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Decedents' Estates

Cases and Materials

Second Edition

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This book is dedicated to
Francis J. Hearn, Jr.,
the best call of the day, any day.

ROB

This book is also dedicated to
Dr. Normand Bernard Begnoche
(1959–2010)
"My Daddy loved me.
His favorite color was green."

MTF

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Sudwishcer v. Estate of Hoffpauir, 705 So. 2d 724 (La. 1997), 113
Sullivan v. Burkin, 390 Mass. 864, 460 N.E.2d 571 (1984), 437, 609
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Taylor v. Holt, 134 S.W.3d 830 (2003), 208
Templeton Estate, 4 Fiduciary Rep. 2d 172 (Pa. Orphans' Ct. 1984), 523
The Hebrew University Association v. Nye, 148 Conn. 223, 169 A.2d 641 (1961), 546, 549
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Trimble v. Gordon, 430 U.S. 762, 97 S. Ct. 1459 (1977), 121, 147
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Tulsa Professional Collection Services, Inc. v. Pope, 485 U.S. 478, 108 S. Ct. 1340 (1988), 1, 14
Turpening, *In re* Estate of, 258 Mich. App. 464, 671 N.W.2d 567 (2003), 112
Unthank v. Rippstein, 386 S.W.2d 134 (Tex. 1964), 535
Usry v. Farr, 274 Ga. 438, 553 S.E.2d 789 (2001), 744
Valma M. Hanson Revocable Trust, ***In re***, 779 N.E.2d 1218 (2002), 364
Vaupel v. Barr, 194 W. Va. 296, 460 S.E.2d 431 (1995), 271
Vissering v. Commissioner, **Estate of**, 990 F.2d 578 (10th Cir. 1993), 753
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Ward v. Van der Loeff, House of Lords, United Kingdom, [1924] A.C. 653, 789
Ware v. Ware, 224 W. Va. 599, 687 S.E.2d 382 (2009), 348, 624
Washington v. Glucksberg, 521 U.S. 702, 117 S. Ct. 2258 (1997), 849, 850
Wasserman v. Cohen, 414 Mass. 172, 606 N.E.2d 901 (1993), 354
Wendland v. Wendland, 26 Cal. 4th 519, 28 P.3d 151 (2001), 858, 860
Wheeler v. Wheeler, 281 Ga. 838, 642 S.E.2d 103 (2007), 103, 642, 741
White v. United States, 680 F.2d 1156 (7th Cir. 1982), 761
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Wingate v. Estate of Ryan, 149 N.J. 227, 693 A.2d 457 (1997), 47, 113
Wolfe's Will, *In re*, 185 N.C. 563, 117 S.E. 804 (1923), 288
Woodward v. Commissioner of Social Security, 760 N.E.2d 257, 435 Mass. 536 (2002), 141
Woodworth, Estate of, 18 Cal. App. 4th 936, 22 Cal. Rptr. 2d 676 (1993), 480–482
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Assisted Reproduction
http://www.cdc.gov/art/index.htm (last accessed June 18, 2010), 139
Congregation for the Doctrine of Faith, Instruction *Dignitas Personae* On Certain Bioethical Questions (2008), http://usccb.org/comm/dignitaspersonae/dignitas_personae.pdf (last accessed June 18, 2010), 139
California Probate Laws and Resources
California Probate, Trusts, Wills & Estates: Related Laws and Law Links, http://www.megalaw.com/ca/top/caprobate.php (accessed June 18, 2010), 22
Sacramento County Public Law Library, *Probate Resources*, http://www.saclaw.lib.ca.us/pages/legal-research-guides.aspx, 22
Census Bureau Information
U.S. Census Bureau, *Subject Index*, http://www.census.gov/main/www/subjects.html (accessed Mar. 17, 2010), 79
U.S. Census Bureau, *Married-Couple and Unmarried Partner Households: 2000*, http://www.census.gov/prod/2003pubs/censr-5.pdf (accessed June 18, 2010), 88
U.S. Census Bureau, *Families and Living Arrangements*, http://www.census.gov/population/www/socdemo/hh-fam.html (accessed June 18, 2010), 88
Employee Retirement Income Security Act of 1974 (ERISA)
U.S. Department of Labor, PWBA Office of Regulations and Interpretations, Advisory Opinion by Robert J. Doyle, Director of Regulations and Interpretations, to Mr. Thomas R. Giltner, Dec. 7, 1994, http://www.dol. gov/ebsa/programs/ori/advisory94/94-41a.htm#tof (accessed Mar. 17, 2010), 78
Equitable Adoption
William G. Reeves, *Inheritance by Equitable Adoption: An Overview of Theory and Proof*, http://www.mobar.org/journal/2001/mayjun/reeves.htm (accessed Mar. 1, 2010), 104
Escheat
State of Delaware, Department of Finance: Division of Revenue, *Escheat — Unclaimed Property*, http://www.state.de.us/revenue/information/Escheat.shtml (accessed Mar. 17, 2010), 78
Form Wills
http://www.calbar.ca.gov/calbar/pdfs/publications/Will-Form.pdf (accessed Mar. 10, 2010), 179
Will Forms for Your State, http://www.uslegalforms.com/last_will_and_testament.html; select Will Forms — All States — Free Law (accessed Mar. 10, 2010), 179
Legalzoom, Wills, http://www.legalzoom.com/legalzip/wills/will_procedure.html (accessed Mar. 10, 2010), 179
Legacy Writer, *Online Estate Planning Tools for Life*, http://www.legacywriter.com/CreatYourWill_Process.html (accessed Mar. 10, 2010), 179

Generation-Skipping Transfer Tax

Internal Revenue Service, *Generation-Skipping Transfer Tax Return*, http://www.irs.gov/pub/irs-pdf/f706gsd.pdf (accessed Mar. 12, 2010), 189

California Bureau of Tax Administration, *California Generation-Skipping Transfer Tax Return*, http://www.sco.ca.gov/Files-ARD-Tax-Info/estate_distributions_gstd.pdf (accessed Mar. 12, 2010), 189

New York State, Department of Taxation and Finance, *Estate/Generation Skipping Transfer Tax Forms*, http://www.tax.state.ny.us/pdf/2010/et/et500_110.pdf (accessed Mar. 12, 2010), 189

Medicaid

Centers for Medicare & Medicaid Services, *Medicaid Index*, http://www.cms.hhs.gov/medicaid/medicaidindex.asp (accessed July 2, 2010), 900

National Association of State Medicaid Directors, *Links to State Medicaid Agencies*, http://www.nasmd.org/links/state_medicaid_links.asp (accessed July 2, 2010), 900

National Conference of State Legislators, *State Medicaid Reform*, http://www.ncsl.org/Default.aspx?TabId=14347 (accessed July 2, 2010), 900

Organ Donation

www.unos.org (last visited Apr. 5, 2010), 834

www.ustransplant.org (last visited Apr. 10, 2010), 834

Pets Trusts and Estate Planning

Leona Helmsley's Dog Loses All but 2 Million, N.Y. TIMES, June 17, 2008, http://www. nytimes.com/2008/06/17/nyregion/17trouble.html?_r=1&ref=nyregion (accessed June 27, 2010), 524

Last Will and Testament of Leona M. Helmsley, http://www.nytimes.com/packages/pdf/nyregion/city_room/20070829_helmsleywill.pdf, 525

The Estate Planning for Pets Foundation, *Estate Planning for Your Pet*, http://www.estate planningforpets.org (accessed June 27, 2010), 530

Gerry W. Beyer, *Estate Planning for Pet Owners*, http://www.professorbeyer.com/Articles/Animals.htm (accessed June 27, 2010), 530

Amy Shever, PetGuardian, LLC, *Pet Trust Plans*, http://www.petguardian.com (accessed June 27, 2010), 530

QTIP Trusts

Richard W. Sherman, *A Half-Dozen Uses for a QTIP (qualified terminable interest property)*, http://www.nysscpa.org/cpajournal/old/12097358.htm (accessed June 19, 2010), 412

Social Security

Social Security Administration Online, http://www.socialsecurity.gov/pressoffice/basic fact.htm (accessed Apr. 5, 2010), 895–896

Social Security Administration Online, *Fast Facts_* & Figures about Social Security, 2009, http://www.socialsecurity.gov/policy/docs/chartbooks/fast_facts/2009/fast_facts09.pdf (accessed Apr. 5, 2010), 896

Social Security Administration Online, *Social Security Programs Throughout the World: The Americas 2009*, http://www.socialsecurity.gov/policy/docs/progdesc/intl_update/2010-03/index.html (accessed Apr. 5, 2010), 896

Social Security Administration Online, *SSI Recipients by State and County, 2008*, http://www.socialsecurity.gov/policy/docs/statcomps/ssi_sc/index.html (accessed Apr. 2010), 896

Supreme Court of Tasmania

Supreme Court of Tasmania, http://www.supremecourt.tas.gov.au/home, 226

Preface

Second editions offer authors the opportunity to refine, sharpen, and certainly correct what occurred in the first edition. We are grateful for the opportunity to do just that. The first edition was published in 2006, but largely written in 2005, and much has changed since then. An increasing number of states have adopted the Uniform Trust Code, the catastrophic economic collapse of 2008 focused attention on prudent investing, and there has continued a gradual reduction and even elimination of the federal estate tax. The Uniform Probate Code was substantially revised in 2008, now permitting notarized wills, expansive non-biological heirship, and a new formulation of a spouse's elective share. Spousal status has been extended to an increasing number of persons who are of the same-sex, and states continue to grapple with harmless error and integration of non-probate transfers. Thus, the laws have changed, but what has remained the same is the necessity of providing attorneys who know the issues and can professionally meet the needs of their clients. As with the first edition, our goal, like yours, is to properly educate these attorneys.

As we continue into the Twenty-First Century, any course on decedents' estates is best characterized by the creation of *inter vivos* trusts, the proliferation of non-probate transfers, the easing of the "harsh formalism" of ancient formulae, the disclaimer of inheritance and contest through prenuptial agreements, and the casting of lifelines as an ever-increasing generation of older persons plans for incapacity. Any student–or professor–would never have predicted that states would limit the Rule Against Perpetuities, or abolish it altogether. No one would have predicted that academics would tinker with the share of a pretermitted heir, discount the word "survivor," or rationalize the introduction of extrinsic evidence to change the plain meaning of words. Likewise, who would have thought that Lehman Brothers would fail, that Bernie Madoff was operating a Ponzi scheme, or that there would be a year—2010—when there would be no federal estate tax at all. None. All of these things have come to pass, but a few things have remained the same. For example, taxation of estates is present, no matter what the federal outcome. Taxation has always been the tail that wags the dog, and no matter what occurs with the federal levies, the states remain vigilant in collection of gift, estate, and inheritance taxes. And the human desire to make a difference in life remains the same, evidencing itself in gifts to charity, educational trusts for children, spousal trusts, and a myriad of trusts to provide "care, comfort and support" for everyone and everything, including pets and mausoleums. Remaining the same, too, is the public policy of any government that seeks to provide an orderly, efficient and fair administration of wealth transfer.

A final factor that has remained the same, be it expressed in the last edition or this one, is the reality that, at some point in time, each person seeking to transfer wealth will become a decedent. No matter what legal changes have occurred, strategies have been adopted, or taxes have been imposed and paid, each person is amassing a decedent's estate. This is the reason why we chose this title for the book, even though we are conscious

observers of the scene and realize that *inter vivos* transfers and planning options are the focus of the modern course material. In assembling the material for the book, choosing cases, writing the Notes, and incorporating code provisions, we have made a purposeful effort to concentrate on the modern adaptations of *inter vivos* planning, but we are ignoring neither our indebtedness to what has gone before, nor the things that have remained the same. We hope that the reader will recognize and appreciate this balance in the following themes.

First, our primary concern is to make this book a good teaching vehicle. To facilitate this, we continue to place a Tool Bar at the start of each chapter, hoping that this will allow for a brief introductory summary before entering the thicket of material. Often students miss the forest for the trees, and we hope that the Tool Bar will assist in providing a comprehensive overview from which the reader will be able to start, refer to throughout, and summarize at the conclusion. We have painstakingly chosen cases with fact patterns that invite interest, creativity, and debate. Good cases make good classes! A Teachers' Manual was written to assist with these cases, integrate the code provisions, and explain interconnectedness.

A second theme of the book is informational. While we do ask a few questions in the Notes, far more often we explain, elaborate on the case, and highlight. And while we believe in the practice of providing students with problems, we prefer to allow the cases or the professor to present the problems. The Teachers' Manual contains many former exam questions, with feedback provided. Furthermore, students and professors have embraced the Web, which is even available during class. Therefore, the casebook has many Web addresses. There is a Table of Web Sites, and the Web addresses throughout the material provide the students and the professors with a chance to update statistics, view forms, and obtain further sources and information. Plus, we hope you will utilize the many international statutes provided, furnishing a glimpse into such arenas as spousal rights and fiduciary administration in foreign countries. Finally, we offer a device that we have used to teach some of the material—what we refer to as the Analytical Principle. This is a tool, consisting of time frames and points of reference, and is used to explain complicated issues such as lapse, powers of appointment, and vesting. We explain it in Chapter Six: Utilizing Future Interests, but its applicability will be shown in Chapter Seven: Creation, Classification, and Utilization of Trusts. We hope that you used it when you taught from the first edition, and we hope it continues to provide a good resource.

A third theme of the casebook is confrontational. That is, to incorporate into the text the thorny issue of estate and gift taxation. We have omitted a separate chapter on taxation, preferring instead to place the cases on taxation throughout the casebook. Some of these tax considerations consist of material presented in Notes, and some are cases, but each offers a glimpse into the interrelationship between the material being studied and taxation. We think this must be confronted in any course on decedents' estate. Professors wishing to avoid taxation issues may utilize a syllabus that consistently omits these considerations. But we hope that others will find the inclusion of taxation to be a dose of reality for students, acknowledging that many of our trusts are premised on avoiding incidents of ownership that will subject the estate to taxation, or structured so as to achieve income or gift tax benefits. Admittedly, some of the tax cases are complicated and unfamiliar, but we think that modern planning for decedents must accommodate their presence and utility.

The final theme inculcated throughout the chapters is statutory construction analysis. Too often students become imbued with a lopsided appreciation for the common law to the detriment of statutory interpretations. To address this, included within the text are

various code provisions, such as the international codes previously mentioned, and a number of state and uniform statutes, many from community property states. For example, there are numerous references to both the older and the newer version of the Uniform Probate Code. Also, we find that the Uniform Trust Code has increasing application, as well as the Uniform Prudent Investor Act, Uniform Principal and Income Act, and the Uniform Health Care Decisions Act. Repeated reference will be made to these, and more individualized attention will be given to the Uniform Parentage Act, the Uniform Premarital Agreement Act, the Uniform Simultaneous Death Act, and the Uniform Statutory Rule Against Perpetuities Act. Of course, individual cases will discuss other state statutes in the context of decisions rendered. Admittedly, sometimes these cases were included because of the extensive discussion generated by the state's statute. Although the statutes may lack the factual context, including the drama of decisional law, they are the indisputable first step in any analysis.

The casebook is divided into eight chapters. Chapter One: An Introduction, introduces the student to the issues that will arise in the succeeding chapters. We have provided you with "A Family Affair" that concerns a family confronting death, incapacity, wealth transfer, and how the government, attorneys, and the family's own decisions will interconnect. The clients factually portrayed confront a reoccurring dilemma in modern society—how to plan for incapacity and transmit wealth to others. Addressing this invites what is to come in all the other chapters. But this is the chapter where the student is likely to first be introduced to the significance of non-probate transfers in the transmission of wealth, the struggle between state and federal tax entities, the overwhelming effort to avoid either gift or estate taxes, and the possibility that attorneys may be held liable for negligence. When we end the book with Chapter Eight: Planning for Incapacity, we will revisit the issues we presented in this first chapter. There, we will also introduce Medicare, Medicaid, Social Security, and the challenge of paying for assisted living. Increasingly, as is demonstrated in this chapter, the goal of estate planning is to plan for many years of incapacity and assisted living.

Chapter Two: Intestate Succession, is traditional, statutory, and yet very modern. Every state has an intestate statute defining heirs; this is both traditional and statutory. But extensive consideration is given to the changing definition of family in American society. After establishing the pattern of distribution of wealth, when there is neither a Last Will and Testament nor a non-probate substitute, the chapter explores how spouses, issue, and the biological revolution have affected status and the distribution of wealth under intestate statutes. Same-sex partners are achieving increasing status as spouses, and science has increased opportunities for parenthood and heirs. Who is an issue of whom? This is very exciting. And the 2008 revisions to the Uniform Probate Code have introduced new elements. And although they will have applicability to other forms of wealth transfer, this chapter provides the opportunity for students to discuss simultaneous death, assignment of expectancy, and disclaimers. These, too, are traditional, but private ordering and non-probate opportunities provide modern applicability.

Chapter Three: The Last Will and Testament, details the historical rules meant to safeguard the testator's last wishes. We will examine the different types of wills and then explore the formalities and intentionalities needed to execute any of them. When faced with many historical precedents establishing the validity of wills, it is interesting to introduce the students to the modern doctrines of substantial compliance and primary intent. Plus, for the first time, students will study the newest introduction by the Uniform Probate Code: notarized wills. All of the pomp and circumstances of days-gone-by, with witnesses and lots of signatures, now may be reduced to a simple notary public. Progress? This is

the chapter where we seek to balance the old against the new, the evolution of presence at execution, and how much influence is undue. These cases mirror the human condition. And once the students have mastered professional execution, with all of its competing interests, we discuss revocation and revival of wills. As with execution, we have sought to balance the old with the new.

Chapter Four: The Meaning of Words, invites the students to become attorneys, to make a "fortress out of the dictionary." The law has accepted facts of independent significance and incorporation, but legal lists and exoneration are evolving, as are ademption and accessions. Likewise, the law regarding contracts to make wills is fairly settled, but commentators have suggested and offered legislation, proposing changes to the rules addressing mistake and the distribution of property when there has been a lapse in persons and property. Comparing the age-old rules with the new exigencies is like pouring new wine into old bottles, precipitating good class participation. But our objective was to provide the grist, offering a chance to explore textualism and evolution.

Chapter Five: Restraints on Transfer of Wealth, confronts the student with a premise they learned in Chapter One—that they have a right under the Constitution to pass their property to others at death. But in this chapter, we learn that there are restraints upon that right. For example, you cannot create a trust that promotes lawlessness, you cannot forget your issue, and since your spousal equivalent is your economic partner, she or he has a right to part of the wealth amassed prior to death. These restraints are the ones that students expect, fresh from classes on constitutional law. But we also address a final restraint, the bureaucratic process that will offer considerable restraint upon transfer at death. The costs, forms, delays, taxes, administration, and contests can be a bureaucratic nightmare. Finally, extensive treatment is provided for spouse equivalents. The listing of statutory entitlements available to a spouse equivalent, able to benefit, is a valuable reminder of public policy's attentiveness to committed unions. And the statutory and judicial models to provide for augmenting the estate for election by a surviving spouse equivalent are meant to promote dialogue about public policy's deficiencies and changes. Indeed, the 2008 revision to the elective share provisions of the Uniform Probate Code, seeking to integrate marital property considerations into distribution of property at death, offers good discussion opportunities.

Chapter Six: Utilizing Future Interests, provides an explanation of the words, phrases, and constructions that have divided "interest" from "possession" for hundreds of years. Anticipating the next chapter, devoted exclusively to trusts, this chapter provides definitions, cases, and the Analytical Principle that may be used to chart the interests that will pass under anti-lapse statutes, class gifts, powers of appointment, the Rule Against Perpetuities, and vesting. Rather than study the material in a vacuum, the cases and statutes seek to provide what is necessary to use future interests in estate planning instruments. Students will have had an introduction to this material in their first year property classes, for better or for worse, so what we provide here is the practical application of those words and phrases, applicable to trusts and what goes into them.

Chapter Seven: Creation, Classification, and Utilization of Trusts, is the longest chapter in the casebook, but we thought it was justified to assemble all of the trust material in one place to provide a comprehensive approach to the topic. We think it essential that the students understand the five elements of a trust. The cases complement the statutes, and we have sought to distinguish gifts and highlight fiduciary responsibility. We are particularly pleased with the extensive Notes concerning trusts for pets. As is illustrated by the estate plan of many famous people, trusts for pets are far more common than anyone may think.

If the five elements of a trust are traditional, the classifications of trusts provided present the modern evolution. We have added references to Trusts & Estates—a periodical that we think is particularly relevant to any discussion of trusts. Too often, courses on decedents' estates neglect to illustrate types of trusts common to estate planning. The ten trusts and five non-probate contractual arrangements that we include are meant to provide the student with modern applicability, placing the material firmly in the context of what occurs each day in law offices throughout the United States. We anticipate that these classifications will prompt interesting class discussion. Likewise, modification and termination of trusts have historical roots and, therefore, have rules, but more modern statutes have made substantial inroads, offering a discussion as to preference and, most importantly, professional responsibility. Likewise, we have provided extensive Notes and commentaries to sharpen discussion.

Too often, trust administration is given little attention in law schools. The Wall Street collapse of 2008 and the massive government bailouts may prompt greater scrutiny. But regardless of the headlines, a significant portion of attorneys practicing in this field of law do so in the context of wealth management. In this chapter, we seek to provide you with the tools to get these future wealth managers started! Thus, there is extensive consideration given to what is prudent, the duty of loyalty, and how to maintain income for beneficiaries but still maintain principal for remainder beneficiaries. And how should a trustee invest, repair, sell or administer the trust property? These issues are discussed under powers of the trustee, and appropriate statutory guidelines are provided. Likewise, we provide commentary from practitioners and scholars in the field.

Finally, in Chapter Seven, we discuss three legal constructions that rest upon the validity of trusts; they are, class gifts, powers of appointment, and the Rule Against Perpetuities. With class gifts and powers of appointment, it is possible to present the rules pertaining to definition, scope, and validity, but the Rule Against Perpetuities offers a considerable challenge because of its changing status. It is possible to speculate that the Rule began to lose its binding force when states sought to ameliorate its harshness with doctrines such as wait and see, second look, and cy pres. These are all explained. But when states, and eventually the Uniform Probate Code, adopted the Uniform Statutory Rule Against Perpetuities, extending wait and see to ninety years, it was possible to imagine eliminating the Rule completely. Some states have done so. We provide a state statute abolishing the Rule. Goodness! This provides an opportunity to discuss the public policy behind the Rule, and having learned about trusts in the same chapter, hopefully it will all come together in discussing innovations like dynasty trusts or perpetual trusts.

Chapter Eight: Planning for Incapacity, offers an opportunity to return to the family affair presented in the first chapter, and then to discuss options in light of what has been learned between then and now. For example, the utility of a will, the consequences of intestate succession, the necessity of clear language, the avoidance of unreasonable restraints upon beneficiaries, and the use of trusts to provide for care and support. With that done, practicality demands assessment of resources and, specifically, payments from entitlement programs such as Social Security, Medicare, and Medicaid. And so as to provide for personal dignity and privacy, and to ease the burden on family members, there are state forms and cases concerning durable powers, health care decision delegation, and the powers of conservators and guardians. The facts of these cases command headlines, and we seek to provide context through famous lives, such as Brooke Astor. Increasingly, we believe that the issues presented in this chapter will dominate the lives discussed in the issues presented in previous chapters. None of us get out alive, and between now and then, we need to plan for incapacity and death.

As you use this book, we welcome your comments and suggestions. And we wish to express our deep appreciation to many who contributed to this enterprise. Although any errors are our own, we wish to acknowledge our former decedents' estates professors, John L. Garvey and Neill Alford. The grace, friendship, and exactitude of the late Jesse Dukeminier provide inspiration. And the empowerment and wisdom of mentors such as Walter Wadlington provide encouragement. Present and former students contributed more than they know, and more than we can acknowledge.

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Note on Editing

Some text, footnotes, and citations have been edited to make the cases we have included more manageable and relevant to the teaching tools applicable to a three- or four-credit course. The footnotes that are included contain the original footnote numbers from the original source. All omissions are indicated with an appropriate ellipses symbol to indicate that material has been omitted.