.

In their research, paralegals must often locate state statutes that apply to specific situations and determine what court has jurisdiction. Jurisdiction is the power or authority that a court has to hear a case and to make a decision. Without jurisdiction, any decision by a court would be meaningless.

Federal Courts

Federal courts have no jurisdiction to probate a will or to administer an estate. Federal court cases are usually cases involving in personam jurisdiction (jurisdiction over the person), whereas probate court proceedings are in rem proceedings (proceedings that are directed against property rather than against persons). The purpose of the proceedings is to determine title to, or the extent of people’s interests in, specific property located within a state court’s jurisdiction.

Federal courts cannot appoint or control executors, administrators, or guardians. However, once an executor or administrator has been appointed by a state court, a claim against the estate may be brought in a federal court, but only when the parties are citizens of different states and the claim exceeds $75,000.

State Courts

Specific state courts have jurisdiction to probate a will or to administer an estate. This jurisdiction derives from either the state constitution or acts of the state legislature. Many states have established a separate court and empowered it with probate jurisdiction (i.e., the authority to probate wills and to administer estates). In most states, this separate court is referred to as the probate court. However, some states designate this same court as the court of chancery, the surrogate court, or the orphan’s court. States that have not established separate courts give the authority to probate wills and to administer estates to courts of general jurisdiction, such as superior courts, district courts, circuit courts, county courts, and courts of common pleas. Some of these courts of general jurisdiction have separate divisions, one of which is empowered to probate wills and to administer estates.
§ 10.2 PROBATE RECORDS

In some states, the records of all probate activities are kept in an office called the Registry of Probate. In these states, an official, called the Register of Probate, is either elected or appointed to administer the office. The Register of Probate is responsible for the care and custody of all books, documents, and papers filed with the probate court. She must maintain the probate records, compile indexes, and make the records available to the public upon request. In other states, this recordkeeping function is performed by the clerk of court.

The register or clerk keeps a docket of all cases that come before the court and, in general, handles all clerical matters necessary for the court’s operation. The Uniform Probate Code contains the following provision relative to court records [UPC § 1–305]:

The [Clerk of Court] shall keep a record for each decedent, ward, protected person or trust involved in any document that may be filed with the Court under this Code, including petitions and applications, demands for notices or bonds, trust registrations, and of any orders or responses relating thereto by the Registrar or Court, and establish and maintain a system for indexing, filing, or recording that is sufficient to enable users of the records to obtain adequate information. Upon payment of the fees required by law the clerk must issue certified copies of any probated wills, letters issued to personal representatives, or any other record or paper filed or recorded. Certificates relating to probated wills must indicate whether the decedent was domiciled in this state and whether the probate was formal or informal. Certificates relating to letters must show the date of appointment.

In some states, the Registry of Probate is housed in the same building as the Registry of Deeds, which is the office that retains deeds, mortgages, and other instruments affecting title to real property. A search of the title to real property often requires the use of both offices. When property is transferred by deed, the Registry of Deeds records the deed. When property is transferred by will or intestacy, no deed is used; the probate records must be examined to determine who has title to the property. Having the two offices in the same building allows title examiners conveniently to examine both types of records.

§ 10.3 UNIFORM LAWS

Uniform laws, sometimes called model acts, are laws that have been proposed by the National Conference of Commissioners on Uniform State Laws (a body with representatives from every state) for adoption by state legislatures. These recommendations are not a requirement: states may adopt the uniform laws or pass their own laws. Some uniform laws have been adopted, either in whole or in part.
part, by many state legislatures; others have been adopted by only a few state legislatures. The version adopted by a state is often amended by the state legislature, thereby making the “uniform law” no longer uniform. Table 10–1 lists the uniform laws relating to wills, estates, and trusts and the states that have adopted them. Using the index to your state’s statutes will help you find your own state’s version of any of these uniform laws.

Table 10–1 Uniform Laws Relating to Wills, Trusts, and Estates

<table>
<thead>
<tr>
<th>Name of Uniform Act</th>
<th>States That Have Adopted Uniform Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anatomical Gift Act (2006)</td>
<td>AR, CO, ID, IN, IA, KS, MN, MT, NV, NM, ND, OR, SD, TN, UT, VA</td>
</tr>
<tr>
<td>Custodial Trust Act</td>
<td>AK, AZ, AR, CO, DC, HI, ID, IN, LA, MA, MN, MO, NE, NV, NM, NC, RI, VA, WI</td>
</tr>
<tr>
<td>Disclaimer of Property Interests Act (1999)</td>
<td>AZ, AR, DC, FL, HI, IN, IA, MD, NV, NM, ND, OR, VA, WV</td>
</tr>
<tr>
<td>Disposition of Community Property Rights at Death Act</td>
<td>AK, AR, CO, CT, FL, HI, KY, MI, MT, NY, NC, OR, VA, WY</td>
</tr>
<tr>
<td>Durable Power of Attorney Act</td>
<td>AL, AK, AZ, AR, CA, CO, DE, DC, HI, ID, IA, KS, KY, ME, MD, MA, MI, MN, MS, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, VI, UT, VT, VA, WA, WV, WI, WY</td>
</tr>
<tr>
<td>Estate Tax Apportionment Act (1964 Act)</td>
<td>AR, ID, NM, WA</td>
</tr>
<tr>
<td>(1958 Act)</td>
<td>HI, MD, MI, ND, NM, OR, RI, VT</td>
</tr>
<tr>
<td>Guardianship and Protective Proceeding Act (1997)</td>
<td>AL, CO, HI, MN, MT</td>
</tr>
<tr>
<td>Health-Care Decisions Act</td>
<td>AL, AK, DE, HI, ME, MS, NM, WY</td>
</tr>
<tr>
<td>Health-Care Information Act</td>
<td>MT, WA</td>
</tr>
<tr>
<td>International Wills Act (Uniform Probate Code, Article II, Part 10)</td>
<td>AK, CA, CO, CT, DE, DC, HI, IL, MN, MT, NM, ND, PA, VA</td>
</tr>
</tbody>
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(continues)
## Table 10–1 Uniform Laws Relating to Wills, Trusts, and Estates (continued)

<table>
<thead>
<tr>
<th>Name of Uniform Act</th>
<th>States That Have Adopted Uniform Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interstate Arbitration of Death Taxes</td>
<td>CA, CO, CT, DE, ME, MA, MI, MN, NE, NV, OR, PA, RI, TN, VT, VA, WA, WV, WI</td>
</tr>
<tr>
<td>Interstate Compromise of Death Taxes</td>
<td>AK, CA, CO, DE, DC, IL, KY, ME, MD, MA, MI, MN, MO, NE, NV, NH, NJ, NY, OH, OR, PA, RI, SC, TN, VT, VA, WA, WV</td>
</tr>
<tr>
<td>Multiple-Person Accounts Act</td>
<td>AK, AZ, CO, DC, MT, NE, NM, ND, SD</td>
</tr>
<tr>
<td>Probate Code</td>
<td>AK, AZ, CO, HI, ID, ME, MI, MN, MT, NE, NJ, NM, ND, PA, SC, SD, UT, WI</td>
</tr>
<tr>
<td>Probate of Foreign Wills Act</td>
<td>TX, WI</td>
</tr>
<tr>
<td>Simultaneous Death Act (1991)(1993)</td>
<td>AK, AZ, AR, CO, DC, HI, KS, KY, MT, NH, NM, NC, ND, OH, OR, SD, UT, VA, WI</td>
</tr>
<tr>
<td>(1940)</td>
<td>AL, CA, DE, FL, GA, ID, IL, IN, IA, ME, MD, MA, MI, MN, MS, MO, NE, NV, NJ, NY, OK, PA, RI, SC, TE, TX, VT, VI, WA, WV, WY</td>
</tr>
<tr>
<td>Statutory Form Power of Attorney Act</td>
<td>AR, CA, CO, DC, MT, NM, OH, OK, RI, TX, WI</td>
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<tr>
<td>Statutory Rule Against Perpetuities</td>
<td>AK, AZ, AR, CA, CO, CT, DC, FL, GA, HI, IN, KS, MA, MI, MN, MT, NE, NV, NJ, NM, NC, ND, OR, SC, SD, TN, VA, WV</td>
</tr>
<tr>
<td>Testamentary Additions to Trusts Act (1991)</td>
<td>AK, AZ, AR, CT, HI, KY, MN, NE, NM, ND, OH, RI, SD, VA, WV</td>
</tr>
<tr>
<td>(1960)</td>
<td>CA, DE, DC, FL, GA, ID, IL, IN, IA, KS, ME, MD, MA, MI, MS, NV, NH, NJ, NY, NC, OK, OR, PA, SC, TN, TX, UT, VT, WA</td>
</tr>
<tr>
<td>TOD Security Registration Act</td>
<td>AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, UT, VT, VA, WA, WV, WI, WY</td>
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Uniform Probate Code

The Uniform Probate Code (UPC) (see Exhibit 4–1) is a law designed to modernize and standardize the laws relating to the affairs of decedents, minors, and certain others who need protection. The law was developed in response to growing dissatisfaction with the high cost, long delays, and unnecessary formalities involved with the old-fashioned probate procedure. Some people resented judicial control and interference by the court in what they considered to be family matters. For some states, the UPC offered welcome changes.

For example, the UPC gives heirs and devisees the option of selecting supervised or unsupervised administration. **Supervised administration** occurs under the continuing authority of the court. In contrast, **unsupervised administration** occurs without court action, unless requested by an interested person. Although there is no court supervision, the Registrar of Probate is given the authority to process any necessary documents and to decide whether they are complete. In unsupervised administration, an interested person can petition the court to resolve a question, such as the validity of the will or the appointment of the personal representative. The court does not become involved unnecessarily; it only settles controversies or doubts.

### Table 10–1 Uniform Laws Relating to Wills, Trusts, and Estates (continued)

<table>
<thead>
<tr>
<th>Name of Uniform Act</th>
<th>States That Have Adopted Uniform Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transfers to Minors Act</td>
<td>AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SD, TN, TX, UT, VA, WA, WV, WI, WY</td>
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</table>
The purposes of the Uniform Probate Code are [UPC § 1–102]:

1. to simplify and clarify the law concerning the affairs of decedents, missing persons, protected persons, minors, and incapacitated persons.
2. to discover and make effective the intent of a decedent in the distribution of her property.
3. to promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to its successors.
4. to facilitate use and enforcement of certain trusts.
5. to make uniform the law among the various jurisdictions.

Table 10–2 lists the eight articles and contents of the Uniform Probate Code. In 1990, major changes in Article II of the UPC were made in response to the following developments in society:

1. Fewer formalities exist today than in the past.
2. The use of living gifts, jointly owned property, and trusts have increased so much that they constitute a major form of wealth transmission.
3. The advent of a multiple-marriage society, wherein a significant portion of the population marries more than once and has stepchildren and children by previous marriages and wherein a partnership theory of marriage has gained acceptance.

<table>
<thead>
<tr>
<th>Article I</th>
<th>General provisions, definitions, and probate jurisdiction of court</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article II</td>
<td>Intestacy, wills, and donative transfers</td>
</tr>
<tr>
<td>Article III</td>
<td>Probate of wills and administration</td>
</tr>
<tr>
<td>Article IV</td>
<td>Foreign personal representatives; Ancillary administrations</td>
</tr>
<tr>
<td>Article V</td>
<td>Protection of persons under disability and their property</td>
</tr>
<tr>
<td>Article VI</td>
<td>Nonprobate transfers on death</td>
</tr>
<tr>
<td>Article VII</td>
<td>Trust administration</td>
</tr>
<tr>
<td>Article VIII</td>
<td>Effective date and repealer</td>
</tr>
</tbody>
</table>
Uniform Simultaneous Death Act

When two people die at the same time, as in an automobile accident, plane crash, boating accident, gas poisoning, or house fire, it is often impossible to determine who died first. **The Uniform Simultaneous Death Act** is a uniform law, adopted by most states, that sets forth rules to be followed when the passage of property depends upon the time of one’s death, and there is no sufficient evidence that the people died other than at the same time.

**CASE STUDY** *In re Estate of Sky Dancer*

*13 P.3d 1231 (CO)*

**FACTS:** Sky Dancer died in December 1997. She left a will, which was photocopied by the police. The original will was retained by the police, as one of the beneficiaries was implicated in Sky Dancer’s death. As the original will was not available, the court had received the photocopy, which all parties agreed showed probable deficiencies in execution. The will also contained handwritten portions that were not in the testatrix’s handwriting.

**QUESTION:** Should the defective will copy, even with apparent defects that can’t be clarified because the original isn’t available, be admitted to probate?

**COURT DECISION:** No.

**REASON:** The will copy did not satisfy the Colorado statute as its execution was defective, but the legislature had enacted the Uniform Probate Code, which provides that wills that are not in compliance with statutory execution requirements may be treated as a will if clear evidence exists that the document was intended by the deceased to be their will. Here, while the execution defects might be surmountable thanks to the U.P.C. adoption, the handwritten portions, not in the pen of the deceased, was a fatal defect not encompassed by the Uniform Probate Code.

Uniform law, adopted by most states, that sets forth rules to be followed when the passage of property depends upon the time of one’s death, and there is no sufficient evidence that the people died other than at the same time.
The following four rules apply under the Uniform Simultaneous Death Act when two or more persons die at the same time:

1. When title to property depends upon priority of death, and there is insufficient evidence that the persons died other than at the same time, the property of each person shall be disposed of as if she had survived. Thus, when a mother’s will leaves her entire estate “to my daughter, Kathleen, if living, but if not, to Kathleen’s children equally,” and the mother and daughter die at the same time in a car accident, the mother’s estate will pass directly to the daughter’s children.

2. When two or more beneficiaries are designated to take successively or alternatively by survivorship under another person’s will or trust, and there is insufficient evidence that they died other than simultaneously, the property shall be divided into as many equal portions as there are successive or alternate beneficiaries and a share distributed to each.

3. When there is no evidence that joint tenants or tenants by the entirety died other than simultaneously, half shall be distributed to each. When there are more than two joint tenants in the same situation, the property is distributed among them all equally.

4. When an insured and a beneficiary of a life insurance policy have died, and there is insufficient evidence that they died other than simultaneously, the proceeds are payable as if the insured had survived the beneficiary.

The law does not apply when there is competent evidence that one person died before the other person, as in the Sauers case.
STATE OF NEW YORK
SURROGATE’S COURT: COUNTY OF NEW YORK

PROBATE PROCEEDING, WILL OF
JOHN P. KENNEDY, JR.,
a/k/a JOHN FITZGERALD KENNEDY, JR.,

Deceased.

To the Surrogate’s Court, County of New York
It is respectfully alleged:

1. (a) The name, citizenship, domicile (or, in the case of a bank or trust company, its principal office) and interest in this proceeding of the petitioner are as follows:

Name: Timothy P. Shriver

Domicile or Principal office: JPK Enterprises, 500 Fifth Avenue, Suite 1710
            Street and Number: NY, 10110
            City, Village or Town: New York
            State: NY
            Zip Code: 10110

Citizen of: United States

Name: N/A

Domicile or Principal office: __________________________ (If different from domicile)
            Street and Number: __________________________
            City, Village or Town: __________________________
            State: __________________________
            Zip Code: __________________________

Citizen of: __________________________

Interest(s) of Petitioner(s):
[X ] Executor(s) named in decedents Will
[ ] Other (Specify)

1. (b) The proposed Executor [ ] is [x] is not an attorney.
[NOTE: An Executor-Attorney must comply with SCPA 2307-[a]; also see 207.19G Surrogate’s Court Rules] The death certificate must be filed with this proceeding. If the decedent’s domicile is different from that shown on the death certificate, attach an affidavit explaining the reason for this inconsistency.

2. The name, domicile, date and place of death, and national citizenship of the above named decedent are as follows:

(a) Name: John P. Kennedy, Jr.
(b) Date of death: July 16, 1999
(c) Place of death: Falmouth, Massachusetts
(d) Domicile: [Street]: 20 North Moore Street, Apt. 9E
            City, Town, Village: New York
            County: New York
            State: New York
            Zip Code: 10013
            Citizen of: United States

3. The Last Will, herewith presented, relates to both real and personal property and consists of an instrument or instruments dated as shown below and signed at the end thereof by the decedent and the following attesting witnesses:

December 19, 1997  James S. Benvenuto, Luann Spiotta
(Date of Will) (Names of All Witnesses to Will)
(Date of Codicil) (Names of All Witnesses to Will)
(Date of Codicil) (Names of All Witnesses to Will)
CASE STUDY  Sauers v. Stolz

W. E. Doyle and Mary Edna Doyle, his wife, were killed in a collision between their automobile and a truck. Both were rendered unconscious at the time of the impact and neither ever regained consciousness. Two lay witnesses testified at the trial to determine who should inherit from Mary’s intestate estate and whether to apply the Uniform Simultaneous Death Act. Frank W. Hathaway testified that he immediately rushed to the accident scene from a block away. He testified:

Q. And when you arrived at the scene of the accident what did you find?
A. I went to Mrs. Doyle. She was laying on the right-hand side of the car. She was completely out of the car. I tested her to see if she was alive by pressing under the breast and around the arm to see if I could find a heart beat, and I did not find any heart beat.

Q. Where, under her arm, did you press to determine if there was a heart beat?
A. Under the left arm and around by the breast and a little over towards the middle of the chest.

Q. And, from any of your examination, did you determine there was a heart beat of any kind?
A. No, sir.

Q. Did you observe the condition of the body at that time?
A. The body was twisted. It looked like to me it might have been twisted in the hips pretty near clear around.

Q. What do you mean by twisted?
A. She was laying normal in the chest, flat on her back, and at her hips, they were kind of turned around.

Q. About how far?
A. I would say about a three-quarter turn.

Q. Was there any movement on or about the body at all?
A. No.

Q. After examining Mrs. Doyle’s body, what did you next do?
CASE STUDY  Sauers v. Stolz (continued)

A. I went around the car to see if there was any other person in the car, and then I found a man on the left side of the car, who was laying with his head over the wheel. I tested him for heartbeat and I found a slight heart beat on him.

Q. Was the man’s head on the inside or outside of the car?
A. It was outside.

Q. How did you test the man?
A. Under the left arm I found a slight heart beat.

Q. And was there any movement of his body?
A. I didn’t see no movements of his body—only heart beat that I felt.

The other eyewitness, Mr. Williamsen, testified that he was driving behind the truck that collided with the Doyle car and that he was at the scene of the accident within a few minutes after it occurred. He testified:

Q. Will you describe her [Mrs. Doyle’s] condition as you saw her at that time?
A. Well, she was laying out of the car with her feet still on the running board and she had just fell out of the car, evidently, to the left side and her body was twisted—looked like it was twisted almost in half. A broken back was what I thought it was; upper half of the body was face up and lower half down.

Q. Did you examine her?
A. I tried to feel a pulse on her arm and there was none; and under the arm and there was none. She had dust both in her nostrils and in her mouth and she hadn’t taken a breath from the time of the accident—couldn’t possibly have.

Q. Did you make any further examination of the body of Mrs. Doyle at that time?
A. No [the rest of the answer stricken].

Q. Then what did you do?
A. Walked around to the other side of the car.

Q. What did you find?
A. Mr. Doyle was hanging out the left side of the car.

Q. Describe the position of his body.
A. His feet was caught between the motor and front seat; his head was twisted back in under the front part of the car; his entire body was hanging out of the car and head twisted back under the running board. It had been dragged.

Q. Did you examine his body?
A. Yes. I pulled his body around straight and he was bleeding quite badly.

Q. How did you examine it?
A. He had pulse on his arm, to start with.

Q. Would you say that was a strong pulse?
A. Yes, it was.

Q. Or a weak pulse?
A. It was strong.

Q. What else did you do at the automobile at that time?
A. Well, he slowly bled to death. He was bleeding quite profusely and certain that is what he died of. He had a very bad split head and that is what he died from.

On cross-examination Williamsen further testified concerning Mr. Doyle:

Q. His head was under the board?
A. Under the running board.

Q. What was the condition of his head? Mr. Doyle’s head?
A. It was cracked clear open, sir.

Q. The head was cracked open?
A. Yes, sir. It was bleeding.

Q. Complete skull fracture, would you say?
A. Yes.

Q. And bleeding profusely?
A. Yes. You could see his heart beat. Every time—it would spurt through the top of his head every time the heart beat.

Q. Was his head split wide open? Could you see into his brain?
A. Pretty near see into it—quite bloody.

(continues)
Uniform Transfers to Minors Act

Difficulties may arise when gifts are given to minors. Sometimes parents or guardians use the gifts for themselves rather than for the benefit of the minor. At other times, gifts are given to minors and then revoked by the donor before the minor reaches adulthood. In the past, gifts to minors were often used as tax shelters. People would make gifts of money and securities to their children with the aim of shifting unearned income to lower-bracket taxpayers. The IRS stopped this particular practice by establishing a kiddie tax that taxes unearned income of children under the age of 14. In 1995, for example, a child’s unearned income over $1,300 was taxable at the parent’s maximum tax rate if the child had not reached the age of 14.

The Uniform Transfers to Minors Act (UTMA), which has been adopted by most states, prevents some of the problems involved when transfers are made to minors. The UTMA replaces an earlier law known as the Uniform Gifts to Minors Act (UGMA). Besides money and securities, the UTMA allows any kind of property, whether real or personal, tangible or intangible, to be transferred to a custodian for the benefit of a minor. Transfers may be made from trusts, estates,
and guardianships as well as from living donors. To be consistent with Internal Revenue Service policy, the UTMA uses the age of 21, rather than 18, to determine when custodianship ends and the former minor receives the property.

Under the uniform law, a transferor (or donor) can register a stock certificate or other security in the name of the transferor (or donor), other adult person, or trust company “as custodian for [name of minor] under the [name of state] Uniform Transfers to Minors Act.” Similarly, a transferor (or donor) can open a bank account in the name of the transferor (or donor), other adult person, or trust company “as custodian for [name of minor] under the [name of state] Uniform Transfers to Minors Act.” An interest in real property is recorded in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: “as custodian for [name of minor] under the [name of state] Uniform Transfers to Minors Act.”

Each transfer may involve only one minor, and only one person may be the custodian. The minor’s Social Security number is used to identify the account, and the income from the securities or bank account is taxable to the minor if she is over the age of 14. A gift to a minor under the Uniform Transfers (or Gifts) to Minors Act is considered to be a completed gift, making it subject to the federal gift tax discussed in Chapter 2.

A custodian must keep custodial property separate and distinct from all other property and must maintain records of all transactions relating to the custodial property. When investing funds, the UTMA requires the custodian to “observe the standard of care that would be observed by a prudent person dealing with the property of another.”

A gift made under the act is **irrevocable**: that is, it cannot be taken back. The *McLaughlin* case demonstrates this point of law. Gifts made under the UTMA must be held by the custodian and used only for the minor’s support, maintenance, education, and benefit. When the minor becomes 21 years old (18 in some states), the balance of the property held by the custodian must be given to the minor outright.

### CASE STUDY

**Matter of Estate of McLaughlin**

483 N.Y.S.2d 943 (NY)

**FACTS:** Rose McLaughlin established two separate $20,000 bank accounts under the Uniform Gift to Minors Act, one for each of her two daughters. A year later, she closed the accounts and placed the money in two Totten trust accounts in joint names, each naming one of her daughters as a Totten trust beneficiary. When Rose died, the creditors of her estate claimed that the bank accounts should be included as assets of her estate.

(continues)
**Uniform Anatomical Gifts Act**

The **Uniform Anatomical Gifts Act (UAGA)** provides an easy way to make a testamentary donation of vital organs for medical research or transplant. All 50 states and the District of Columbia have now adopted either the 1968 or the 1987 version of the act.

Under the 1987 act, no witnesses are required on the document used to make an anatomical gift, such as a donor card or driver’s license. In addition, the consent of the next of kin after death is not required. Other provisions of the 1987 act include the following:

1. A donor may revoke the offer of an anatomical gift without advising any specified donee.
2. The designation of a gift of one organ—for example, eyes or a heart—does not restrict the use of other organs as donations after death unless otherwise indicated by the decedent.
3. Hospitals rather than the attending physicians are the donees of anatomical gifts.
4. The sale and purchase of organs and tissue are prohibited.
5. People who act in good faith in accordance with the terms of the act cannot be liable in any civil or criminal action relating to the transplant.

Chapter 14 includes a discussion of anatomical gifts.

**SUMMARY**

Federal courts have no jurisdiction to probate wills or to administer estates, as their jurisdiction is primarily *in personam* jurisdiction. State courts, exercising *in rem* jurisdiction, have the power to hear probate proceedings to determine title to...
specific property located within the state. Further, some specific state courts have probate jurisdiction, their authority coming from state constitutions or statutes. Each state has either a separate court or a court of general jurisdiction with jurisdiction over probate matters.

In some states, probate records are kept in the Registry of Probate and are the responsibility of an official known as the Register of Probate. Other states give the responsibility to a clerk of court. Some states house the Registry of Probate in the same building with the Registry of Deeds to facilitate the examination of records in both offices.

Uniform laws are laws that have been proposed by a national committee for adoption by state legislatures. Some uniform laws have been adopted by many states; others have been adopted by only a few states. States sometimes amend uniform laws after adopting them, making them no longer uniform.

The Uniform Probate Code, adopted by 15 states, is designed to reduce the high cost, long delays, and unnecessary formalities involved with probating an estate.

The Uniform Simultaneous Death Act, adopted by most states, establishes rules to be followed when the passage of property depends upon the time of death and no sufficient evidence can establish which person died first.

Either the Uniform Gifts to Minors Act or the Uniform Transfers to Minors Act has been adopted by every state. The law provides an inexpensive, easy mechanism for transferring money and other property to minors. The Gifts to Minors Act provides for making gifts of securities and cash to a custodian for the benefit of a minor. The Transfers to Minors Act, which has been adopted by 38 states, allows the transfer of any kind of property, real or personal, to a custodian for the benefit of a minor. Gifts made to minors under either act are irrevocable.

The Uniform Anatomical Gifts Act, which has been adopted in one form or another by every state, provides for a simplified manner of making a testamentary donation of vital organs for medical research or transplant. The act was amended in 1987 in an attempt to close the gap between the need for organs and tissues and the supply of them.

**REVIEW QUESTIONS**

1. Why do federal courts have no jurisdiction to probate a will or to administer an estate?
2. From what source do state courts obtain their jurisdiction to probate wills and to administer estates?
3. To what courts do states that have not established separate courts with probate jurisdiction give the authority to probate wills and to administer estates?
4. Why is the Registry of Probate housed in the same building as the Registry of Deeds in some states?
5. Must all states adopt uniform laws? Explain.
6. Why did the Uniform Probate Code come into existence?
7. When title to property depends upon priority of death, and there is insufficient evidence that the persons have died other than simultaneously:
   a. How will the property of each person be disposed?
   b. How will the property be disposed when the decedents are two beneficiaries who are designated to take the property successively?
   c. How will the property be disposed when the decedents are joint tenants?
   d. How will the property be disposed when the decedents are an insured and a beneficiary of a life insurance policy?

8. Why does the Uniform Transfers to Minors Act use the age of 21 rather than 18 as the age when custodianship terminates and the property is distributed to the former minor?

9. Under the Uniform Transfers to Minors Act, what language is used to open a bank account for a minor named Irene Buckley whose custodian is Joan M. Peabody?

10. For what two reasons was the Uniform Anatomical Gifts Act revised in 1987?

**CASES TO DISCUSS**

1. Mrs. Roig established three Shearson (investment) accounts valued at $50,000, in which she was the custodian for each of her three children under the Uniform Gifts to Minors Act. Later, in a divorce proceeding, the trial court held that the three accounts were marital property belonging to Mrs. Roig and her husband. Was the trial court correct in its holding? Why or why not? *Roig v. Roig*, 364 S.E.2d 794 (WV).

2. At the time Kathy gave birth to Krystal, Kathy was living as a foster child in Edith’s home. Edith petitioned the probate court to be appointed as guardian of Krystal. Under the law of that state, the probate court has equity jurisdiction in all matters relating to wills, trusts, and administration of decedents’ estates. Another statute provides that only courts having full equity jurisdiction have power to adjudicate rights as to the custody of infants. Did the probate court have the power to appoint Edith as guardian of Krystal? Why or why not? *In re Krystal S.*, 584 A.2d 672 (ME).

**RESEARCH ON THE WEB**

1. Log on to the Internet, type in <http://www.Google.com> and press Enter. Then, in the box type the name of the court that settles estates in your state (either probate court, surrogate court, orphan’s court, or court of chancery). Look for information about your state court and report on your findings.

2. Do an online search for the the Uniform Probate Code. How does the Uniform Code differ from the Probate Code in your state?

3. For information about uniform laws in your state, see the Web site of the National Conference of Commissioners on Uniform State Laws at <http://www.nccusl.org/>.
SHARPENING YOUR PROFESSIONAL SKILLS

1. What is the name and location of the court in your county that has jurisdiction to probate wills and to administer estates? How near to the Registry of Deeds is the court located?

2. Examine your state statute and determine your state’s version of the Uniform Gifts to Minors Act from among the following:
   a. the 1956 version
   b. the 1966 version
   c. its own version
   d. the 1983 version known as the Uniform Transfers to Minors Act

   Give the reference number of that particular statute.

3. Examine Table 10–1, and make a list of the uniform laws that have been adopted by your state.

SHARPENING YOUR LEGAL VOCABULARY

On a separate sheet of paper, fill in the numbered blank lines in the following anecdote with legal terms from this list:

- court of chancery
- custodian
- in personam jurisdiction
- in rem proceedings
- irrevocable
- jurisdiction
- model acts
- orphan’s court
- probate court
- probate jurisdiction
- Registry of Deeds
- Registry of Probate
- Supervised administration
- surrogate court
- Uniform Anatomical Gift Act
- Uniform Gifts to Minors Act
- uniform laws
Uniform Probate Code (UPC)
Uniform Simultaneous Death Act
Uniform Transfers to Minors Act (UTMA)
unsupervised administration

Enrique made use of one of many (1) (sometimes called (2))—that is, laws proposed by the National Conference of Commissioners on Uniform State Laws for adoption by state legislatures—when he made a gift of money to his five-year-old daughter. The law, called the (3) when it was first formulated in 1956, provides an inexpensive, easy mechanism to transfer gifts of cash and securities to minors. Gifts made to minors under the law are (4), that is they cannot be taken back. Enrique’s state has adopted a more recent version of the law, called the (5), which allows any kind of property to be transferred to a(n) (6) for the benefit of a minor. Enrique also made use of another law, known as the (7), when he filled out a simple card providing for the donation of his organs and tissue for medical research or transplant. When Enrique died, his will was probated in a court that had (8), that is, the authority to probate wills and administer estates. Without such (9), any decision by a court would be meaningless. In most states, this court is called the (10). However, some states refer to it as the (11), the (12), or the (13). These court proceedings are (14), which means they are directed against property rather than against persons. Enrique’s state had not adopted the (15), which is a law designed to modernize and make uniform the laws relating to the affairs of decedents, minors, and certain other people who need protection. His heirs and devisees did not have the option of selecting (16) (administration under the continuing authority of the court) or (17) (administration without court action). Because Enrique did not die at the same time as one of his heirs or co-owners, the rules under the (18) were not applicable. Enrique’s will and other probate papers were filed in an office known as the (19), which was located in the same building as the (20).

**KEY TERMS**

- in personam jurisdiction
- in rem proceedings
- irrevocable
- jurisdiction
- kiddie tax
- probate court
- probate jurisdiction
- registry of deeds
- registry of probate
- supervised administration
- the uniform simultaneous death act (UTMA)
- uniform anatomical gifts act (UAGA)
- uniform laws
- uniform probate code (UPC)
- uniform transfers to minors act (UTMA)
- unsupervised administration

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