Trusts and Wills
Robert C. Palmer **Fall 2010**

Attendance and preparation are mandatory and checked. Since this is an important course for the bar exam, we will refer to and read a lot of Texas law, but the course (and test) primarily concerns the general structure of trusts and wills law.
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Textbook: *Wills, Trusts and Estates* (8th ed) by Dukeminier, Lindgren, & Sitkoff
Johanson's Texas Probate Code Annotated

Assignments are approximate and are by weeks. The asterisks represent a guess about the probable division between class sessions. Slides used in class will be distributed but it would be dangerous to substitute those for the text in preparation; you learn what you need by going through the cases themselves.

Week of Aug 23

CHAPTER 1: INTRODUCTION
Section A: The Power to Transmit Property at Death: pp. 1-3; 20-2; 26-38 (Ascher, Langbein, dead hand)
Section B: Transfer of the Decedent's Estate: pp. 38-47, 50-1 (just the will)* (coverage rapid in class) *
Section D: Professional Responsibility: pp. 58-70
CHAPTER 2: INTESTACY: AN ESTATE PLAN BY DEFAULT
Section A: The Basic Scheme: pp. 71-80 [and TPC §38; §41; §43; §45; §47]*****
pp. 87-97 (work with both UPC and the Texas Probate Code provisions) [We will fall behind here.]

Week of Aug 30

Section B: Transfers to Children: pp. pp. 97-107; 109-125*
130-40 [and TPC, §40; §42; §44; §234]
NOTE will on pages 142-145
Section C: Bars to Succession: pp. 145-51; 152-4; 156-7

Week of Sept 8

CHAPTER 3: WILLS: CAPACITY AND CONTESTS
Section A: Mental Capacity: pp. 157-80 [and TPC, §10]

Week of Sept 13

Sections B, C: Undue Influence: pp. 180-207*
CHAPTER 4: WILLS: FORMALITIES AND FORMS
Section A: Execution of Wills: pp. 223-53 [and TPC, §59, §§61-2]

Week of Sept 20

Curative Doctrines: pp. 253-85*
Section B: Revocation of Wills: pp. 286-307 [and TPC, §60; §63]
Section C: Components of a Will: pp. 307-334 (Skip Johnson v Johnson, pp. 317-23)

Week of Sept 27

CHAPTER 5: CONSTRUCTION OF WILLS
Section A: Mistaken or Ambiguous Evidence: pp. 335-357
Section B: Death of Beneficiary Before Death of Testator: pp. 358-79 [and TPC, §68]*
Section C: Changes in Property After Execution of Will: pp. 380-92
CHAPTER 6: NONPROBATE TRANSFERS AND PLANNING FOR INCAPACITY
Section A: Introduction to Will Substitutes**:** pp. 393-7 (Pay careful attention to Langbein)
Section B: Will Substitutes and the Wills Act: pp. 397-412

Week of Oct 4

Section C: Will Substitutes and the Subsidiary Law of Wills: pp. 413-32
Section D: Pour-Over Wills and Revocable Trusts in Modern Estate Planning: pp. 436-47 (pay attention to Clymer v. Mayo)*

Section E: Joint Tenancies in Realty: 447-8
Section F: Planning for Incapacity: pp.448-59 (all the way to Sciavo)

CHAPTER 7: RESTRICTIONS ON THE POWER OF DISPOSITION: PROTECTION OF THE SPOUSE AND CHILDREN

Section A: Rights of the Surviving Spouse: pp. 469-83, 487-91, 498-501

Week of Oct 11

pp. 498-519 [and TPC, §§282-3]
Section B: Rights of Descendants Omitted from the Will, pp. 519-21; 527-39 [and TPC, §67]*

Week of Oct 18

CHAPTER 8: TRUSTS: CREATION AND CHARACTERISTICS

Section A: Introduction: pp. 541-57
Section B: Creation of a Trust: pp. 557- 563 (all the way to Nye), 569-72 (all the way to Speelman), 578-96 [and TX Prop Code, §§112.001-112.010, 112.034]*

CHAPTER 9: RIGHTS TO DISTRIBUTIONS FROM THE TRUST FUND

Section A: Rights of the Beneficiaries to Distributions: pp. 597-609 (particular attention to Marsman)
Section B: Rights of the Beneficiary's Creditors: pp. 609-27, 638-41 [and TX Prop Code, §112.035]

Week of Oct 25

Section C: Modification and Termination of Trusts: pp. 641-60 [and TX Prop Code, §112.054]

CHAPTER 10: TRUST ADMINISTRATION: THE FIDUCIARY OBLIGATION

Section A: Introduction: pp. 667-75
Section B: The Duty of Loyalty: pp. 675-88
Section C: The Duty of Prudence: pp. 688-725*
Section D: Impartiality and the Principal and Income Problem: pp. 725-36
Section E: Subrules Relating to the Trust Property: pp. 736-8
Section F: Duty to Inform and Account: pp. 738-50

Week of Nov 1

CHAPTER 11: CHARITABLE TRUSTS pp. 751-69

CHAPTER 12: POWERS OF APPOINTMENT: pp. 803-36*

CHAPTER 13: CONSTRUCTION OF TRUSTS: FUTURE INTERESTS

Section A: Introduction: pp. 837
Section B: Classification of Future Interests: pp. 837-45 [and Tx Prop Code, §§5.001, 5.003, 5.041, 5.042, particularly §5.042e]
Section C: Construction of Trust Instruments: pp. 845-62 (pay particular attention to Clobberie's Case)

Week of Nov 8

pp. 862-74, 876-83*

CHAPTER 14: THE RULE AGAINST PERPETUITIES

Section A: Introduction: pp. 885-8 [and Tx Prop Code, §112.036]
Section B: The Orthodox Rule Against Perpetuities: pp. 888-97
Section C: Perpetuities Reform: 897-900 (particular attention to savings clauses); 905-17 (and TX Prop Code, §5.043]

Week of Nov 15

Section D: Technical Application of the Rule to Class Gifts
POAs: pp. 917-24
Section E: Other Durational Limits: 925-30

Nov 22-Dec 1

CHAPTER 15: WEALTH TRANSFER TAXATION

Coverage and extent of coverage to be determined after congressional action on gift and estate taxes and considering the degree of progress through the prior material.