

# TEXAS ESTATE ADMINISTRATION

## CLASS INFORMATION & SYLLABUS

Fall 2008

*Professor Gerry W. Beyer*

*Governor Preston E. Smith Regents Professor of Law*

*Texas Tech University School of Law*

### Course Materials – Required:

1. GERRY W. BEYER, TEXAS ESTATE ADMINISTRATION – CASES AND MATERIALS (2008) (AuthorHouse).
2. GERRY W. BEYER, TEXAS ESTATE PLANNING STATUTES WITH COMMENTARY (2008) (Aspen Publishers).

### Contact Information:

Office: Law 310

Telephone (office): (806) 742-3990, ext. 302 (If I am not in my office when you call, please leave a message on the voice mail system and I will return your call.)

Fax: (978) 285-7941

Home: (806) 698-9334 (If I am not home, please leave a message with Margaret or on our answering machine and I will return your call.)

E-mail: [gwb@professorbeyer.com](mailto:gwb@professorbeyer.com)

Website: <http://www.ProfessorBeyer.com>

Blog: <http://BeyerBlog.com>

### Office Hours:

Whenever I am in my office — below are typical times (but subject to change):

**Monday through Wednesday:**

10:00 a.m. to 11:00 a.m.; 1:00 p.m. to 4:00 p.m.

**Thursday and Friday:**

No set times; stop by anytime.

**E-mail List:**

It is *essential* that you register for e-mail updates as these updates serve as the official source of all class announcements. Please submit your name and preferred e-mail address to me directly or via e-mail if you have not already been confirmed as being on the e-mail list.

**Attendance:**

- You are expected to attend **every** class meeting.
- **Prompt Arrival:** You are expected to be in your seat and ready to start when class is scheduled to start. It is unprofessional and impolite to arrive at or after the start of class.
- **Tardy:** You are tardy if you (1) arrive late, (2) leave early, or (3) leave in the middle of class and return. Three tardies equates to one absence. (If you are really creative, you could come late, leave and return during class, and then leave early and get one absence in one day even though you are in class for awhile!)
- **Excessive Absences:** Other than in exceptional circumstances, if you accrue four (4) or more absences, you will be automatically dropped from this course. Notice will be provided after the third absence. You may petition for relief from this rule by submitting a sworn affidavit along with supporting materials to document the reason for your absences. Note that your petition must show a justifiable reason for *all* your absences, not just the fourth and subsequent absences.

**Class Preparation:**

- You must be prepared for every class.
- You must be prepared to discuss the assigned material.
- Your final grade is subject to a one level reduction (e.g., from a B to a C+) for being unprepared.

**Technology Etiquette:**

- Turn off all mobile communication devices such as cellular telephones and pagers prior to the beginning of class.
- Boot up computers before class starts.
- Turn off computer audio.
- Disable distracting screen savers.
- Use an adequately charged battery or a power cord to avoid running out of power and the associated low battery warning noises.
- Do not use your computer for purposes that are not related to class. For example, do not write or reply to e-mail or instant messages, surf the Internet, work on your Facebook or MySpace page, etc.

**Syllabus:**

Assignments are subject to change.

<u>Date</u>	<u>Topic</u>	<u>Text</u>
Aug. 18, 2008	Class Information Introduction to Estate Administration	1-11
Aug. 20, 2008	Introduction to Estate Administration (continued)	11-23
Aug. 25, 2008	Jurisdiction	25-38
Aug. 27, 2008	Venue Review of Probate Matters	38-45 45-55
Sept. 1, 2008	Labor Day – No class	
Sept. 3, 2008	Statutes of Limitations	55-71
Sept. 8, 2008	Statutes of Limitations (continued) Opening an Estate Administration Locating Will	71-74 75 75-76
Sept. 10, 2008	Locating Will (continued) Proper Applicant Contents of Application	76-77 77-78
Sept. 15, 2008	Filing Citation to Interested Parties	78-79 79-82
Sept. 17, 2008	Hearing on Application	82-100

<u>Date</u>	<u>Topic</u>	<u>Text</u>
Sept. 22, 2008	Court's Action on Application Qualification of Personal Representative	100-105 105-106
Sept. 24, 2008	Issuance of Letters Notice to Creditors	106-111 113-114
Sept. 29, 2008	Notice to Beneficiaries	114-119
Oct. 1, 2008	Inventory, Appraisalment, and List of Claims	121-126
Oct. 6, 2008	Action by Court Post-Approval Duties of Personal Representative Introduction to Types of Administration Dependent Administration – Generally	126-134 134-135 137-138
Oct. 8, 2008	Setting Apart Exempt Property and Family Allowance	138-140
Oct. 13, 2008	Sale of Estate Property Renting of Estate Property Mineral Property Matters Creditors' Claims	141-149 149-150 150 150-151
Oct. 15, 2008	Creditors' Claims (continued)	151-160
Oct. 20, 2008	Creditors' Claims (continued)	160-166
Oct. 22, 2008	No classes (Prof. Beyer attending Fall ACTEC meeting)	
Oct. 27, 2008	ACTEC Fall Meeting Report Personal Representative Compensation and Expenses	166-187
Oct. 29, 2008	Successor Personal Representative Annual Accounts	187-188 189
Nov. 3, 2008	Partition and Distribution Final Settlement, Accounting, and Discharge Independent Administration — Introduction	189-190 190-191 193
Nov. 5, 2008	Creating an Independent Administration Powers and Duties of the Independent Administrator	193-198 198-200
Nov. 10, 2008	Successor Independent Administrators Closing the Independent Administration	200-209 209-215

<u>Date</u>	<u>Topic</u>	<u>Text</u>
Nov. 12, 2008	<i>[Reports of court hearings due.]</i> Abbreviated Methods of Administration	217-223
Nov. 17, 2008	Abbreviated Methods of Administration (continued)	223-235
Nov. 19, 2008	<i>[Documents due.]</i> Foreign Wills	237-241
Nov. 24, 2008	Conclusion Examination Information	
Dec. 4, 2008 1:00 p.m.	Final Exam	

**Course Purpose:**

The purpose of this course is to help students acquire the skills necessary to administer the estate of a deceased individual under Texas law.

**Expected Learning Outcomes:**

Upon completion of this course, a student will be able to determine the proper method of administering a decedent's estate under Texas law and to take the appropriate steps to administer the estate from beginning to end. The specific tasks the student will be able to complete include the following:

- Determine which court has jurisdiction to administer the estate.
- Determine which court has venue to administer the estate.
- Ascertain the applicable statute of limitations.
- Locate a decedent's will.
- Prepare and file an application to open an estate administration.
- Determine the proper citation to give to interested parties.
- Understand how a court conducts and rules on the application.
- Know when and how to probate a will as a muniment of title.
- Qualify a person as a personal representative.

- Obtain letters of administration or letters testamentary.
- Provide notice to creditors and beneficiaries.
- Prepare the inventory, appraisal, and list of claims.
- Conduct a dependent administration including:
  - Setting aside exempt property and the family allowance
  - Selling and renting estate property
  - Prioritizing and paying creditors' claims
  - Determining personal representative compensation
  - Obtaining the appointment of a successor personal representative
  - Preparing annual and final accountings
  - Distributing estate property and closing the administration
- Conduct an independent administration.
- Administer an estate using short-form methods.
- Know when and how to use the determination of heirship procedure.
- Administer community property.
- Use emergency intervention procedures.
- Probate foreign wills.

### **Methods of Assessing Learning Outcomes:**

**1. Reports of Court Hearings Attended:** You must attend two court proceedings involving the probate of a decedent's estate. They must be *different* types of proceedings. [Note that the probate of a will as a muniment of title and the probate of a will coupled with the opening of an estate administration are considered different types of proceedings.]

For each hearing, you must prepare a report in the following form:

1. Type of proceeding.
2. Date of hearing.
3. Court.
4. Name of presiding judge.
5. Style of case.

6. Names of attorneys.
7. Detailed description of what you observed.
8. Analysis (most important part of your report) – Your analysis should address issues such as the things you observed that were done correctly, conduct that needs improvement and why, your suggestions and recommendations, and anything else you would like to report.

You may use your discretion regarding the length of each report. One page per report is obviously too short and only in very interesting or complicated situations would more than five pages be appropriate.

**Note:** You may attend these hearings in the Texas county (or counties) of your choosing. The procedures vary significant among the counties. If you elect to attend the hearings in Lubbock County, the following information may be helpful:

You should contact the court and find out the times at which the hearings are set. Then, the coordinator will give you the attorneys' information and you will have the responsibility of contacting the attorneys (both sides, if applicable) to make sure it is permissible for you to observe.

**Judge Head (Constitutional County Court):**

Coordinator = Irene Munoz

Imunoz@co.lubbock.tx.us

806-775-1550

Hearings: Tuesdays and Thursdays. The schedule is set every Friday.

Please let Irene know if you are going to attend so that she can make sure too many students do not want to attend on the same day.

**Judge Lanehart: (County Court at Law #3):**

Coordinator = Brandi Loya

bloya@co.lubbock.tx.us

806-775-1309

Hearings: Depends, but every day of the week.

The reports are due November 12, 2008 but you are highly encouraged to turn them in early.

**2. Preparation and Correction of Documents:** Based upon fact patterns and documents I will supply, you must prepare and edit a series of probate-related documents.

I will distribute these fact patterns, documents, and more detailed instructions at various times throughout the class which will correspond to the relevant class discussions.

The documents are due November 19, 2008.

**3. Final Exam:** A 2 hour final examination will be administered on December 4, 2008. The exam will include both essay and objective questions.

### **Instructions for Reports and Documents:**

#### **1. Due Dates**

All written assignments are due at the **beginning of class** on the indicated dates.

#### **2. Late Penalties**

Extensions will *not* be granted. A penalty will be imposed of *2 points per hour* (or fraction thereof) that the assignment is late, not to exceed 20 points per 24 hour period. No negative grades will be awarded; however, all assignments must be submitted to pass the course.

#### **3. Identification of Assignments**

Use your special project number, not your name, on all assignments.

#### **5. Format**

Textual material must be typed or electronically printed with all margins between 1 and 1½ inches. A 12 point font should be used for the main text.

#### **6. Individual Work Product**

*Collaboration on the assignments is strictly prohibited.* The penalty for collaboration includes, but is not limited to, a failing grade in the course and being reported to the Honor Council. You may, however, consult any materials you wish.

### **Criteria for Grade Determination:**

**Written Assignments:** The following factors will be considered in grading the assignments: accuracy (e.g., legally correct), completeness, clarity, quality, neatness, organization, presentation, and timeliness.

The court hearing reports are worth a total of 80 points and will count for 20% of your grade.

The probate documents are worth a total of 120 points and will count for 30% of your grade.

**Exam:** The following factors will be considered in grading the final examination: accuracy (e.g., legally correct), completeness (e.g., number of issues spotted), and analysis (including organization, clarity, quality, and presentation).

The exam is worth 200 points and will count for 50% of your grade.

### **Academic Honesty**

It is the aim of the faculty of Texas Tech University to foster a spirit of complete honesty and high standard of integrity. The attempt of students to present as their own any work not honestly performed is regarded by the faculty and administration as a most serious offense and renders the offenders liable to serious consequences, possibly suspension.

“Scholastic dishonesty” includes, but it not limited to, cheating, plagiarism, collusion, falsifying academic records, misrepresenting facts, and any act designed to give unfair academic advantage to the student (such as, but not limited to, submission of essentially the same written assignment for two courses without the prior permission of the instructor) or the attempt to commit such an act.

a. “Cheating” includes, but is not limited to:

- (1) Copying from another student’s test paper;
- (2) Using during a test materials not authorized by the person giving the test;
- (3) Failing to comply with instructions given by the person administering the test;
- (4) Possession during a test of materials that are not authorized by the person giving the test, such as class notes or specifically designed “crib notes.” The presence of textbooks constitutes a violation only if they have been specifically prohibited by the person administering the test.
- (5) Using, buying, stealing, transporting, or soliciting in whole or in part the contents of an unadministered test, test key, homework solution, or computer program;

- (6) Collaborating with or seeking aid or receiving assistance from another student or individual during a test or in conjunction with other assignment without authority;
- (7) Discussing the contents of an examination with another student who will take the examination;
- (8) Divulging the contents of an examination for the purpose of preserving questions for use by another when the instructor has designated that the examination is not to be removed from the examination room or not to be returned to or kept by the student;
- (9) Substituting for another person or permitting another person to substitute for oneself to take a course, a test, or any course-related assignment;
- (10) Paying or offering money or other valuable thing to or coercing another person to obtain an unadministered test, test key, homework solution, or computer program, or information about an unadministered test, test key, homework solution, or computer program;
- (11) Falsifying research data, laboratory reports, and/or other academic work offered for credit; and
- (12) Taking, keeping, misplacing, or damaging the property of the university or of another if the student knows or reasonably should know that an unfair academic advantage would be gained by such conduct.

b. “Plagiarism” includes, but is not limited to, the appropriation of, buying, receiving as a gift, or obtaining by any means material that is attributable in whole or in part to another source, including words, ideas, illustrations, structure, computer code, other expression and media, and presenting that material as one’s own academic work being offered for credit.

c. “Collusion” includes, but is not limited to, the unauthorized collaboration with another person in preparing academic assignments offered for credit or collaboration with another person to commit a violation of any section of the rules on scholastic dishonesty.

d. “Falsifying academic records” includes, but is not limited to, altering or assisting in the altering of any official record of the university and/or submitting false information or omitting requested information that is required for or related to any academic record of the university. Academic records include, but are not limited to, applications for admission, the awarding of a degree, grade reports, test papers, registration materials,

grade change forms, and reporting forms used by the Office of the Registrar. A former student who engages in such conduct is subject to a bar against readmission, revocation of a degree, and withdrawal of a diploma.

e. “Misrepresenting facts” to the university or an agent of the university includes, but is not limited to, providing false grades or resumes; providing false or misleading information in an effort to receive a postponement or an extension on a test, quiz, or other assignment for the purpose of obtaining an academic or financial benefit for oneself or another individual; or providing false or misleading information in an effort to injure another student academically or financially.

### **Accommodations for Disabilities**

Students with disabilities requiring accommodations should contact Prof. Calvin L. Lewis, Associate Dean for Student Affairs & Diversity (if accommodations need to remain confidential), or me (if the accommodations need not remain confidential).

### **Observance of a Religious Holy Day**

Texas House Bill 256 requires institutions of higher education to excuse a student from attending classes or other required activities, including examinations, for the observance of a religious holy day. The student shall also be excused for time necessary to travel. An institution may not penalize the student for the absence and allows for the student to take an exam or complete an assignment from which the student is excused. No prior notification of the instructor is required. However, the student must notify the professor at some point to make sure that the absence is not counted against him or her.