

TRUST & WILLS

Syllabus—Spring 2019

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Classroom: BLB-144

Course overview and Learning Objective

This course covers the law and policy of the two main legal vehicles for controlling the posthumous distribution of one's property: trusts and wills. Specific coverage includes introductory matters (freedom of disposition and the mechanics of succession); intestate succession (basic structure, transfers to children, and bars to succession); the law of wills (formalities, contests, and construction); the law of trusts (creation, administration, alienation, appointment powers, and duration); and related issues (pay on death mechanisms and other will substitutes, planning for incapacity, and limits on freedom of disposition).

By successfully completing this course, students will develop a thorough understanding of common law principles governing wills and trusts, corollary aspects of both the Uniform Probate Code and relevant Texas state law, and theoretical and policy issues relating to the posthumous disposition of property.

Class meetings

We will meet Mondays and Wednesdays from 4:00 pm-5:30 pm in BLB-144. Under Law Center procedures, the class will conclude no later than 5:20 pm, in order to allow time for transition to any subsequent users of the classroom space. In order to provide the required instructional time, in view of the fixed conclusion time, class sessions will begin promptly at 4:00 pm.

Texts

The main text for this course is Dukeminier et al., *Wills, Trusts, and Estates* (10th ed. 2017). Please feel free to purchase any used copies of this edition of this book. Earlier editions of this text should not be used, because the page numbers will not align with the reading assignments in this syllabus, and also because earlier editions will lack the most recent cases.

Although not a required coursebook, I strongly recommend that you obtain Gerry W. Beyer, *Texas Estate Planning Statutes with Commentary* (2017-2019 ed.). We will have readings from this book in addition to the textbook, and while the material is available free online albeit in multiple places, having it at hand will make it much easier to prepare for and participate in class. The library has two copies of this book on reserve.

Readings from the Dukeminier text are indicated as “DS” in the assignment section of this syllabus. Statutory readings are indicated as either “TEC” (“Texas Estate Code”) or “TPC” (“Texas Property Code”). Any other course materials will be appropriately described in this syllabus or posted on Blackboard.

Class discussion; Call-on Groups

Class sessions will be a mixture of lecture presentation, individual student presentation, and occasional large group interaction. Thus your timely participation in class discussion is both required and encouraged. Students must thoughtfully complete the reading assignments, including both the text and statutory materials.

You should be prepared to participate in class every day. If you cannot properly prepare for class, you can request a pass for that day. In order to request a pass, email me no later than 2:30 p.m. that day and I will not call on you for that class. You can use a pass in this manner up to **two times** during this semester. You should be prepared every class day, even if Call-on Groups are established and the Group to which you are assigned is not designated to be called upon on a particular class day.

Because this is a large class, I anticipate that I will establish Call-on Groups. If so, the course schedule below will be annotated early in the semester to include Call-on Group assignments of course materials. Although content assignments for the Call-on Groups will be set as noted, the specific date(s) upon which the materials will be reached by a Call-on Group is subject to change as we progress through the course topics.

Attendance

Attendance is mandatory, and will be taken every class through distribution of an attendance sheet. You must personally initial the sign-in sheet before I leave the classroom. I will always have the attendance sheet at the podium for a brief time period after class for anyone who has not had a chance to initial it. If you do not do so, you will be considered absent even if

the attendance sheet does not circulate to you during class, or if you simply forget to initial the sheet. You are responsible for making sure you have initialed the sheet before I leave with it; no retroactive attendance verification will be allowed.

If virtual attendance is arranged by an approved remote access system, your attendance will be tracked under the procedures established by the remote access system.

UHLC's Honor Code applies to initialing the attendance sheet. Students may initial only their own names, not those of other students. Initialing the name of other students is a violation of the Honor Code. Lack of preparation without a timely pass, excessively early departure or late arrival, or inappropriate behavior during class, may result in your being marked absent even if you physically were present in the classroom for some portion of the class period.

UHLC attendance rules specify that no student can receive credit for a class from which they have been absent more than 20% of the time. If you are absent in excess of 20% of our course meetings, I will refer the matter to the academic dean or other administrative office, and that referral may result in your administrative withdrawal from the class or other consequences. Substantial absences accumulated short of the 20% threshold may serve as a basis for grade reduction (see below). Students must keep track of their own absences in addition to the sign in sheet process, in order to monitor their attendance relative to UHLC requirements or potential adverse grade implications.

Assessment

Grades will be issued in compliance with the Law Center's grading policy. The grade for this course primarily will be determined by a three-hour final examination. The examination will include at least one essay-type question, and will also include multiple-choice, true-false or similar items that can be handled by a Scantron card.

Closer in time to the final examination, I will post a listing of materials that may be brought to the examination, or which will be provided to you as part of the examination.

In addition to the final examination, grades may be affected to a lesser extent by extraordinarily good or poor class participation, excessive absences, tardiness or early departures, or due to an excessive lack of preparation. For example, a "B" might be pushed up to a "B+" or downward to a "B-," or a "C+" might be pushed up to a "B-" or downward to a "C." Only in rare circumstances will these non-examination factors affect the assignment of a letter grade by more than a half-increment.

Laptops and other electronic devices

Laptops or other mobile devices are pervasive in our society, and within a classroom environment they can be beneficial if students use them in an appropriate, nondisruptive, way. If I call on you and you are distracted by your device, you may be assessed as being unprepared. If you believe that a classmate's use of their device unreasonably interferes with your learning experience, please feel free to privately let me know about your concern so the situation may be appropriately addressed.

I have arranged for classes to be recorded for audio and video, and anticipate that those files will be made available online. Please reference Blackboard discussion posts for the link to the recordings. Whether or not Law Center recording occurs or is posted online, personal recording of class sessions is prohibited unless necessary for an agreed-upon disability accommodation.

Office hours and non-class student conferences

As an adjunct professor who lives in Galveston and has a law office in Beaumont, my availability for set office hours at a fixed location on campus is limited. Therefore, you should contact me by email a fair time in advance and we will make mutually agreeable arrangements for a day, time and place to confer either in person or by telephone. Absent unusual circumstances I will not meet with students during the hour before class, to allow me time to finalize class preparations.

BLACKBOARD

I will maintain a course BLACKBOARD site. It will host course documents (latest updated syllabus, PowerPoint slides, audio/video clips of class presentations, as well as other materials) and provide a forum in which students are invited to address procedural and substantive issues or concerns related to the class. Students must stay updated regarding any information posted to the BLACKBOARD site, and should check it regularly. BLACKBOARD can provide alerts for content changes, so you may want to explore enabling that feature.

Professionalism and expectations

Students should meet the basic expectations of any professional during our class meetings: arrive on time, be prepared, and stay physically and mentally present throughout class.

***CAPS (this paragraph is now a requirement of the Provost)**

Counseling and Psychological Services (CAPS) can help students who are having difficulties managing stress, adjusting to the demands of a professional program, or feeling sad and hopeless. You can reach CAPS (www.uh.edu/caps) by calling 713-743-5454 during and after business hours for routine appointments or if you or someone you know is in crisis. No appointment is necessary for the “Let's Talk” program, a drop-in consultation service at convenient locations and hours around campus. http://www.uh.edu/caps/outreach/lets_talk.html

COURSE TOPICS & READINGS: SPRING 2019

I. Introduction

Date	Topic	Reading
Jan 14 Mon Class #1	Course introduction; freedom of disposition; mechanics of succession; professional responsibility	DS 1-9; 40-51; TEC §§ 256.051-053; 256.151-152; 256.201; 258.001-003; 258.051; 301.002; 301.051-052; 301.151-152; 303.001-002; 308.001-003; 308.054; 401.001; 402.001-002

II. Intestate succession

Date	Topic	Reading
Jan 16 Wed Class #2	Introduction; basic structure of intestate succession	DS 63-90; TEC §§ 201.001-.003; 201.056-.057; 201.101; 201.151-.152
Jan 23 Wed Class #3	Transfers to children; bars to succession	DS 90-96; 122-24; 127-31; 135-36; TEC §§ 201.058; 122.001-.002; 201.051-.052; 201.055-.056

III. Wills

Date	Topic	Reading
Jan 28 Mon Class #4	Introduction to wills; formalities; execution	DS 141-44; 147-62; TEC §§ 251.051; 251.101-.105; 254.002; 256.153
Jan 30 Wed Class #5	Curing execution defects; e-wills; holographic wills	DS 162-74; 190-96; 198-204; TEC §§ 251.052, 251.107
Feb 4 Mon Class #6	Holographic wills (cont'd); revocation of wills	DS 204-222; TEC §§ 253.002; 123.001- .002
Feb 6 Wed Class #7	Revocation of wills (cont'd); revival of wills	DS 222-40
Feb 11 Mon Class #8	Components of a will; contracts relating to wills	DS 240-62; TEC § 254.004
Feb 13 Wed Class #9	Construction of wills	DS 325-51; TEC §§ 255.451

Feb 18 Mon Class #10	Lapse and anti-lapse of devises; ademption; abatement; exoneration of liens	DS 351-62; 368-74; 381-84; TEC §§ 255.151-.154; 355.109; 255.301-.303; 355.151; 355.153; 255.101-.102
Feb 20 Wed Class #11	Capacity: mental competency; absence of insane delusion; undue influence	DS 263-90; TEC §§ 251.001; 256.152
Feb 25 Mon Class #12	Capacity: duress; fraud; tortious interference with inheritance expectancy	DS 296-309; 310-17; 321-24; TEC § 254.005
Feb 27 Wed Class #13	Rights of a surviving spouse	DS 519-35; 544-48; TEC §§ 102.004; 353.051; 102.002.-003; 353.101.-.104
Mar 4 Mon Class #14	Rights of an omitted spouse; rights of omitted issue	DS 553-64; 571-85; TEC §§ 255.051-.056

IV. Trusts

Mar 6 Wed Class #15	Introduction to trusts; intent to create a trust	SD 385-414; TPC §§ 111.002-.003; 111.005; 112.001-.009; 112.034; 112.038; 111.035
Mar 18 Mon Class #16	Trust property; trust beneficiaries; written instrument	DS 414-29; 433-37; TPC §§ 112.004; 112.005; 112.037

Mar 20 Wed Class #17	Revocable trusts	DS 444-71; TPC § 112.051; TEC § 254.001
Mar 25 Mon Class #18	Discretionary trusts; spendthrift trusts; self-settled trusts; trusts for persons supported by the state	DS 695-714, 720-27; TPC §§ 114.007; 112.035; 112.029
Mar 27 Wed Class #19	Modification and termination of trusts; trustee removal	DS 727-57; TPC §§ 112.051; 112.054; 112.071-.087; 112.081-.083
Apr 1 Mon Class #20	Powers of appointment as related to trusts	DS 807-35; TPC §§ 181.001-.083
Apr 3 Wed Class #21	Powers of appointment (cont'd); trust administration (part one)—scope, nature, and trustee powers	DS 835-44; 587-96; TPC §§ 113.001-.002; 113.004-.020; 113.024
Apr 8 Mon Class #22	Trust administration (part two)—duty of loyalty, duty of prudence in distribution and trust administration decisions	DS 596-624; TPC §§ 113.051-.055; 113.085; 113.015; 117.007
Apr 10 Wed Class #23	Trust administration (part three)—duty of prudence in investment decisions	DS 624-49; TPC §§ 114.08211 114.083-.084; 114.006; 117.001-.012

Apr 15 Mon Class #24	Trust administration (part four)—duty of prudence in investment decisions (cont'd), duty of prudence in delegation of trustee authority, and custodial & administrative functions	DS 649-667; TPC §§ 117.011; 113.085; 114.0031
Apr 17 Wed Class #25	Trust administration (part five)—duty of impartiality; distinguishing principal and income; duty to inform and account	DS 667-686, 691-93; TPC §§ 116.001-.006; 116.051-.052; 116.101-.103; 116.151; 116.161; 116.176; 116.201-.202; 113.151-.152

V. Beyond Wills and Trusts

Apr 22 Mon Class #26	Trust administration (part six) (continuation of part five)—duty of impartiality; distinguishing principal and income; duty to inform and account	DS 471-93, 496-98; TEC 101.002; 111.051-.052; 111.054; 113.151-.152; 113.1541; 113.154; 113.155; 113.158; 113.252; 114.001-.106; 115.002
Apr 24 Wed Class #27	Review/overflow day; no additional substantive material assigned	