

ESTATE PLANNING

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, TEACHING MATERIALS ON ESTATE PLANNING (3d ed. 2005) (Thomson-West).
2. GERRY W. BEYER, TEXAS ESTATE PLANNING STATUTES WITH COMMENTARY (2008) (Aspen Publishers).¹

Course Materials – Recommended:

GERRY W. BEYER, WILLS, TRUSTS, AND ESTATES – EXAMPLES AND EXPLANATIONS (4th ed. 2007) (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

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

Blog: <http://www.BeyerBlog.com>

¹ If you plan to practice in a state other than Texas, please see me before purchasing this book.

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 fifth 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. The syllabus below is current as of August 14, 2008.

<u>Date</u>	<u>Topic</u>	<u>Text</u>	<u>Texas Statutes</u>
Aug. 18, 2008	Introduction	v-vi, 1-10	
Aug. 20, 2008	Client Contact – Introduction Securing Employment in the Estate Planning Field Obtaining Clients Client Interview	550-558 558-559 560-563 563-571	
Aug. 25, 2008	Client Interview (continued) Information and Document Collection	571-576 576-578	
Aug. 27, 2008	[Receive Intestacy, Wills, and Trusts Problem Set] Intestacy, Wills, and Trusts Review [not covered in class] Attorney-Client Relationship Fees	 22-74 578-583 583-590	
Sept. 1, 2008	Labor Day – no class		
Sept. 3, 2008	Fiduciary Selection Professional Responsibility	590-602 602-620	Prob. Code § 58b

<u>Date</u>	<u>Topic</u>	<u>Text</u>	<u>Texas Statutes</u>
Sept. 8, 2008	Professional Responsibility (continued) Malpractice	621-642 642-653	
Sept. 10, 2008	Role of Legal Assistants Self-Help Techniques Used by Non-Attorneys Enhancing Professional Status	653-659 659-675 675	
Sept. 15, 2008	DUE: Intestacy, Wills, and Trusts Problem Set <i>Client Interview – General & Property Disposition</i>		
Sept. 17, 2008	Overview of Document Drafting Document Formatting	10-19 849-855	
Sept. 22, 2008	Forms Common Drafting Errors	855-860 860-863	
Sept. 24, 2008	DUE: Engagement Letter Disability Planning – Property Management – Introduction Durable Power of Attorney Self-Designation of Guardian of the Estate	337-338 338-357 358-365	Prob. Code § 481-506 Prob. Code § 679
Sept. 29, 2008	Custodial Trusts Disability Income Insurance Disability Planning – Health Care – Introduction Statutory Surrogates	365-382 382-383 384 384-393	H&S Code ch. 313
Oct. 1, 2008	Due: Will Draft <i>Client Interview – Disability Planning for Property</i>		
Oct. 6, 2008	Medical Power of Attorney HIPAA Declaration for Mental Health Treatment Self-Designation of Guardian of the Person Long-Term Care Insurance	393-414 414-418 418-419 419-426	H&S Code ch. 166(D) CP&R Code ch. 137 Prob. Code § 679
Oct. 8, 2008	Accelerated Life Insurance Payments and Viatical Settlements Home Care Contracts Medicaid Planning	426-436 437-440 440-458	Insurance Code ch. 1111
Oct. 13, 2008	DUE: Disability Plan for Property <i>Client Interview – Disability Planning for Health Care</i>		

<u>Date</u>	<u>Topic</u>	<u>Text</u>	<u>Texas Statutes</u>
Oct. 15, 2008	Planning for Physical Aspects of Death – Introduction Living Wills & DNR Orders Assisted Suicide	459-472 472-479 479-510	H&S Code ch. 166(A)-(D) Penal Code § 22.08
Oct. 20, 2008	Anatomical Gifts Disposition of Body	510-539 539-548	H&S Code chs. 691, 692, & 693 H&S Code §§ 711.002 & 711.039
Oct. 22, 2008	No class (Prof. Beyer attending Fall ACTEC meeting)		
Oct. 27, 2008	Wealth Transfer Taxation Overview		
Oct. 29, 2008	DUE: Disability Plan for Health Care <i>Client Interview – Physical Aspects of Death</i>		
Nov. 3, 2008	Probate Avoidance Techniques – Introduction Reasons to Avoid Probate Inter Vivos Gifts Powers of Appointment	75-76 76-79 79-90 90-93	Prop. Code ch. 181
Nov. 5, 2008	DUE: Disability Plan for Physical Aspects of Death ACTEC Meeting Report Joint Tenancies Multiple-Party Bank Accounts	93-95 95-107	Prob. Code § 46 Prob. Code §§ 436-449
Nov. 10, 2008	Pay/Transfer on Death Property Life Insurance Annuities Retirement Plans	107-112 112-120 120-121 121-124	Prob. Code § 450; Trans. Code § 501.031
Nov. 12, 2008	DUE: Will Final Version Selecting Witnesses Document Execution Procedure	864-866 866-873	
Nov. 17, 2008	Video-recording the Will Execution Ceremony Safekeeping of Documents Review of Estate Plan Will Contest Prevention	873-883 883-884 884-890 676-715	
Nov. 19, 2008	Clients With Special Circumstances	716-848	
Nov. 24, 2008	Client Document Execution Conclusion and Final Thoughts		

<u>Date</u>	<u>Topic</u>	<u>Text</u>	<u>Texas Statutes</u>
Exam Period	<i>No final exam!</i>		

Course Purpose:

The purpose of this course is to help students acquire the skills necessary to prepare legally effective and intent-fulfilling estate plans by identifying and implementing the appropriate legal techniques.²

Expected Learning Outcomes:

Below is a non-exclusive list of the tasks a student should be able to perform upon completion of this course:

- Search for employment in the estate planning area.
- Obtain estate planning clients.
- Interview clients who need estate planning services.
- Set fees for estate planning services.
- Assist clients in selecting fiduciaries.
- Recognize professional responsibility issues that may arise in an estate planning practice.
- Avoid malpractice.
- Understand the role of legal assistants in the estate planning process.
- Draft legally effective and intent fulfilling estate planning documents including:
 - Wills
 - Trusts
 - Durable powers of attorney
 - Self-designations of guardians
 - Medical powers of attorney
 - Declarations for mental health treatment
 - Directives to physicians (living wills)
 - Anatomical gifts

² Planning for clients with taxable estates or complex businesses is outside the scope of this course.

- Disposition of body documents
- Recognize common errors in drafting estate planning documents.
- Supervise the execution, witnessing, and acknowledgment of estate planning documents.
- Understand and be able to advise clients on the use of techniques including:
 - Disability income insurance.
 - Long-term care insurance.
 - Life insurance.
 - Medicaid.
 - Inter vivos gifts.
 - Powers of appointment.
 - Joint tenancies.
 - Multiple-party accounts
 - Pay on death property.
 - Annuities.
 - Retirement plans.
- Recognize situations where a will contest is likely and then to take steps to minimize the likelihood of the contest.
- Recognize when clients have special circumstances for which additional planning may be needed.

Assignments (Methods of Assessing Learning Outcomes):

<u>Date Due</u>	<u>Description</u>	<u>Point Value</u> ³
September 15, 2008	Intestacy, Wills, and Trusts Problem Set	200
September 24, 2008	Engagement Letter	50
October 1, 2008	Will Draft	50 ⁴

³ Point values may change if a client's circumstances require substantially less or more work on a particular document than originally anticipated or if for other reasons an adjustment is appropriate.

⁴ As this is a "learning" assignment, points will be awarded primarily on the effort reflected by the draft rather than the result.

<u>Date Due</u>	<u>Description</u>	<u>Point Value</u> ³
October 13, 2008	Disability Plan for Property Durable Power of Attorney Self-Designation of Estate Guardian	100 50
October 29, 2008	Disability Plan for Health Care Medical Power of Attorney HIPAA Authorization Self-Designation of Personal Guardian Mental Health Treatment Declaration	100 50 0 ⁵ 50
November 5, 2008	Physical Aspects of Death Plan Living Will Anatomical Gift Disposition of Body	50 50 50
November 12, 2008	Will Final Version	200

Note: For most drafting assignments, you will also complete a series of questions about that particular technique. You must submit the answers to these questions along with the documents.

Assignment Instructions:

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 Form is substantially the same as self-designation of estate guardian form.

4. Applicable Law and Citations

You may select any state to use as “your state” in completing the assignments. I recommend that you select the state in which you intend to practice.

If you select Texas, please cite (in GREENBOOK form) to the applicable statutory or judicial authority supporting your submissions.

If you select another state, please cite (in BLUEBOOK form) to the applicable statutory or judicial authority supporting your submissions **and** include copies of the relevant authority on which you have clearly marked (e.g., by highlighting or underlining) the applicable language.

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. You may, however, consult any materials you wish.

Criteria for Grade Determination:

The following factors will be considered in grading the assignments: accuracy (e.g, legally correct and in compliance with our client’s intent), completeness, clarity, quality, neatness, organization, presentation, and timeliness.

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.