

Contemporary Issues in the Law of Trusts: An Annotated Bibliography

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This bibliography covers significant issues concerning the use of trusts, with a particular emphasis on issues relevant for family law attorneys. The bibliography covers articles published over the last five years, from 2016 through 2021.

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Alimony & Child Support

Fabian M. Marriott, Student Note, *No Disclaimer for the Domestic Support Evader: Why Alimony and Child Support Obligations Should Be Barred from Their Right to Disclaim Inheritances*, 71 RUTGERS U.L. REV. (2020) (explaining the provisions of the Uniform Trust Code that prevent the use of trusts to avoid the payment of spousal or child support).

Grayson M.P. McCouch, *Post-Marital Income Shifting and the End of Alimony Trusts*, 54 REAL PROP. TR. & EST. L.J. 179 (2019) (discussing how changes to the federal tax code in 2017 may impact the use of trusts to pay alimony obligations).

Justin T. Miller, *Making Divorce Less Taxing: A Unique Opportunity for Income, estate, and Gift Tax Planning*, 52 REAL PROP. TRUST & EST. L.J. 1 (2017) (addressing tax issues to be considered during the marital dissolution process, including the potential use of support trusts rather than alimony payments).

Justin T. Miller, *Tax Reform Could Make Divorce a Whole Lot More Taxing*, 52 FAM. L.Q. 303 (2018) (discussing how changes to federal tax laws will affect divorcing spouses, including the elimination of relief from grantor trust treatment for trust payments to a former spouse).

Alternative Dispute Resolution

Jonathan G. Blattmachr, *Reducing Estate and Trust Litigation Through Disclosure, In Terrorem Clauses, Mediation and Arbitration*, ALI-CLE COURSE MATERIALS, July 7-8, 2016 (SY003 ALI-CLE 461) (assessing ways to reduce the risk, scope, or cost of litigation concerning trusts, including the use of mediation and arbitration).

Darla L. Daniel, *Alternative Dispute Resolution and the Uniform Trust Code – Colorado’s Approach*, 45 ACTEC L.J. 11 (2019) (discussing Colorado’s approach to alternative dispute resolution for disputes about trusts).

Arbitration Clauses

Steven D. Baker, *Rachal v. Reitz and the Efficacy and Implementation of Mandatory Arbitration Provisions in Trusts*, 9 EST. PLAN. & COMMUNITY PROP. L.J. 191 (2017) (assessing the im-

pect of judicial decisions recognizing the validity of trust provisions requiring binding arbitration of disputes between trustees and beneficiaries).

David Horton, *The Limits of Testamentary Arbitration*, 68 FLA. L. REV. F. 12 (2016) (arguing that laws providing for the enforcement of mandatory arbitration clauses in wills and trusts should not apply to claims brought by beneficiaries who did not consent to be bound by the clauses, because the interest in testamentary freedom should not outweigh the interest in preventing arbitration clauses from being used to insulate improper conduct from judicial review).

Robert M. Kincaid, Jr., *In Terrorem Clauses and Arbitration Clauses in Wills and Trusts in Ohio*, OHIO PROB. L.J., Sept./Oct. 2016 (assessing Ohio law on the validity of arbitration clauses in trusts).

Grayson M.P. McCouch, *Another Perspective on Testamentary Arbitration*, 68 FLA. L. REV. F. 68 (2016) (discussing the controversial issues of enforceability and procedural fairness raised by mandatory arbitration clauses in wills and trusts, and considering how to balance the interest in testamentary freedom with the benefit of allowing court proceedings to determine the validity of a will or trust).

W. Cameron McCulloch & Michelle Rosenblatt, *Drafting & Enforcing Arbitration Clauses in Wills, Trusts & Settlement Agreements*, 12 EST. PLAN. & COMMUNITY PROP. L.J. 103 (2019) (discussing the advantages and disadvantages of including clauses in trusts and other estate planning documents that require disputes to be resolved through arbitration).

Mary F. Radford, *Response to Professor Spitko's The Will as an Implied Unilateral Arbitration Contract and an Alternative Proposal*, 68 FLA. L. REV. F. 30 (2016) (responding to Professor Spitko's novel and far-reaching arguments and proposing that arbitration clauses in wills and trusts should be enforceable to the extent that they are paired with an enforceable negative inheritance clause specifying that a beneficiary will be barred from inheriting if the beneficiary refuses to participate in arbitration of any disputes concerning the will or trust).

Edward F. Sherman, *Arbitration in Wills and Trusts: From George Washington to an Uncertain Present*, 9 *Y.B. ON ARB. & MEDIATION* 83 (2017) (providing an overview of the debate over enforceability of arbitration clauses in wills and trust instruments, from George Washington's use of such a clause in his will to contemporary judicial and legislative positions taken on the issue).

E. Gary Spitko, *The Will as an Implied Unilateral Arbitration Contract*, 68 *FLA. L. REV.* 49 (2016) (arguing that a will should be regarded as an implied unilateral contract between the testator and the state, in which the state agrees to honor the testator's donative intent, and therefore arbitration clauses in wills, and trusts created pursuant to wills, should be enforced even against beneficiaries who did not agree to the arbitration provisions).

Reid Kress Weisbord, *The Governmental Stake in Private Wealth Transfer*, 98 *B.U. L. REV.* 1229 (2018) (proposing a unifying theory about the extent to which the government has an interest in regulating transfers of private wealth and overriding individual donor preferences and autonomy, and then applying that theory to issues including the permissible scope of trust privacy and the enforceability of no contest and arbitration clauses in trust instruments).

Asset Protection Trusts

Scott St. Amand, *Should I Stay or Should I Go? The Erosion of the Offshore Asset Protection Trust and the Rise of Its Domestic Analogue*, *FLA. B.J.*, June 2017, at 18 (providing a general overview of the tax and nontax advantages of domestic trusts versus foreign trusts).

Amy J. Amundsen, *Domestic Asset Protection Trusts in Divorce Litigation*, 29 *J. AM. ACAD. MATRIM. LAW.* 1 (2016) (analyzing the risk that a domestic asset protection trust can be used to unfairly deprive a spouse and children of their right to marital property in the trust when a divorce occurs).

Louis F. Del Duca, *Fraudulent Conveyances Masquerading as Asset Protection Trusts*, *UCC L.J.*, Jan. 2018 (arguing that domestic asset protection trusts, like the foreign versions that preceded

them, lie on the border of criminality and are essentially mechanisms for fraudulently evading creditors).

Brendan Duffy, Note, *In States We “Trust”: Self-Settled Trusts, Public Policy, and Interstate Federalism*, 111 NW. U. L. REV. 205 (2016) (offering a framework for courts deciding choice of law issues concerning domestic asset protection trusts and whether their validity should be governed by the law of the settlor’s state or the law of the state in which the trust was established).

Dan W. Holbrook, *Domestic Assets Protection Trusts in Light of Toni 1 Trust v. Wacker*, TENN. B.J., Apr. 2019, at 23 (discussing cases about the effectiveness of a state’s asset protection trust laws where a trust is created by a person who is not a resident of the state).

Nora Hood, Note, *Domestic Asset Protection Trusts: A Debtor’s Friend and Creditor’s Foe*, 13 BROOK. J. CORP. FIN. & COM. L. 443 (2019) (examining the use of domestic asset protection trusts and the impact of recent amendments to the Uniform Voidable Transaction Act).

Inga Ivsan, Comment, *Emerging Challenges in Asset Protection Planning*, 24 U. MIAMI BUS. L. REV. 135 (2016) (discussing the historical and contemporary challenges to the use of asset protection trusts and recommending other techniques that lawyers should consider when seeking to secure client assets).

Patrick K. Kenney, Note, *A Changing World Calls for Iowa to Apply the Alter Ego Doctrine to Irrevocable Trusts*, 106 IOWA L. REV. 1477 (2021) (proposing legislation to clarify when creditors will be able to reach trust assets using alter ego or veil-piercing theories).

Courtney McCandless, *Nevada Asset Protection Trust*, NEV. LAW., Dec. 2018, at 25 (discussing how asset protection has become a primary focus of estate planning since Congress increased the federal transfer tax exemption to the point where most Americans do not have a taxable estate).

Abigail E. O’Connor et al., *SPATS: A Flexible Asset Protection Alternative to DAPTS*, EST. PLAN., Feb. 2019, at 3 (explaining how a special power of appointment trust can be used as an alternative to a self-settled trust for asset protection).

Peter Spero, *Recent Cases Show Need for Strict Compliance with DAPT Statutes*, EST. PLAN., May 2017, at 8 (reviewing potential problems that can undermine the effectiveness of a domestic asset protection trust).

Carla Spivak, *Democracy and Trusts*, 42 ACTEC L.J. 311 (2017) (arguing that the obscure property law doctrine of numerus clausus should be applied to trusts as a solution to problems such as the inability of tort creditors to reach trust assets to recover damages).

Jake Stribling, Comment, *In Texas We Trust: The Need to Bring Domestic Asset Protection Trusts to Texas*, 12 EST. PLAN. & COMMUNITY PROP. L.J. 163 (2019) (arguing that Texas should join the states that have legislation providing for the use of domestic asset protection trusts, because this would reduce the extent to which Texas residents turn to offshore accounts as a means of achieving legal protection of assets).

Robert Tiplady, *Michigan Asset Protection Trusts*, MICH. B.J., Nov. 2018, at 30 (advising lawyers drafting asset protection trusts under Michigan law).

Cheyenne VanKirk, Note, *Domestic Asset Protection Trusts: Ushering in the Klabacka Era*, 42 SEATTLE U. L. REV. 1559 (2019) (applauding a Nevada court decision upholding the efficacy of domestic asset protection trusts).

Cherish D. Van Mullem, *Shield Assets Kept Nearby with Asset Protection Trusts*, 45 EST. PLAN. 32 (2018) (providing an overview of the use of domestic asset protection trusts and the growing interest in them).

Bankruptcy

Travis M. Daniels & Talin Keshishian, *When Bankruptcy Breaks Your “Asset-Protection” Plan*, AM. BANKR. INST. J., June 2016, at 28 (assessing the impact of bankruptcy on qualified personal residence trusts).

Robert C. Meyer, *Bankruptcy and Trusts*, AM. BANKR. INST. J., Feb. 2021, at 26 (explaining significant issues that can be generated by the bankruptcy of a trust’s settlor or beneficiary).

Charitable Trusts

Elizabeth K. Butler, Note, “*How Fair Art Thou?*” – *Managing the Intersections of Charitable Trust Law and Municipal Bankruptcy*, 93 U. DET. MERCY L. REV. 691 (2016) (describing the conflicts that arose when the City of Detroit went bankrupt and creditors sought to force the sale of extremely valuable artwork in the City’s charitable trust).

Steven W. Golden, *In Art We Trust: The Intersection of Trust and Bankruptcy Law in Detroit*, 48 TEX. TECH. L. REV. 313 (2016) (arguing that works of art held in charitable trust could not be sold to satisfy Detroit’s debts in bankruptcy).

Matthew Roland, *Disregarding Donors and Tinkering with Texas Trusts: Judicial Modification of Restricted Charitable Gifts*, 10 EST. PLAN. & COMMUNITY PROP. L.J. 375 (2018) (discussing the extent to which courts can modify or terminate charitable trusts to account for changed circumstances).

Children & Family Decisionmaking

Gerald G. Brew, *Trusts in Guardianship: Using “Family Freeze” Agreements to Resolve Disputes*, 46 ACTEC L.J. 9 (2020) (explaining how management trusts can be more effective than guardianships for preventing family conflicts and protecting parents from elder financial abuse).

J. Sam Rodgers, *Do You Tru\$t Your Children: A Parent’s Final Dilemma*, 28 CORNELL J.L. & PUB. POL’Y 93 (2018) (evaluating the use of incentive trusts as a way for parents to impose conditions on their children’s inheritance of their assets).

Jordan Sprechman et al., *Major Concerns with Minors: Planning for UTMA Accounts*, EST. PLAN., Aug. 2018, at 3 (discussing ways that parents can use trusts to extend their control over their child’s assets beyond the age when the children otherwise would gain control over the assets transferred through the Uniform Gifts to Minors Act or the Uniform Transfers to Minors Act).

Choice of Law Clauses

Thomas P. Gallanis, *The Use and Abuse of Governing-Law Clauses in Trusts: What Should the New Restatement Say?*, 103 IOWA L. REV. 1711 (2018) (proposing that the settlor of a trust

should be able to choose the law that will govern the trust, by including a choice of law clause in the trust instrument, unless this would be contrary to the mandatory law of the jurisdiction with the most significant relationship to the matter).

Susan Leonard Repetti, *Trust Clauses Regarding Governing Law*, in *DRAFTING WILLS AND TRUSTS IN MASSACHUSETTS* (5th ed. 2020) (WT MA-CLE 41-1) (considering the extent to which Massachusetts will enforce clauses indicating a donor's intention about which state's law will govern the interpretation and validity of a trust).

Directed Trusts

David Biscoe Bingham, *Arkansas Enacts a Version of the Uniform Directed Trust Act: Relief for "Directed Trustees" Begins in 2020*, *ARK. LAW.*, Winter 2020, at 10 (discussing the adoption of the Uniform Directed Trust Act in Arkansas, allowing for the creation of trusts in which a person who is not a trustee is given power to act as a trust director or protector or advisor with power over the trust).

Jane Ditelberg, *Am I My Brother's Keeper: Willful Misconduct and the Directed Trustee Under the Uniform Directed Trust Act*, 44 *ACTEC L.J.* 207 (2019) (analyzing a provision of the Uniform Directed Trust Act concerning liability for willful misconduct by a trustee).

Alexis S. Gettier, *New Direction: The Connecticut Uniform Directed Trust Act*, 33 *QUINNIPIAC PROB. L.J.* 274 (2020) (describing the benefits of increased flexibility and control afforded by Connecticut's adoption of the Uniform Directed Trust Act).

William P. Lapiana, *The Directed Trust in Divorce Court*, 42 *EST. PLAN.* 44 (2015) (discussing the trend toward the use of directed trusts and reviewing Delaware law concerning such trusts).

William D. Lucius & Shirley B. Whitenack, *Directed Trusts: A Primer on the Bifurcation of Trust Powers, Duties, and Liabilities in Special Needs Planning*, 15 *NAELA J.* 71 (2019) (providing a detailed explanation of how individuals planning for the future care of a person with special needs may benefit from the use of a directed trust, which has multiple individuals or entities with power to direct the trustee on specified aspects of the trust, such

as investment management or distribution decisions, rather than just a single, traditional trustee unilaterally making all decisions about the trust).

John D. Morley & Robert H. Sitkoff, *Making Directed Trusts Work: The Uniform Directed Trust Act*, 44 ACTEC L.J. 3 (2019) (discussing issues raised by directed trusts and reviewing the new uniform law concerning these trusts).

Wayne E. Reames, *Beyond UTC Section 808 and the Uniform Directed Trust Act*, 45 ACTEC L.J. 61 (2019) (predicting that the widespread use of directed trusts, with its fragmentation of the traditional trustee function into separate but interrelated parts, will be the most significant change in trust practice in the first half of the twenty-first century).

James P. Spica, *From Strength to Strength: A Comment on Morley and Sitkoff's Making Directed Trusts Work*, 44 ACTEC L.J. 215 (2019) (describing several ways in which Michigan has modified the Uniform Directed Trusts Act).

James P. Spica, *Michigan's Proposed Adoption of the Uniform Directed Trust Act*, MICH. B.J., Nov. 2018, at 26 (explaining the impact of Michigan's adoption of the Uniform Directed Trust Act).

James P. Spica, *Used Not Only as Directed: Michigan's Adaptation of the Uniform Directed Trust Act*, 64 WAYNE L. REV. 339 (2019) (analyzing Michigan's directed trust statute and how it compares to the Uniform Directed Trust Act).

Divorce

Kim Kamin & Elizabeth A. Garlovsky, *Trust Planning for Divorce and Blended Families*, ALI-CLE Course Materials, June 25-30, 2017 (CY020 ALI-CLE 1701) (outlining the significant roles that trusts can play in planning before marriage and during divorce, including the use of alimony trusts, child support trusts, and supplemental needs trusts).

Samuel Kan, *Divorce and the Collapse of the Three-Legged Stool: Setting Servicemembers up for Success in the Age of BRS and Covid-19*, 66 WAYNE L. REV. 409 (2021) (providing advice about trusts and other means of protecting the financial future of spouses when military marriages end in divorce).

Patrick J. Lannon et al., *Protecting an Inheritance in the Event of Divorce*, FLA. B.J., July/Aug. 2020, at 28 (discussing the use of trusts to minimize the risk that an inheritance left to a descendant will wind up passing to the descendant's former spouse in the event of a divorce).

Richard W. Nenno & Denise D. Nordheimer, *Divorce and Third-Party Trusts in Delaware*, 17 DEL. L. REV. 1 (2021) (reviewing court decisions in Delaware about when trust interests constitute marital property, assessing how trusts can affect alimony issues, and explaining how trusts can serve as de facto premarital agreements).

John J. Scroggin, *Divorce Planning from a Tax and Estate Planner Perspective*, EST. PLAN., Nov. 2016, at 29 (advising lawyers about the importance of including tax advisors and estate planners in divorce settlement negotiations, and explaining the potential use of divorce trusts, lifetime QTIP trusts, bypass trusts, reversionary trusts, charitable remainder trusts, spendthrift trusts, and irrevocable trusts).

Edward F. Smith III & Yoshimi O. Smith, *Divorce Planning with Irrevocable Trusts Under the TCJA*, EST. PLAN., Mar. 2019, at 32 (considering how divorce affects trusts, the use of trusts in divorce planning, and the impact that new federal tax laws may have on such trusts).

Stephanie L. Tang, *The Spike in Silver Splitters: Examining Special Considerations for Graying Divorces*, 28 ELDER L.J. 39 (2020) (recommending ways to use trusts in divorce proceedings involving older clients).

Vincent L. Teahan, *Estate Planning to Protect Children of Divorce*, N.Y. ST. B.J., Apr. 2019, at 8 (discussing how matrimonial attorneys can use trusts and other devices to prevent adult children of divorced and remarried parents from being unexpectedly disinherited).

Ethical Considerations

Karen E. Boxx & Philip N. Jones, *Janus as a Client: Ethical Obligations When Your Client Plays Two Roles in One Fiduciary Estate*, 44 ACTEC L.J. 223 (2019) (analyzing whether an attorney

may have a conflict of interest when representing a trustee who is also a beneficiary of the trust).

Brian T. Bradley, *Modern Estate Planning Requires a Broader View*, OR. ST. B. BULL., Dec. 2019, at 36 (contending that estate planners must look beyond the traditional concerns about death and taxes and focus on protecting a client's wealth from being destroyed by lawsuits, health care costs, remarriage of the client's surviving spouse, and death or divorce of the client's children).

Louis A. Silverman, *Legal Ethics and Avoiding Fraudulent Transfers*, EST. PLAN., Sept. 2021, at 29 (explaining why lawyers must be cautious and aware of the boundary lines between properly helping clients to achieve estate planning goals and assisting them in transferring assets in fraud of creditor rights).

Thomas E. Simmons, *Conflict-of-Interest-Infected Virtual Representatives and a Cure*, 64 S.D. L. REV. 1 (2019) (discussing virtual representation in trust proceedings and how it can be used to bind beneficiaries even if they are incompetent, missing, minors, unborn, or unascertained, and warning about the ethical concerns that can arise when a virtual representative of a beneficiary has a conflict of interest).

Carla Spivack, *Twenty-First Century Trusts and Ethics: Estate Planning for Couples*, 53 CREIGHTON L. REV. 683 (2020) (arguing that although many attorneys routinely represent both spouses when doing estate planning work, the presumption in favor of allowing joint representation of spouses should be reversed because the economic inequality of men and women and between primary caregivers and primary wage-earners in American families create many situations in which spouses have adverse interests in estate planning).

Fiduciary Duties

Deborah A. DeMott, *The Domains of Loyalty: Relationships Between Fiduciary Obligation and Intrinsic Motivation*, 62 WM. & MARY L. REV. 1137 (2021) (examining whether the obligations of fiduciary law reinforce or undercut the intrinsic motivation to act loyally, with examples that include situations where the trustee of a family trust has a conflict of interest to which the settlor consented in structuring the trust).

Timothy M. Ferges, *A Dichotomy of Fiduciary Duties*, *PROB. & PROP.*, July/Aug. 2018, at 34 (discussing the questions about fiduciary obligations that can arise when a person serves as a trustee and simultaneously manages a business owned by the trust).

Marielle F. Hazen, *The Fiduciary Pitfalls of Managing Special Needs Trusts that Own Real Estate*, 13 *NAELA J.* 1 (2017) (addressing the duties and responsibilities of the trustee of a special needs trust that holds real estate, and how such trustees can reduce their risk of liability and best protect the interests of the trust's beneficiary).

Amy K. Kanyuk, *Trustee Discretion: The Better Part of Valor or Vulnerability?*, *EST. PLAN.*, Dec. 2019, at 3 (discussing how a trustee's duties and powers can be affected by trust terms that give the trustee discretion in making distributions).

Grayson M.P. McCouch, *Revocable Trusts and Fiduciary Accountability*, 26 *ELDER L.J.* 1 (2018) (arguing that the beneficiaries of a revocable trust should be able to sue the trustee for breaches of fiduciary duties occurring during the settlor's lifetime, if the breaches were committed without the settlor's knowledge or approval).

Alan Newman, *Trust Law in the Twenty-First Century: Challenges to Fiduciary Accountability*, 29 *QUINNIPIAC PROB. L.J.* 261 (2016) (criticizing states for enacting legislation that dilutes or eliminates fiduciary accountability, such as legislation that allows exculpatory clauses relieving trustees of liability for negligence, legislation that relieves trustees of their duty to account to beneficiaries, and legislation allowing trustees to avoid fiduciary duties by allocating the performance of critical functions to non-trustee "advisers" or "protectors").

Max M. Schanzenbach & Robert H. Sitkoff, *Reconciling Fiduciary Duty and Social Conscience: The Law and Economics of ESG Investing by a Trustee*, 72 *STAN. L. REV.* 381 (2020) (examining whether trust fiduciary law permits trustees to take into account environmental, social, and governance factors in making investment decisions about trust assets).

Robert Selsor & Jeffrey Glogower, *Liberation and Liability: Duties, Claims and Defenses Regarding the Trustee's Obligation to*

Provide Information to Beneficiaries, J. MO. B., Nov./Dec. 2017, at 308 (considering the legal, policy, and practical aspects of a trustee's decisions about disclosure of information about the trust to its beneficiaries).

Fraudulent Actions

Alexander A. Bove, Jr., *Can an Incompetent Individual Make a Fraudulent Transfer?*, EST. PLAN., Feb. 2017, at 23 (discussing whether a fraudulent transfer can occur where the representative of an incapacitated or incompetent person has a representative who transfers the person's assets to a trust).

Nicole F. Stowell, Erik Johanson & Carl Pacini, *The Use of Wills and Asset Protection Trusts in Fraud and Other Financial Crimes*, 65 DRAKE L. REV. 509 (2017) (analyzing the use of offshore and domestic trusts in wealth transfer and preservation fraud schemes).

Nathan Wadlinger et al., *Domestic Asset Tracing and Recovery of Hidden Assets and the Spoils of Financial Crime*, 49 ST. MARY'S L.J. 609 (2018) (explaining the process of tracing, freezing, and recovering hidden and stolen assets in fraud and divorce cases, and discussing the important role of legal counsel and the decision whether to proceed with the asset recovery process).

Gun Trusts

Gerry W. Beyer, *Target Best Practices for Guns Included in an Estate*, EST. PLAN., Mar. 2016, at 25 (explaining how gun trusts can be used to protect a client's rights with respect to machine guns or other firearms subject to special regulation under the National Firearms Act).

Apostolos Plokamakis, *Gun Trusts: A Necessary Estate Planning Tool to Ensure that Beneficiaries Avoid Criminal and Civil Penalties*, 44 LINCOLN L. REV. 57 (2017) (describing the increasing use of trusts as an estate planning mechanism for the transfer of ownership of firearms).

Taylor Smith, Comment, *Rule 41F: Targeting a Gun Trust Loop-hole*, 9 EST. PLAN. & COMMUNITY PROP. L.J. 327 (2017) (discussing the Obama administration's issuance of rules concerning background checks and other requirements for people with power over trusts for holding and transferring firearms).

Michael A. Sneeringer, *Gun Trusts – What’s All the Fuss?*, *PROB. & PROP.*, Mar./Apr. 2017, at 10 (dispelling misconceptions about gun trusts and explaining how they can be used to properly dispose of a client’s firearms).

Incapacity Planning

Marty Burbank, *Capacity Issues and Other Factors Impacting Elder Law Clients and Attorneys in California*, 2016 *ASPATORE SPECIAL REP.* 5 (2015) (providing an overview of issues faced by elder law attorneys, including a discussion of the types of trusts commonly used for elderly clients to protect and manage assets during incapacity).

David J. Feder & Robert H. Sitkoff, *Revocable Trusts and Incapacity Planning: More Than Just a Will Substitute*, 24 *ELDER L.J.* 1 (2016) (arguing that while revocable trusts may primarily be used as substitutes for wills, with the goal of avoiding probate, they also typically serve a secondary purpose of avoiding the need for a conservatorship in the event that the settlor becomes incapacitated, and so the beneficiaries of such a trust should have presumptive standing to enforce the trust when the settlor is incapacitated).

Laura Upchurch, *Using Management Trusts in Lieu of or with a Guardianship of the Estate*, 11 *EST. PLAN. & COMMUNITY PROP. L.J.* 325 (2019) (explaining how a management trust under Texas law can be used to hold and manage the assets of a ward or incapacitated person).

International Perspectives

Adam Hofri-Winogradow, *The Statutory Liberalization of Trust Law Across 152 Jurisdictions: Leaders, Laggards and the Market in Fiduciary Services*, 53 *U.C. DAVIS L. REV.* 2313 (2020) (reporting the findings of a systematic study of changes in trust law around the world since 1925, which concluded that trust laws in the United States are highly permissive compared to the rest of the world, and even compared to most small offshore island jurisdictions).

Rebecca Lee, *The Evolution of the Modern International Trust: Developments and Challenges*, 103 *IOWA L. REV.* 2069 (2018) (examining the evolving use of trusts for wealthy families in

Hong Kong and what it shows about the impact of the modern international trust).

Joint Spousal Trusts

Bob Kirkland, *The Good, the Bad, and the Innovative: The Evolution of Joint Spousal Trusts in Today's Estate Planning*, PRAC. LAW., Dec. 2020, at 51 (explaining estate planning opportunities involving qualified spousal trusts).

Robert K. Kirkland & Andrew M. Mitchell, *Old Dog or New Trick? The Evolution of Joint Spousal Trusts in Today's Estate Planning*, PRAC. LAW., Aug. 2021, at 32 (discussing the use of joint spousal trusts for estate planning in common law property states and community property states).

Michaëlle D. Rafferty, *Use of Joint Spousal Trusts in Community Property States: Still the Gold Standard of Estate Planning?*, PRAC. LAW., June 2021, at 47 (providing lawyers in non-community property states an opportunity to understand why joint spousal trusts are a common planning tool in community property jurisdictions).

Litigation

Richard C. Ausness, *A "Mere Expectancy?" What Rights Do Beneficiaries of a Revocable Trust Have Prior to the Death of the Settlor*, 32 QUINNIPIAC PROB. L.J. 376 (2019) (analyzing the issues that can be raised by beneficiaries with respect to revocable trusts, including challenges to the settlor's mental capacity and lawsuits against the trustee after the settlor's death for wrongdoing allegedly committed during the settlor's lifetime).

J. Ellen Bennett, Mark R. Caldwell & Donovan Campbell, Jr., *You Settled It, Right? Family Settlement Agreements in Probate, Trust, and Guardianship Disputes*, 11 EST. PLAN. & COMMUNITY PROP. L.J. 213 (2019) (discussing the significant complications and difficult issues that can arise in drafting settlement agreements for disputes about trusts).

Frank N. Ikard, Jr. & Adam Herron, *Standing, Capacity, and Necessary Parties in Trust Litigation*, 11 EST. PLAN. & COMMUNITY PROP. L.J. 255 (2019) (explaining the difference between standing issues and capacity issues in litigation about trusts).

Matthew Triggs & Jessica Zietz, *Hidden in Plain Sight: Avoiding Conflicts of Interest in Trust Litigation*, FLA. B.J., Jan. 2016, at 94 (analyzing whether a trustee must obtain court approval before using trust assets to pay legal fees associated with prosecuting or defending litigation concerning the trust).

Long-Term Care Planning

Evan Farr, *Asset Protection Planning for Veterans' Benefits Eligibility*, EST. PLAN., Aug. 2019, at 26 (explaining how military veterans can use irrevocable trusts to protect assets while qualifying for government benefits to cover the costs of nursing home or other long-term care).

Evan Farr, *Trusts for Veterans Asset Protection Planning*, PRACTICAL LAW., Aug. 2019, at 16 (advising attorneys on the use of irrevocable trusts as a tool for helping military veterans qualify to receive special benefits to pay for long-term care).

Letha Sgritta McDowell, *Asset Protection Planning for Blended Families*, 12 NAELA J. 81 (2016) (providing advice to elder law attorneys about the use of trusts to protect clients from the cost of care for a chronic illness, including ways to minimize the potential damage that common asset protection planning techniques can have on delicate relationships within blended families).

Lisa M. Nelley, Case Note, *Heyn v. Director of the Office of Medicaid, Massachusetts Appeals Court Holds that the Power to Purchase an Annuity Does Not Render the Corpus of an Irrevocable Trust a Countable Resource*, 12 NAELA J. 145 (2016) (analyzing a Massachusetts decision overturning the termination of Medicaid long-term care benefits for a nursing home resident who owned a house that was placed in an irrevocable trust).

Lisa M. Neeley, *Limiting State Medicaid Agency Attempts to Expand the "Any Circumstances" Test: An Analysis of Massachusetts' Multiyear Legal Battle over the Use of Irrevocable Trusts in Long-Term Care Planning*, 13 NAELA J. 35 (2017) (discussing the use of irrevocable trusts in long-term care planning, and particularly how Massachusetts has denied applications for Medicaid long-term care benefits for applicants with assets in irrevocable trusts).

Premarital Planning

Mary Cushing Doherty, *Romantic Premarital Agreements: Solving the Planning Issues Without “The D Word,”* 29 J. AM. ACAD. MATRIM. LAW. 35 (2016) (discussing the use of domestic asset protection trusts as an alternative to premarital agreements, particularly in situations where a client has religious or emotional reasons to avoid explicit discussion of premarital planning or the possibility of divorce).

Pam Friedman, *Marital Agreements: Wealth Conservation Tool for Estate Plans*, EST. PLAN., May 2016, at 30 (advising financial planners not to overlook the importance of divorce planning, and explaining the role that irrevocable trusts can play as an alternative to prenuptial agreements).

Robert M. Nemzin, *New Domestic Asset Protection Statute Provides Planning Alternative to Newly Uncertain Prenuptial Agreements in Michigan*, PROB. & PROP., Mar./Apr. 2018, at 7 (explaining how the use of domestic asset protection trusts may be an additional and preferred technique for premarital planning after a Michigan court’s decision casting doubt on the effectiveness of prenuptial agreements for shielding property in a divorce proceeding).

Michael A. Sneeringer, *The Case for Trusts as an Alternative to Prenuptial Agreements when Religion Intervenes*, PROB. & PROP., May/June 2019, at 33 (advising attorneys about how to use trusts to protect the property and business interests of a client whose religious beliefs preclude the use of a prenuptial agreement).

Allison Tait, *Trusting Marriage*, 10 U.C. IRVINE L. REV. 199 (2019) (assessing the resurgence in the use of trusts in marriage planning and describing the alarming potential for these trusts to undermine the values of personal trust and financial transparency within marriages).

Privacy Trusts

Bradford S. Cohen & Alexander L. Bruin, *Achieving True Privacy for Public Figures Through Privacy Trusts*, L.A. LAW., May 2019, at 22 (describing how privacy trusts can be used to prevent disclosure of information about a public figure’s personal residence).

Probate Avoidance

Mark Cianciulli, *Should You Put Your Property into a Trust?*, EXPERIENCE, Oct./Nov. 2019, at 16 (assessing the advantages and disadvantages of transferring assets into a living trust in order to avoid the expenses and delays of the probate process).

Zackary C. Nehls, Note, *Death Is Certain but Probate Is Optional: How to Transfer Wealth and Dodge Creditors Using a Revocable Trust*, 65 ST. LOUIS U. L.J. 431 (2021) (discussing how revocable inter vivos trusts are used to avoid the traditional probate estate administration process, and arguing that laws should be changed to protect creditors by obligating trustees to pay the settlor's debts before distributing trust assets to the beneficiaries).

Public Policy Concerns About Trusts

Felix B. Chang, *Asymmetries in the Generation and Transmission of Wealth*, 79 OHIO ST. L.J. 73 (2018) (examining how trusts contribute to wealth inequality and how trusts and estates law has not reflected a coherent and unifying approach to inequality).

Bridget J. Crawford, *Less Trust Means More Trusts*, 75 WASH. & LEE L. REV. ONLINE 74 (2019) (discussing how trusts perpetuate wealth inequality and how the erosion of faith in the legal system has led to transformations in the use of trusts and major changes to trust law).

Bridget J. Crawford, *Magical Thinking and Trusts*, 50 SETON HALL L. REV. 289 (2019) (considering whether family trusts serve appropriate legal or social purposes or merely perpetuate and exacerbate wealth inequality).

Ying Khai Liew, *Justifying Anglo-American Trusts Law*, 12 WM. & MARY BUS. L. REV. 685 (2021) (arguing that trust law and the recognition of the existence of trusts is justified because trusts enhance personal autonomy in a unique way that is supported by the liberal tradition of political morality).

Reid K. Weisbord, *A Catharsis for U.S. Trust Law: American Reflections on the Panama Papers*, 116 COLUM. L. REV. ONLINE 93 (2016) (discussing the reaction to a leak of confidential documents about offshore asset protection trusts, and considering the

aspects of U.S. trust law that authorize similar asset protection techniques).

Special Needs and Supplemental Needs Trusts

Adam C. Dees, *My Client Is the Trustee of a Supplemental Needs Trust – Now What?*, J. KAN. B. ASS'N, May/June 2021, at 45 (providing an overview of the considerations that trustees and their attorneys should have in mind when creating, administering, or terminating a supplemental needs trust).

Steven Friedman, *Supplemental Needs Trusts*, EST. PLAN., Oct. 2017, at 26 (considering how supplemental needs trusts can provide financial protection like a special needs trust, but without the repayment requirements of special needs trusts).

Rebecca A. Iannantuoni & Keith Bradoc Gallant, *For Children with Special Needs: Special Needs Trusts and Other Planning Options*, FAM. ADVOC., Winter 2020, at 30 (explaining the importance of special needs trusts as an estate planning tool for individuals with children who are differently abled, and also describing the value of writing a letter of intent containing instructions that are legally non-binding but will provide vital guidance to future caregivers).

Ron M. Landsman, Case Note, *Decambre v. Brookline Housing Authority, Special Needs Trusts Come to Federal Housing Supports for the Needy*, 13 NAELA J. 55 (2017) (discussing a First Circuit decision about the extent to which distributions from a special needs trust count as income that could disqualify the recipient from being eligible for federal benefits such as rent support under the Section 8 housing program).

Kristen M. Lewis, *Planning Challenges for Beneficiaries with Special Needs*, EST. PLAN., Mar. 2019, at 14 (reviewing the most common challenges that arise in the use of special needs trusts and other planning of care for people with special needs).

Lauren Pierucci, *Protecting Client Settlement Funds with Special Needs Trusts*, ILL. B.J., Aug. 2017, at 40 (describing how special needs trusts can be a valuable mechanism for receiving funds obtained through settlements made on behalf of clients with disabilities).

Anna Sappington, *The Social Security Administration's Policy Overhaul: A Practitioner's Guide to the 2018 Special Needs Trust POMS Revisions*, 15 NAELA J. 127 (2019) (explaining major revisions that the Social Security Administration made to its Program Operations Manual System in 2018, and how these changes affect the creation and operation of special needs trusts).

Kevin Urbatsch, Case Note, *Herting v. California Department of Health Care Services, The First-Party Special Needs Trust Payback Provision: Do Medicaid's Estate Recovery Statutory Exceptions Apply*, 12 NAELA J. 57 (2016) (discussing conflicting California appellate court decisions about the extent to which there are exceptions to a state Medicaid agency's ability to recover reimbursement for health care costs paid by Medicaid on behalf of the beneficiary of a special needs trust).

Taxation

Jonathan G. Blattmachr & Carlyn S. McCaffrey, *Year-End Estate Tax Planning After the 2020 Election*, EST. PLAN., NOV. 2020, at 4 (providing an overview of the principal planning techniques, including use of trusts, for removing wealth from a client's estate tax base).

Mark R. Krogstad & Matthew W. Van Heuvelen, *Domestic Asset Protection Trusts: Examining the Effectiveness of South Dakota Asset Protection Trust Statutes for Removing Assets from a Settlor's Gross Estate*, 61 S.D. L. REV. 378 (2016) (discussing whether transfers to domestic asset protection trusts can be structured as completed gifts for federal gifts tax purposes and whether the transferred assets are effectively removed from the settlor's gross estate for federal estate tax purposes).

Abigail E. O'Connor, *Trusts and QBI: The New 199A Applied*, 11 EST. PLAN. & COMM. PROP. L.J. 107 (2018) (explaining how trusts may benefit from new tax law and regulations that allow deductions for up to twenty percent of qualified business income).

Arielle M. Prangner, *Implications of Termination of Grantor Trust Status*, 13 EST. PLAN. & COMMUNITY PROP. L.J. 443 (2021) (discussing the significant income tax issues that can arise when a trust that had been treated as a grantor trust under the Internal

Revenue Code is “turned off” and no longer qualifies as a grantor trust).

Les Raatz, *Including All Trusts in the Settlor’s Estate – The Skinny on Helmholtz and Sections 2036 and 2038 Recalling the Tale: The Emperor’s New Clothes*, 11 EST. PLAN. & COMMUNITY PROP. L.J. 279 (2019) (discussing how “estate tax string” provisions, which require assets formerly held by the decedent to be brought back into the gross estate for estate tax purposes, can be used to achieve a tax-free step up in basis of trust assets upon the death of a settlor of a trust).

Jay A. Soled, *Spousal Lifetime Access Trusts*, EXPERIENCE, Fall/Winter 2016, at 42 (explaining the advantages and disadvantages of continuing to use spousal lifetime access trusts as an estate planning tool even after Congress chose not to reduce the lifetime gift and estate tax exemption amount).

Trustee Selection

Katherine C. Akinc et al., *Inside the Mind of a Trustee: The Importance of Understanding a Trustee’s Perspective*, 12 EST. PLAN. & COMMUNITY PROP. L.J. 185 (2020) (discussing the characteristics of a good trustee, the duties of trustees, and how good drafting of trust instruments can enhance the likelihood that a trust achieves a client’s interests).

James T. McNary, *Finding Fiduciaries*, BENCH & B. MINN., Jan. 2018, at 24 (explaining how attorneys can advise clients on the considerations relevant to the selection of trustees, trust advisors, and trust protectors).

Mark R. Parthemer & Sasha A. Klein, *A Practical Guide to Trustee Selection: A Review of the Most Common Tax (and Nontax) Traps*, FLA. B.J., Apr. 2016, at 54 (reviewing key issues to consider when advising a trust settlor on the selection of a trustee).

Trust Protectors

Alexander A. Bove, Jr., *A Protector by Any Other Name. . .*, 8 EST. PLAN. & COMMUNITY PROP. L.J. 389 (2016) (asserting that a trust protector generally should be regarded as having fiduciary duties with respect to the trust).

Jeffrey S. Goethe, *Trust Protectors Under Current Florida Law: A Passing Trend or Valuable Planning Tool?*, FLA. B.J., June 2017, at 34 (discussing the potential benefits of appointing a trust protector and considering alternative mechanisms that should be considered as alternatives to the use of a trust protector).

Andrew T. Huber, *Trust Protectors: The Role Continues to Evolve*, PROB. & PROP., Jan./Feb. 2017, at 15 (providing a broad overview of trust protectors and the potential challenges and opportunities presented by the use of trust protectors).

Paul B. Miller, *Regularizing the Trust Protector*, 103 IOWA L. REV. 2097 (2018) (arguing against the general extension of fiduciary duties to trust protectors, and recommending that trust protectors should be treated as having fiduciary status only to the extent that trust protection mandates implicate fiduciary powers).

Michael Pack, *The Trust Protector*, S.C. LAW., July 2020, at 30 (describing the potential benefits and risks of appointing a trust protector, and advising attorneys about the need for drafting trust protector provisions that are clear and unambiguous).

Jessica L. Showers, *Trust Protectors: A Practical Solution to Many Trust Problems*, EST. PLAN., Nov. 2019, at 3 (assessing the benefits of appointing a trust protector who will ensure that the trustee carries out the settlor's intentions).