As we come to the end of another academic year, the AALS Section on Trusts & Estates is pleased to send this newsletter with information about conferences, programs, calls, scholarship and other professional news of interest to the membership.

The Section sponsored a lively program at the Annual Meeting in San Francisco in January. Professor Mark L. Ascher (Texas), Professor Karen E. Boxx (Washington), Professor Barbara K. Bucholtz (Tulsa) and Dominic J. Campisi, Esq. (Evans, Latham Campisi) weighed in with their thoughts on the topic Resolved: The Trust is Dead. The program consisted of a moderated debate, followed by a town-hall question and answer session and closing remarks from each panelist. Judging by the turn-out, many of us are interested in questions about transformations brought about by the demand for directed trusts, a recharacterization of fiduciary duties as default rules, erosions in the duty of loyalty, the proliferation of asset protection trusts, and elimination of the rule against perpetuities. It was perhaps not much of a surprise, though, that a room full of law professors resoundingly rejected the resolution in a mock poll at the end of the program. Trusts are far from dead.

Indeed the law of wills, trusts and estates is a dynamic area. Questions about wealth aggregation and transmission are more important than ever. In December of last year, the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 was enacted to extend many of the Bush-era tax cuts. It also increased the estate and gift tax exemption to $5 million,
lowered the rate to 35% and implemented spousal portability for exemptions. The 2010 Tax Act did not, however, address many of the substantial problems created by the Economic Growth and Tax Relief Reconciliation Act of 2001, originally scheduled to expire at the end of 2010. Instead, lawmakers merely “kicked the can down the road,” in a manner of speaking, and delayed EGTRRA’s sunset until the end of 2012. This period of continued uncertainty makes planning for the future incredibly important -- if difficult and expensive. These and similar topics will be the subject of a program entitled Death and Taxes: Now and Beyond 2012 to be co-sponsored by the Section on Trusts & Estates and the Section on Taxation at the AALS Annual Meeting to be held January 4-8, 2012 in Washington, D.C. Program chairs are Professor Laura Rosenbury (Washington University in St. Louis) and Professor Jim Repetti (Boston College). There is a description of the program in this newsletter. And Watch your mailboxes for more information about this upcoming program.

Also at the next AALS Annual Meeting in January, the American College of Trust and Estate Counsel will hold a reception for all members of the AALS Section on Trusts and Estates. Professor Mary Radford (Georgia State) was elected as the President of ACTEC earlier this year, and has graciously arranged this opportunity for us to come together in a more social environment for conversation with each other and with D.C.-area ACTEC members. ACTEC is a national organization of approximately 2,600 lawyers elected to membership on the basis of their integrity, commitment to the profession, competence and experience as trust and estate counselors. In other words, ACTEC members are among the best of the best practitioners in the field. ACTEC also has Academic Fellows, who are full-time law professors (and mostly members of the AALS Section on Trusts & Estates); International Fellows, who practice law primarily or exclusively in a non-U.S. jurisdiction; and judicial Fellows, who are members of the bench. Once the AALS assigns a date and time for the reception, we will let you know. This reception is one you will not want to miss.

As each of us prepares to embark on our summer projects, please take an opportunity to connect with a colleague in the Trusts & Estates field. Reach out to someone that you already know or someone you’d like to know and ask if they might have time to read a draft or talk about an idea at some point over the summer. We have several hundred Section members, and building and maintaining community of scholars and teachers requires deliberate action by each of us. Let’s push ourselves to discuss, debate, collaborate, question, rethink, explore ideas with each other -- live, over e-mail and in print. Sometimes we will disagree (hopefully with a dose of humility and kindness), but through deep engagement with each other, we can push the boundaries of what we know and how we know it.
I had a high-school coach who was fond of aphorisms (and young girls, but that is another story). “Success begets success,” was one of the coach’s favorite sayings. However anathematic the coach was (very, in retrospect) or aphorisms are (very, now), this saying resonates with me. Our Section’s collegiality and robust programming is a sign of even greater collaboration and exchange of ideas to come.

2012 AALS Annual Meeting:
“Death and Taxes: Now and Beyond 2012"

Washington, DC
January 8, 2012
10:30 - 12:15

Laura Rosenbury, Washington University in St. Louis

The Section on Trusts and Estates will join forces with the Section on Taxation to host a joint session at the 2012 AALS Annual Meeting in Washington, DC. Death and Taxes: Now and Beyond 2012 will examine fundamental questions facing all tax and trusts and estates scholars in light of estate tax law changes and uncertainties.

January, 2012 will mark the beginning of the second and final year of a political compromise that established a unified federal estate and gift tax with a $5 million exemption and a 35 percent top rate. If no new law is passed, the estate tax in 2013 will revert to its pre-2001 status with a $1 million exemption and 55 percent top rate. Our joint session will use this state of flux to explore the future of estate tax law.

The session will consist of three sequential discussions moderated by Jim Repetti of the Section on Taxation and Laura Rosenbury of the Section on Trusts and Estates. The discussions will explore the following questions: Should we tax inherited wealth? If so, should we retain the estate tax or instead replace it with an inheritance tax or, alternatively, impose the income tax on gifts and inheritances by repealing section 102? Finally, if we do not replace the estate tax, what changes should we make within the current estate tax system?
A half hour will be devoted to each question, with scholars providing brief contrasting opinions based on their past and current research. Confirmed speakers include Paul Caron (University of Cincinnati College of Law), Bridget Crawford (Pace Law School), Bill Lyons (University of Nebraska College of Law), Beverly Moran (Vanderbilt University Law School), and Phyllis Smith (Florida A&M University College of Law). Other speakers will be added this summer.

The 2012 Annual Meeting will take place from Thursday, January 5 through Sunday, January 8, 2012. The joint session of the Sections on Trusts and Estates and Taxation has been scheduled for Friday, January 6 from 10:30 am -12:15 pm. Please contact Laura Rosenbury at lrosenbury@wustl.edu or 314-935-5935 with any questions. We hope to see you all there.

**ACTEC Legal Education Report on Experiential Learning and Skills Training in Trusts and Estates Classes**

Mary Radford of Georgia State sends along the following summary of the ACTEC Legal Education Committee Report on Experiential Learning and Skills Training in Trusts & Estate Classes

In 2010-2011, the ACTEC Legal Education Committee addressed the problems that many law students are encountering when they graduate in that the law school has not given them experiential or skills training and the firms in which they are practicing (if they are in firms at all) have chosen not to devote adequate time to mentoring and training. In discussions among the members of the Legal Education Committee, several members indicated that they had introduced skills and experiential-learning components into their Trusts & Estates classes. Professors Gerry Beyer (Texas Tech) and Mary Radford (Georgia State) asked the ACTEC Academic Fellows to submit brief descriptions of their efforts in this regard. Over 20 Academic Fellows responded and the Legal Education Committee is now compiling a report that contains these descriptions and contact information. The report will be made available to the members of the AALS Trusts and Estates Section.
News about Recent Activities of Section Members

Promotions, Faculty Moves, and Visiting Faculty

Greg Alexander of Cornell taught at the University of Hawaii in the January 2011 term.

Iris Goodwin of the University of Tennessee has been granted tenure. She teaches wills and trusts, wealth transfer tax, estate planning, property, and ownership and justice. She frequently writes about elements of the private law in light of public law concerns. Her recent work explores, among other topics, the public implications of private orderings and the normative dimension of laws facilitating the inter-generational transfer of wealth, especially in families with outsize fortunes.

Kathryn Venturatos Lorio is now interim dean of Loyola Law School in New Orleans.

Ray Madoff of Boston College taught at the University of Hawaii's January 2011 term.

Fran Miller of Boston University is teaching at the University of Hawaii during the Spring 2011 semester.

Speeches, Scholarship, and Other Activities of Members


Gerry Beyer of Texas Tech (picture at right) was elected to the American Law Institute and he published Wills & Trusts, 63 SMU L. Rev. 865-891 (2010). Gerry’s Wills, Trusts, and Estates Professor Blog was named as one of the ABA Journal’s Blawg 100 (one of the 100 best legal blogs as selected by the ABA Journal’s editors) and the blog was also voted by ABAJournal.com readers as the #1 most popular blog in the Law Prof. Plus category.

Gerry delivered the keynote speach, “Morals from the Courthouse: A
Study of Recent Texas Cases Impacting the Wills, Probate, and Trust Practice,” at the San Antonio Estate Planners Council—Docket Call in Probate Court seminar held in San Antonio, Texas in February 2011; he was a speaker at the 2011 Estate Planning & Community Property Law Journal Seminar on “Avoiding the Estate Planning “Blue Screen of Death”—Common Non-Tax Errors and How to Prevent Them,” and he was a co-presenter for an ABA Teleconference entitled *Ethical Issues in Estate Planning for Pet Owners* in November. Additionally, Gerry made CLE presentations in cities including Dallas, Houston, San Antonio, Lubbock, and Odessa.


For news of the **Jerry Borison**’s new casebook, *Contemporary Approaches to Trusts and Estates*, please see the description at **Susan Gary**’s entry.

For news of **Naomi Cahn**’s new casebook, *Contemporary Approaches to Trusts and Estates*, please see the description at **Susan Gary**’s entry.

For news of **Regis Campfield**’s new edition of *The Taxation of Estates Gifts and Trusts*, please see the description at **William Turnier**’s entry.

For news of **Bridget Crawford**’s new *Federal Texas on Gratuitous Transfers*, please see the description at **Joseph Dodge**’s entry.


For news of **Martin Dickinson**’s new edition of *The Taxation of Estates Gifts and Trusts*, please see the description at **William Turnier**’s entry.
Joseph M. Dodge (picture at right) of the University of Florida, Wendy C. Gerzog of the University of Baltimore, and Bridget J. Crawford of Pace University have published *Federal Taxes on Gratuitous Transfers: Law and Planning* with Wolters Kluwer/Aspen. This is a coursebook for Estate and Gift Tax, with material on Income Taxation of Trusts and Estates, which can also be used for a tax-oriented estate planning course. It is complete through the late 2010 legislation.


Tom Gallanis of the University of Iowa has published the fifth edition of *Family Property Law: Cases and Materials on Wills, Trusts, and Future Interests* (Foundation Press 2011). The book references the latest versions of uniform laws and Restatements, and includes material on “hot” trust topics such as trust protectors, decanting, and family offices. The teachers’ manual will be available in June.

Last fall, Tom gave the Shirley A. Webster Lecture on Wealth Transfer Law at the University of Iowa on “The New Direction of American Trust Law”; the lecture will be forthcoming in the *Iowa Law Review*. Tom and his colleague, Josy Gittler, are co-authoring an article on “Family Caregiving and the Law of Succession,” to be presented at the ACTEC-sponsored symposium at the University of Michigan in October 2011 and forthcoming in the *University of Michigan Journal of Law Reform*. Tom and Ed Halbach of the University of California--Berkeley have prepared Tentative Draft No. 6 of the *Restatement (Third) of Trusts*, to be considered at the ALI annual meeting in May. Within the uniform law commission, Tom has been appointed reporter of a new drafting committee to prepare a uniform act on powers of appointment.

Susan Gary of the University of Oregon, Jerry Borison of the University of Denver, Naomi Cahn of George Washington, and Paula Monopoli of the University of Maryland, have published a new casebook, *Contemporary Approaches to Trusts and Estates*, with Aspen. It is available for fall courses. The casebook reflects the Carnegie Report's call for more interactive pedagogy for law students through its use of extensive problems.
and exercises.


For news of Ed Halbach’s work on the *Restatement (Third) of Trusts* please see Tom Gallanis’ entry.


Kristine Knaplund of Pepperdine University spoke at Duke Law School Symposium, sponsored by the Duke Journal of Gender Law and Policy on “The Uniform Probate Code’s Surprising Gender Inequities” in February; at Valparaiso Law School’s Symposium on Bioethics, Law and Synthetic Biology, sponsored by the Valparaiso Law Review on “Synthetic Cells, Synthetic Life, and Inheritance” in March; and she was program chair and moderator at the ABA Section on Real Property, Trusts and Estates Spring Symposia for “Born To Be Wild: Assisted Reproduction and Estate Planning.”
William P. LaPiana of New York Law School spoke in February at the Third Annual Texas Tech Estate Planning Journal CLE on what the community property lawyer should know about the elective share. For news of Bill’s *Drafting New York Wills and Related Documents*, please see Ira Bloom’s entry.

Ray Maddoff of Boston College has been writing and speaking about the ideas in her book—*Immortality and the Law: The Rising Power of the American Dead* (Yale University Press 2010). The short book looks generally at how the law treats varying interests of the dead including the right to control one's body, the right to control one's property (for both private people and charitable purpose), and the right to control one's reputation. The book shows how American law takes a distinctly American take on this issue of the rights of the dead. It also explores how the rights of the dead in American law have been increasing (largely driven by corporate interests) and how they are squeezing out the rights of the living. (As an aside, the book makes great supplemental reading for a basic Trusts and Estates class).


This past January Ray was a visiting professor at University of Hawaii William S. Richardson
School of Law’s January Term (J-Term) program; she taught a course on Immortality and the Law.


For news of Anthony Miller’s new edition of Family Law: Cases, Materials, and Problems, please see the description at Helene Shapo’s entry.

For news of the Paula Monopoli’s new casebook, Contemporary Approaches to Trusts and Estates, please see the description at Susan Gary’s entry.

Alan Newman of the University of Akron has published the third edition of West's Bogert, Trusts and Trustees treatise, which contains sections 961 - 974 (on trustee accounting).

Randall Roth (picture at right) of the University of Hawaii has published three pieces since the last newsletter, “Eulogy for Samuel P. King,” 14 HAW. B.J. 9 (2011) (about his co-author on Broken Trust); “Hindsight Bias and the Curse of Knowledge,” 139 ABA Trust & Investments 30 (Jan.-Feb. 2011); and “Mirror, Mirror on the Wall, Is China’s Trust the Fairest of All?,” JOTWELL, Oct. 25, 2010 (discussing Frances Foster’s article, “American Trust Law in a Chinese Mirror,” 94 Minn. L. Rev. 602 (2010)).

Helene Shapo of Northwestern is coauthor with Peter Swisher of the University of Richmond and Anthony Miller of Pepperdine on a third edition of Family Law: Cases, Materials, and Problems, and is also revising another volume of the Bogert, Trusts and Trustees treatise.

For news of Peter Swisher’s new edition of Family Law: Cases, Materials, and Problems, please see the description at Helene Shapo’s entry.
William Turnier of UNC, Regis Campfield of SMU, and Martin Dickinson of the University of Kansas are working on the 24th edition of The Taxation of Estates Gifts and Trusts for publication in the fall of 2011 with West.

**Recent Cases of Note**

Ronald R. Volkmer,
Frank J. Kellegher Professor of Trusts and Estates
Creighton University School of Law

It is not easy to categorize appellate cases in the category of “significant,” given the dictionary definition that I discovered in my venerable *Webster’s New Collegiate Dictionary* of 1958 (!) That dictionary defines “significant” as: 1. Having a meaning; 2. Suggesting or containing some covert or special significance; 3. Important; momentous. So I guess I’ll proceed with the third definition and, in the meantime, let others wrestle with the term “significant” other. On to the case law!

**Capato ex rel. B.N.C. v. Commissioner of Social Sec.,** 631 F.3d (3d Cir. 2011): Third Circuit sides with Ninth Circuit’s interpretation of Social Security Act (Gillette-Netting v. Barnhart, 371 F.3d 593 (2004) in the battle over whether posthumously conceived children are entitled to benefits under the Social Security Act *(query whether state law is relevant in that determination in the light of Capato and Barnhart).*

**Ray v. Stewart**, 700 S.E.2d 367 (Ga. 2010); **State ex rel. Houska v. Dickhaner**, 323 S.W.3d 29 (Mo. 2010): Procedural due process claims examined in the context of state conservatorship and probate statutes with state supreme courts rejecting claims that the state statutes violated the due process norms articulated in the *Mullane* and *Tulsa Professional Collection Services, Inc.* cases.


**Hammons v. Hammons**, 327 S.W.3d 444 (Ky. 2010): Legal life estate to widow with power to
invasive corpus for “maintenance and medical care”; “accounting rights” of remaindersmen discussed. (For the older generation: Shades of *Colburn v. Burlingame*, 214. P. 226 (1923)!)}

**Tkach v. Mandeville**, 790 N.W.2d 260 (Mich. 2010): Fascinating discussion of contribution in tenancy in entirety situation involving an abandoning spouse with strong dissent complaining that majority opinion “manufactures an extension of the surviving spouse provision despite the limitations plainly expressed by the Legislature.”

**In re Estate of Haugen**, 794 N.W.2d 448 (N.D. 2011): Unsuccessful attempt to disinherit surviving spouse with the widow receiving not merely the elective share but the entire estate under intestacy; proper drafting by lawyer could have, presumably, prevented the result reached by the court.

**Ex parte Byrom**, 47 So.3d 791 (Ala. 2010): Applicability of anti-lapse statute to trust; as might be expected, given the language of the Alabama’s anti-lapse statute, court concludes that the anti-lapse statute does not apply and the Uniform Trust Code’s provisions do not change that result.

**In re Guertsloh**, 326 S.W.3d 737 (Tex. App. 2010): Trustee of trust could not proceed *pro se* as to do so would violate prohibition on unauthorized practice of law.

**In re Guardianship and Conservatorship of Parkhurst**, 243 P.3d 961 (Wyo. 2010): Holder of durable power resists attempt to have conservator appointed; standard of “necessity” for conservator appointment discussed.

In keeping with tradition (established in the previous edition of this column), I conclude on a somewhat ghoulish note with three cases involving the body of the decedent and feuds over the corpse (subtitled “The Dead Body Gets No Respect”). First off, Illinois and a nasty dispute by the relatives over burial arrangements:

**Carlson v. Glueckert Funeral Home, LTD**, 2011 WL 477711 (Ill. App. 2011): Illinois “Disposition of Remains Act” insulates funeral home from liability after its alleged “abandonment” of a corpse (the statute may not define “dispute,” but unlike pornography, it’s easy to know when one sees it)

And finally, while some states grapple with the problem of “brain drain,” the New York and Michigan courts face the question of brain removal and disposal thereof:

In re Certified Question from U.S. District Court for Eastern, 793 N.W.2d 560 (Mich. 2010): Next of kin had no possessory interest in brain that had been removed by medical examiner to determine cause of death

Recent Publications


Allison Bridges, Marital Fault as a Basis for Terminating Inheritance Rights: Protecting the Institution of Marriage and Those who Abide by their Vows--‘til death do them part, 45 REAL PROP. TR. & EST. L.J. 559-588 (2010).


Irene D. Johnson, *Preventing Identity Theft and Other Financial Abuses Perpetrated Against Vulnerable Members of Society: Keeping the Horse in the Barn Rather than Litigating over the Cause And/or Consequences of His Leaving*, 79 UMKC L. Rev. 99-122 (2010).


J. Thomas Oldham, *You can't take it with you, and maybe you can't even give it away: the case of Elizabeth Baldwin Rice*, 41 U. Mem. L. Rev. 95-120 (2010).


Randall Roth, *Hindsight Bias and the Curse of Knowledge*, 139 ABA Trust & Investments 30 (Jan.-Feb. 2011).


### Scholarship Recently Posted


Wendy S. Goffe, *Estate Planning with Trusts for Divorcing Spouses,* available at


**Mentoring Program**

The Section sponsors a mentoring program for faculty who are new to the academy and also those who are new to trusts and estates. Stewart Sterk of Cardozo Law School chairs the mentoring committee and Susan Gary of the University of Oregon and Naomi Cahn of George Washington are the other members. If you would like to be placed in contact with a T&E mentor or if you would like to serve as a mentor, please contact Stewart Sterk at sterk@yu.edu. Please provide a short description of the area(s) in which you would like a mentor – or in which you would like to mentor.

**Please Keep in Touch**

We are always looking for news to share on teaching, scholarship, service, conferences, cases, and legislation with the four hundred or so members of this section. Please send news for the fall 2011 newsletter to Al Brophy, abrophy@email.unc.edu

**We Know You Know**

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