# Table of Contents

**CHAPTER 1. INTRODUCTION AND PRELIMINARY MATTERS**

A. **INTRODUCTION**
- § 1:3 Origin of difference between real and personal property
- § 1:5 Omnibus Probate Act

B. **PRELIMINARY MATTERS**
- § 1:6 Necessity of administration in court
- § 1:7 Informal administration of small estates
- § 1:10 Decedent’s body and its interment—Funerals and monuments
- § 1:12 Powers of executors and administrators before appointment
- § 1:14 Effect of death or incapacity of principal on powers of agent

**CHAPTER 2. PROBATE COURTS**

A. **ORGANIZATION AND PRACTICE**
- § 2:1 Organization of the Massachusetts Probate Court system
- § 2:2 Petitions, citations, appearances and hearings
- § 2:3 Miscellaneous matters relating to probate procedure

B. **JURISDICTION AND POWERS**
- § 2:5 General statutory jurisdiction
- § 2:6 Jurisdiction sometimes exclusive and sometimes concurrent
- § 2:7 Power to approve compromises and arbitrations

C. **PROBATE DECREES**
- § 2:9 Nature and form of probate decrees
- § 2:11 When probate court decisions can be attacked in collateral proceedings
- § 2:13 Power of probate courts to revise their own decrees to correct errors

D. **EQUITY JURISDICTION OF PROBATE COURTS**
- § 2:14 Generally
- § 2:15 Instructions to executors and other fiduciaries in the performance of their duties
- § 2:16 Declaratory judgments
E. COSTS AND COUNSEL FEES

§ 2:17 Award of costs and expenses
§ 2:18 Award of compensation to attorneys and others for services rendered to estate

CHAPTER 3. PROBATING THE WILL

§ 3:05 Massachusetts Uniform Probate Code [New]
§ 3:2 Preparing and filing the petition for probate
§ 3:3 Notice to interested parties
§ 3:5 Procedure for probating the will—Contested cases
§ 3:6 How to contest a will
§ 3:7 Grounds for contesting a will
§ 3:8 Parties to will contests
§ 3:9 Jury issues
§ 3:10 Codicils and other testamentary instruments
§ 3:11 Lost wills
§ 3:12 Compromises of wills

CHAPTER 4. APPOINTMENT OF EXECUTORS AND ADMINISTRATORS

§ 4:05 Massachusetts Uniform Probate Code [New]
§ 4:1 Who may be appointed executor
§ 4:2 Who is entitled to be appointed administrator
§ 4:3 Procedure for securing the appointment of an executor or administrator

CHAPTER 5. THE BOND

§ 5:05 Massachusetts Uniform Probate Code [New]

CHAPTER 6. SPECIAL FORMS OF ADMINISTRATION

§ 6:05 Massachusetts Uniform Probate Code [New]
§ 6:2 Special administrators
§ 6:3 Administrators with the will annexed
§ 6:4 Temporary executors and temporary administrators with the will annexed
§ 6:5 Administrators de bonis non
§ 6:6 Public administrators

CHAPTER 7. DEATH, RESIGNATION, OR REMOVAL OF EXECUTORS AND ADMINISTRATORS

§ 7:3 Removal
§ 7:4 Consequences of death, resignation or removal

CHAPTER 8. INTERSTATE PROBLEMS

§ 8:1 What law governs administration
### TABLE OF CONTENTS

§ 8:6 Procedure to enable foreign executors or administrators to collect assets in Massachusetts  
§ 8:7 The Massachusetts rule for the settlement of estates of deceased nonresidents  
§ 8:8 Powers of foreign fiduciaries

### CHAPTER 9. ASSETS OF THE ESTATE

§ 9:1 Preparing the inventory  
§ 9:3 Personal property, generally  
§ 9:5 Gifts and other transfers made by decedents  
§ 9:5.50 Securities registered in beneficiary form [New]  
§ 9:6 Gifts causa mortis  
§ 9:7 Joint bank accounts and other jointly held property  
§ 9:8 Debts, claims, and rights of action  
§ 9:9 Apportionment of income  
§ 9:10 Real property  
§ 9:11 Nominee trusts  
§ 9:15 Digital assets [New]

### CHAPTER 10. ASSETS—ACTIONS FOR CAUSING DEATH

§ 10:2 The general negligence statute  
§ 10:5 Time limit for bringing actions for death  
§ 10:6 To whom damages are distributed  
§ 10:7 Damages for death not assets of estate—Exceptions in certain cases  
§ 10:8 What happens if wrongdoer dies

### CHAPTER 11. COLLECTION AND MANAGEMENT OF THE ESTATE

§ 11:1 Taking estate into possession  
§ 11:3 Contracts and expenditures relating to estate  
§ 11:7 Title to personal property  
§ 11:9 Powers and duties in relation to real estate

### CHAPTER 12. SALES UNDER LICENSE OF THE COURT

§ 12:1 Real estate subject to sale  
§ 12:4 Procedure—The petition and license  
§ 12:5 The sale and transfer  
§ 12:10 Sales by foreign executors or administrators  
§ 12:11 Specific performance of agreement or other obligation to convey

### CHAPTER 13. TAXES, GENERALLY

### CHAPTER 14. MASSACHUSETTS ESTATE AND GENERATION–SKIPPING TAXES

§ 14:1 Massachusetts estate tax
CHAPTER 15. FEDERAL ESTATE AND GENERATION–SKIPPING TAXES
§ 15:1 Federal estate tax
§ 15:2 Federal generation-skipping transfer tax

CHAPTER 16. INCOME TAXES
§ 16:2 Massachusetts income tax

CHAPTER 17. PAYMENT OF DEBTS AND CLAIMS
A. IN GENERAL
§ 17:2 Obligations created by decedent
§ 17:3 Claims for services rendered to decedent
§ 17:5 Doubtful and disputed claims
§ 17:7 Order of payment—Priority
§ 17:8 Property out of which debts should be paid

B. THE SPECIAL STATUTE OF LIMITATIONS

1. GENERALLY
§ 17:11 Generally
§ 17:12 Claims barred by special statute of limitations

2. EXCEPTIONS TO THE STATUTE
§ 17:13 Failure of suit for defect of form
§ 17:14 Relief in equity
§ 17:17 Claims not accruing within period of limitation
§ 17:19 Tort action recoverable from insurance proceeds

CHAPTER 18. INSOLVENT ESTATES
§ 18:1 Representing the estate insolvent

CHAPTER 19. ALLOWANCE TO SURVIVING SPOUSE AND MINOR CHILDREN

CHAPTER 20. RIGHT TO WAIVE THE PROVISIONS OF THE WILL
§ 20:1 Nature of right to waive—Procedure
§ 20:2 Amount which can be claimed
Appendix D. Self-Proving Affidavits for Wills

Table of Laws and Rules
Table of Cases
Table of Contents

CHAPTER 21. STATUTORY DISTRIBUTIVE
SHARE OF A SURVIVING SPOUSE IN
THE INTESTATE PROPERTY OF A
DECEASED SPOUSE
§ 21:1 Nature of the right
§ 21:3 Circumstances affecting the right—Conveyances in fraud of it, etc.

CHAPTER 22. DOWER
§ 22:1 Nature of the right
§ 22:4 Estates or interests subject to dower

CHAPTER 23. HOMESTEAD
§ 23:0 Introduction [New]
§ 23:1 Nature of the estate
§ 23:2 How the estate is created [New]
§ 23:3 Multiple owners and trusts [New]
§ 23:4 Effect of marriage, divorce, etc. [New]
§ 23:5 Mortgages and other loans [New]
§ 23:6 Termination [New]
§ 23:7 Proceeds of sale or insurance [New]
§ 23:8 Preexisting homesteads [New]
§ 23:9 Exceptions under the statute and bankruptcy [New]

CHAPTER 24. RULES OF INHERITANCE
AND DESCENT
§ 24:05 Massachusetts Uniform Probate Code [New]
§ 24:1 In general—Heirs and next of kin
§ 24:2 The statutory rule of descent and distribution
§ 24:4 Taking by right of representation
§ 24:11 Forfeiture of inheritance for crime
§ 24:12 Children born out of wedlock
§ 24:13 Posthumous children
§ 24:14 Adopted children

CHAPTER 25. PAYMENT OF LEGACIES
§ 25:2 Right of legatee to renounce or disclaim a legacy
§ 25:3 Actions to recover legacies
§ 25:4 Interest on legacies
§ 25:7 Advancements and the ademption of money legacies
§ 25:11 Bequests of income or annuities
§ 25:12 Mode and sufficiency of payment

CHAPTER 26. DISTRIBUTION OF INTESTATE PROPERTY
§ 26:3 The decree for distribution

CHAPTER 27. ACTIONS BY AND AGAINST EXECUTORS AND ADMINISTRATORS
§ 27:1 In general
§ 27:2 Personal or representative capacity—Form of writ
§ 27:3 Miscellaneous matters relating to pleading and practice
§ 27:6 Limitation of actions
§ 27:8 Death of either party, or death or removal of the executor or administrator, pending suit

CHAPTER 28. SUITS ON PROBATE BONDS
§ 28:4 Suit for failure to file inventory or account or to account for all assets
§ 28:10 Judgment and damages

CHAPTER 29. PROBATE ACCOUNTS
§ 29:1 Duty to render an account
§ 29:2 Form of accounts
§ 29:6 Schedule B—The credit side of the account—In general
§ 29:10 Procedure on accounting, hearings, contests, decrees, etc.
§ 29:12 Notice or assent requirements in allowance of accounts
§ 29:13 Appointment of a guardian ad litem in the allowance of accounts
§ 29:14 Conclusiveness of a decree allowing an account
§ 29:15 Impeachment and reopening of accounts

CHAPTER 30. APPEALS IN PROBATE PROCEEDINGS
§ 30:1 Nature of probate appeals
§ 30:2 Who may appeal what
§ 30:4 Reservations and reports
§ 30:8 What is before the court in appellate proceedings
§ 30:10 Attitude of reviewing court toward the appeal
§ 30:11 Effect of appeal on decree appealed from

CHAPTER 31. PARTITION
§ 31:1 Who may have partition
§ 31:2 Probate courts and land court have concurrent exclusive jurisdiction [Retitled]
§ 31:3 What land may be included in the petition
§ 31:7 Hearing—Decree—Appointment of commissioners, etc.
§ 31:9 Costs and expenses

xv
§ 31:10 Equity jurisdiction—Appointment of receiver to collect rents, etc.
§ 31:12 Partition by sale
§ 31:13 Distribution of proceeds—Claims against individual shares
§ 31:15 Improvements made by individual cotenants
§ 31:18 Rights of strangers not parties to the proceedings

CHAPTER 32. SETTLEMENT OF ESTATES OF ABSENTEES

CHAPTER 33. WILLS

A. IN GENERAL
§ 33:4.50 Claims against estate planning attorneys by a decedent’s beneficiaries or heirs [New]

B. FORMAL REQUISITES OF WILL
§ 33:6 Requirement of testamentary capacity
§ 33:7 Execution of will
§ 33:10 Attesting witnesses—Minimum requirements

C. ALTERATION AND REVOCATION OF WILL
§ 33:14 Revocation of will as result of subsequent change in circumstances

D. RELATED TESTAMENTARY DEVICES
§ 33:23 Transactions void as testamentary in character and in violation of the statute of wills

E. UNDUE INFLUENCE, FRAUD AND MISTAKE
§ 33:25 Burden of proof; definition and nature
§ 33:26 Persons exercising influence
§ 33:27.50 Tortious interference with expectancy of receiving gift or legacy [New]

F. FORM, CONTENTS AND CONSTRUCTION OF WILL

1. GENERALLY
§ 33:30 General rules of construction—Ascertainment of testator’s intention
§ 33:31 Assumption of knowledge of terms used in will
§ 33:32 Construction of inconsistent clauses or provisions
§ 33:33 Admissibility of evidence to aid in construction of will
§ 33:34 Presumption to dispose of entire estate
§ 33:37 Description and subject matter of legacy
\$ 33:38 Legacy or devise as absolute interest, fee simple or life estate

2. PARTICULAR CLAUSES
\$ 33:45 Clauses forfeiting legacies for contests

3. LEGACIES AND DEVISES
   (a) Generally
   \$ 33:48 Specific and general legacies and devises—Ademption
   \$ 33:51 Lapsed legacies and devises
   \$ 33:52 Vested and contingent interests
   (b) Bequests to Groups
   \$ 33:57 Bequests to “heirs,” “issue,” “children,” “legal” and “personal representative,” “family,” “relatives,” “next of kin,” “parent” and “descendants”
   \$ 33:58 Children and other issue of the testator not provided for in the will
   \$ 33:59 Per capita or per stirpes
   (c) Gifts to Charities
   \$ 33:60 Gifts to charities, in general
   \$ 33:61 Cy pres doctrine
   \$ 33:62 Authority of attorney general

CHAPTER 33A. ILLEGAL CONDITIONS AND RESTRAINTS ON ALIENATION
\$ 33A:1 Illegal and impossible conditions
\$ 33A:3 Conditions in restraint of alienation
\$ 33A:6 Postponed enjoyment and the doctrine of Clafin v. Clafin

CHAPTER 34. POWERS OF APPOINTMENT
\$ 34:3 How powers may be exercised—Construction
\$ 34:5 Failure to appoint or appointment void for some illegality—Doctrine of capture
\$ 34:7 Exception—Appointed property as assets for creditors

CHAPTER 35. GUARDIANS AND CONSERVATORS

A. IN GENERAL
\$ 35:1 Introduction
\$ 35:2 Jurisdiction and venue
\$ 35:3 Right to counsel and other protections

B. APPOINTMENT OF GUARDIANS OF MINORS
\$ 35:4 Conditions for appointment
§ 35:5 Selection and who may serve
§ 35:6 Procedure for appointment

C. APPOINTMENT OF GUARDIANS OF INCAPACITATED PERSONS
§ 35:7 Basis for appointment
§ 35:8 Selection and who may serve
§ 35:9 Procedure for appointment

D. APPOINTMENT OF CONSERVATORS
§ 35:10 Basis for appointment
§ 35:11 Selection and who may serve
§ 35:12 Procedure for appointment

E. TEMPORARY GUARDIANS AND CONSERVATORS
§ 35:13 Temporary and special guardians
§ 35:14 Temporary and special conservators

F. POWERS AND DUTIES OF GUARDIANS AND CONSERVATORS
§ 35:15 Requirement of giving bond
§ 35:16 Powers and duties of guardians of minors and incapacitated persons
§ 35:17 Powers and duties of conservators
§ 35:18 Support of a minor or other protected person
§ 35:19 Estate planning for a protected person
§ 35:20 Sales and transfers of real and personal property by conservator
§ 35:21 Sales of real estate where seller’s spouse is under disability
§ 35:22 Contracts made by the conservator or the protected person
§ 35:23 Remedy of incapacitated or protected person where guardian or conservator refuses to act in the person’s interests

G. FOREIGN GUARDIANS, CONSERVATORS, AND PROTECTED PERSONS
§ 35:24 Foreign guardians and conservators
§ 35:25 Conservators of nonresidents
§ 35:25.50 Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act [New]

H. INVENTORY AND ACCOUNTING; COMPENSATION
§ 35:26 Inventory and appraisal
§ 35:27 Accounts
§ 35:28 Compensation and expenses
I. RESIGNATION, REMOVAL AND TERMINATION OF GUARDIANSHIP OR CONSERVATORSHIP

§ 35:29 In general
§ 35:30 Resignation and removal
§ 35:31 Effect of termination

J. ACTIONS BY AND AGAINST GUARDIANS, CONSERVATORS AND PROTECTED PERSONS

§ 35:32 Actions by or against protected persons
§ 35:33 Actions against guardians and conservators

K. GUARDIANS AD LITEM AND NEXT FRIENDS

§ 35:34 Appointment, powers and duties of guardian ad litem or next friend
§ 35:35 Determination of expenses
§ 35:36 Distinction between guardian ad litem and next friend

L. ADDITIONAL OR ALTERNATIVE MECHANISMS FOR ADDRESSING MINORITY AND INCAPACITY

§ 35:37 Delegation of parental or guardianship authority
§ 35:38 Durable powers of attorney
§ 35:39 Health care proxies
§ 35:40 Uniform Transfers to Minors Act
§ 35:41 MUPC facility-of-payment provision
§ 35:42 Bank deposits made by or for minors

Table of Laws and Rules
Table of Cases
CHAPTER 36. TRUSTS AND TRUSTEES

A. IN GENERAL

§ 36:1 Introductory scope note
§ 36:2 Creation and validity of trusts; rescission
§ 36:3 Amendment of trust

B. APPOINTMENT OF THE TRUSTEE AND FUNDING OF THE TRUST

§ 36:5 The nature of the office
§ 36:7 How and when trustees are appointed
§ 36:8 Procedure for securing the appointment
§ 36:12 The nature of the trustee’s title

C. TRUST ADMINISTRATION

§ 36:17 Investments by trustees
§ 36:19 Taxation of trust property
§ 36:20 Compensation—Reimbursement for expenses
§ 36:21 Death, resignation or removal

D. POWERS OF TRUSTEES

§ 36:23.50 Power to make decanting distributions [New]
§ 36:27 Power to make contracts

E. OBLIGATIONS AND LIABILITIES OF TRUSTEES

§ 36:28 Duty of good faith and loyalty
§ 36:29 Duty of reasonable skill and diligence
§ 36:30 Duty to act personally and not delegate
§ 36:32 Liabilities of trustees

F. TERMINATION, ACCOUNTING AND DISTRIBUTION

§ 36:33 Termination of trusts
§ 36:35 Keeping and rendering accounts
§ 36:38 Rights of the beneficiary
CHAPTER 37. CAPITAL AND INCOME
PROBLEMS

A. IN GENERAL
§ 37:1 Generally
§ 37:2 What constitutes the principal of the trust fund—
  Apportionment
§ 37:4 What constitutes income to the life tenant
§ 37:4.50 Power to adjust between income and principal [New]

B. PARTICULAR ITEMS
§ 37:5 Gains and losses, generally
§ 37:6 Ordinary cash dividends
§ 37:7 Stock dividends and other extraordinary dividends—Rights
§ 37:8 Rents, interest, and other income
§ 37:9 Bond interest—Amortization of premiums and accumulation
  of discounts
§ 37:9.50 Assets of diminishing value [New]
§ 37:9.70 Derivatives and asset–backed securities [New]

C. PAYMENTS AND EXPENSES
§ 37:10 Generally
§ 37:11 Alterations and repairs
§ 37:12 Taxes, insurance, and interest

D. MISCELLANEOUS PROBLEMS
§ 37:13 Vacant and unimproved land
§ 37:14 Apportionment of proceeds of salvaging operations, mortgage
  foreclosures, and delayed recoveries, generally

CHAPTER 38. REVOCABLE TRUSTS
§ 38:1 Nature of the problem
§ 38:4 What constitutes a valid revocation
§ 38:5 What transactions are void as being testamentary

CHAPTER 39. DISCRETIONARY POWERS
  OF TRUSTEES
§ 39:2 The general rule
§ 39:3 How far the court will guide the trustee
§ 39:4 When the court will interfere
§ 39:7 Discretionary power to decide between capital and income
CHAPTER 40. SUCCESSIVE FIDUCIARIES

CHAPTER 42. MODIFICATION OF TRUSTS [New]

§ 42:1 Introduction [New]
§ 42:2 Grounds for modification [New]
§ 42:3 Effectiveness of modification for federal tax purposes [New]
§ 42:4 Justiciability and procedural considerations [New]
§ 42:5 The Massachusetts Bosch cases [New]

Appendix

Appendix A1. Cumulative Table of Parallel References

Table of Laws and Rules

Table of Cases

Index