

WILLS & TRUSTS

CLASS INFORMATION & SYLLABUS

Fall 2007

Professor Gerry W. Beyer

Governor Preston E. Smith Regents Professor of Law

Texas Tech University School of Law

Course Materials – Required

GERRY W. BEYER, TEXAS WILLS AND ESTATES: CASES & MATERIALS (5th ed. 2006).

GERRY W. BEYER, TEXAS TRUST LAW: CASES & MATERIALS (2006).

GERRY W. BEYER, TEXAS ESTATE PLANNING STATUTES WITH COMMENTARY (2008).

Course Materials – Optional

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

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>

Office Hours:

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

Monday through Thursday:

11:00 a.m. to noon; 1:00 p.m. to 1:30 p.m.; 3:00 p.m. to 4:30 p.m.

Friday:

No set times.

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 are not already receiving class announcements.

Attendance:

- You are expected to attend **every** class meeting.
- **Prompt Arrival:** You are expected to be in your seat and ready to begin 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 eight (8) or more absences, you will be automatically dropped from this course. Notice will be provided after the seventh 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 eighth 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 15, 2007. Updates will be sent to all students via e-mail.

<u>Date</u>	<u>Topic</u>	<u>Text</u>
	INTRODUCTION	
August 20, 2007	Introduction & Class Procedure Overview & Terminology	1-2
August 21, 2007	Intestate Succession – Introduction Basic Distribution Scheme	3 3-10
August 22, 2007	Basic Distribution Scheme (continued)	3-10
August 23, 2007	Half & Whole Blooded Heirs Adopted Children	10-15 15-35
August 27, 2007	Non-Marital Children Children From Alternative Reproduction Technologies	35-41 41-42
August 28, 2007	Unworthy Heirs Survival	42-47 48-51
August 29, 2007	Advancements Disclaimers	52 52-58

<u>Date</u>	<u>Topic</u>	<u>Text</u>
August 30, 2007	Release and Conveyance of Expectancy Equitable Conversion Other Intestacy Matters	58-65 65-68 68-74
September 3, 2007	Labor Day – No class	
September 4, 2007	Wills – Introduction Legal Capacity Testamentary Capacity	75 75-76 76-85
September 5, 2007	Testamentary Intent Attested Wills	85-92 92-115
September 6, 2007	Attested Wills (continued)	90-115
September 10, 2007	Holographic Wills Nuncupative Wills	115-121 121-128
September 11, 2007	Types of Testamentary Gifts Ademption	129-136 136-144
September 12, 2007	Satisfaction Exoneration Changes in Value	144-148 148-152 153-157
September 13, 2007	Abatement Tax Apportionment Marriage Divorce	157-158 158-159 159 160-165
September 17, 2007	Pretermitted Children	165-169
September 18, 2007	Lapse	169-173
September 19, 2007	Will Revocation – Introduction Revocation by Operation of Law Revocation by Physical Act	175 175-182
September 20, 2007	Revocation by Subsequent Writing Burden of Proof Revival	182-183 183-189 189-191
September 24, 2007	Conditional Revocation Republication Multiple Originals Will Interpretation & Construction – Introduction	191-194 194-196 196-200 201
September 25, 2007	Ambiguity Integration	201-219 219-221

<u>Date</u>	<u>Topic</u>	<u>Text</u>
September 26, 2007	Incorporation by Reference Facts of Independent Significance Pour-Over Provisions	221-228 228-232 233-238
September 27, 2007	Contents Precatory Language Class Gifts Dead Person's Statute Will Contests – Introduction Procedural Matters	238 238-239 239-243 243-244 245-246
October 1, 2007	Review of Will Contest Grounds Previously Covered Insane Delusions Undue Influence & Duress Fraud	246 246-250 250-257 257
October 2, 2007	Mistake Remedies Will Contest Prevention	257-261 261-265 265-282
October 3, 2007	Will Contest Prevention (continued) Ante-Mortem Probate Family Settlement Agreements	265-282 283-285 285-290
October 4, 2007	Conditional Wills Conditional Gifts	291-297 298
October 8, 2007	Combination Wills Election Wills Burial Plots [end of material covered on mid-term exam]	299-312 312-315 315
October 9, 2007	Trusts – Basic Operation Purposes and Uses of Trusts Texas Trust Legislation	1-3 3-7 7-9
October 10, 2007	Trust Creation – Introduction Trust Intent	11-12 12-21
October 11, 2007	Trust Intent (continued)	21-25
October 15, 2007	Methods of Express Trust Creation Relevance of Consideration	25 26
October 16, 2007	Statute of Frauds	26-34
October 17, 2007	Rule Against Perpetuities Trust Purposes	34-41 41-53
October 18, 2007	The Settlor	53-61

<u>Date</u>	<u>Topic</u>	<u>Text</u>
October 19, 2007	Mid-Term Exam – 3:00 p.m. to 5:30 p.m.	
October 22, 2007	Trust Property	61-67
October 23, 2007	The Trustee	67-71
October 24, 2007	The Beneficiary Spendthrift Trusts	72-78 78-84
October 25, 2007	Discretionary Trusts Support Trusts	84-89 89-90
October 29, 2007	Charitable Trusts Pour-Over Wills (review)	90-98 98-103
October 30, 2007	Life Insurance Trusts Trust Administration – Introduction	103-104 105-108
October 31, 2007	Standard of Care & Investments	108-112
November 1, 2007	Prof. Beyer at Fall ACTEC Meeting – No class	
November 5, 2007	Fall ACTEC Meeting Report Trustee Powers	112-114
November 6, 2007	Trust Distributions Duty of Loyalty	115 116-124
November 7, 2007	Duty of Loyalty (continued)	116-124
November 8, 2007	Contract Liability of Trustee Tort Liability of Trustee	125 125-127
November 12, 2007	Allocation of Burdens and Benefits to Principal or Income	127-134
November 13, 2007	Allocation (continued) Trustee’s Duty to Inform Beneficiaries	127-134 134-135
November 14, 2007	Accounting Trustee Compensation	135-139 139-140
November 15, 2007	Trust Modifications the Court (Deviation and Cy Pres)	140-150
November 19, 2007	Trust Modification by the Parties Trust Termination	150-161 161-162
November 20, 2007	Trust Enforcement – Procedural Matters Remedies Against the Trustee	163-165 165-169
November 21, 2007	Thanksgiving Wednesday – No class	

<u>Date</u>	<u>Topic</u>	<u>Text</u>
November 22, 2007	Thanksgiving – No class	
November 26, 2007	Remedies Against the Beneficiary Remedies Against Trust Property	169 169-172
November 27, 2007	Causes of Action Against Third Parties Enforcement of Charitable Trusts Barring of Remedies	172 172-178 178-188
November 28, 2007	Trust Bank Accounts Resulting Trusts	189-197 197-202
November 29, 2007	Constructive Trusts Conclusion	202-209
December 6, 2007	Final Exam – 8:00 a.m. to 10:30 a.m.	

Course Purpose:

The purpose of this course is to provide students with a background of the Texas law of intestate succession, wills, and trusts.

Expected Learning Outcomes:

Upon completion of this course, a student will have acquired knowledge of how property passes when a person dies intestate or with a will. In addition, the student will learn how to create, administer, and enforce trusts. The specific tasks the student will be able to complete include the following:

- How to distribute property under Texas law when a person dies intestate and the impact of facts relating to family circumstances and actions taken by a potential heir.
- Determine whether a will is valid under Texas law.
- Understand the differences between the various types of will.
- Appreciate the impact of changes that occur to property after will execution.
- Determine the effect of changes that occur to a potential beneficiary after will execution.
- Interpret and construe wills using appropriate statutory and judicial rules.
- Recognize situations which may increase the likelihood of a will contest.

- Ascertain whether a will may be successfully contested and if so, on what ground or grounds.
- Protect a will from contest.
- Recognize other issues that may arise in a will context.
- Understand why a person would elect to create a trust.
- Know the elements of a valid trust and the different types of trusts.
- Determine whether a valid trust was created.
- Ascertain the roles played by the settlor, trustee, and beneficiary in a trust context.
- Know how to limit the interest the settlor grants to the beneficiary.
- Understand the trustee's fiduciary duties such as the standard of care and duty of loyalty.
- Determine the liability of a trustee in contract and tort contexts.
- Allocate receipts and expenditures between principal and income.
- Appreciate how a trustee must account to the beneficiaries.
- Explain how a trust may be altered by the court or the parties.
- Enforce trusts and obtain remedies.
- Understand the workings of trust bank accounts, resulting trusts, and constructive trusts.

Method of Assessing Learning Outcomes:

Two exams will be given: a 2½ hour mid-term exam on October 19, 2007 and a 2½ hour final examination on December 6, 2007. Both exams will include essay and objective questions.

Criteria for Grade Determination:

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

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.