

WILLS & TRUSTS

CLASS INFORMATION & SYLLABUS

Spring 2010

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 (6th ed. 2008).

GERRY W. BEYER, TEXAS TRUST LAW: CASES & MATERIALS (2nd ed. 2009).

GERRY W. BEYER, TEXAS ESTATE PLANNING STATUTES WITH COMMENTARY (2009-2010).

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>

Twitter: Gerry_Beyer

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 4:00 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, tweet, etc.

Syllabus:

Assignments are subject to change. Updates will be sent to all students via e-mail.

<u>Date</u>	<u>Topic</u>	<u>Text</u>
	INTRODUCTION	
January 13, 2010	Introduction & Class Procedure Overview & Terminology	1-2
January 14, 2010	Intestate Succession – Introduction Basic Distribution Scheme	3 3-11
January 18, 2010	Martin Luther King, Jr. Day – No class	
January 19, 2010	Basic Distribution Scheme (continued)	reread 3-11
January 20, 2010	Half & Whole Blooded Heirs Adopted Children	11-12 12-28
January 21, 2010	Non-Marital Children Children From Alternative Reproduction Technologies	28-34 34-36
January 25, 2010	Unworthy Heirs Survival	36-46 46-50

<u>Date</u>	<u>Topic</u>	<u>Text</u>
January 26, 2010	Advancements Disclaimers	50-51 51-56
January 27, 2010	Release and Conveyance of Expectancy Equitable Conversion Other Intestacy Matters	57-63 63-67 67-73
January 28, 2010	Wills – Introduction Legal Capacity Testamentary Capacity	75 75-76 76-85
February 1, 2010	Testamentary Intent Attested Wills	85-90 90-116
February 2, 2010	Attested Wills (continued)	reread 90- 116
February 3, 2010	Holographic Wills Nuncupative Wills Military Testaments	116-125 125-126 126
February 4, 2010	Types of Testamentary Gifts Ademption	127-134 134-143
February 8, 2010	Satisfaction Exoneration Changes in Value	143-147 147-151 151-156
February 9, 2010	Abatement Tax Apportionment Marriage Divorce	156-157 157-161 161-162 162-163
February 10, 2010	Pretermitted Children	163-167
February 11, 2010	Lapse	167-171
February 15, 2010	Will Revocation – Introduction Revocation by Operation of Law Revocation by Physical Act	173 173-180
February 16, 2010	Revocation by Subsequent Writing Burden of Proof Revival	180-181 181-188 188-190
February 17, 2010	Conditional Revocation Republication Multiple Originals Will Interpretation & Construction – Introduction	190-193 193-195 195-198 199

<u>Date</u>	<u>Topic</u>	<u>Text</u>
February 18, 2010	Ambiguity Integration	199-217 217-219
February 22, 2010	Incorporation by Reference Facts of Independent Significance Pour-Over Provisions	219-226 226-230 231-236
February 23, 2010	Contents Precatory Language Class Gifts Dead Person's Statute Will Contests – Introduction Procedural Matters	236 236-237 237-241 241-242 243-244
February 24, 2010	Review of Will Contest Grounds Previously Covered Insane Delusions Undue Influence & Duress Fraud	244 244-248 248-263 257-264
February 25, 2010	Mistake Remedies Will Contest Prevention	264-268 268-272 272-282
March 1, 2010	Will Contest Prevention (continued) Ante-Mortem Probate Family Settlement Agreements	282-290 290-292 293-298
March 2, 2010	Conditional Wills Conditional Gifts	299-305 306-309
March 3, 2010	Combination Wills Election Wills Burial Plots [end of material covered on mid-term exam]	310-323 323-327 327
March 4, 2010	Trusts – Basic Operation Purposes and Uses of Trusts Texas Trust Legislation	1-3 3-7 7-9
March 8, 2010	Trust Creation – Introduction Trust Intent	11-12 12-21
March 9, 2010	Trust Intent (continued)	21-32
March 10, 2010	Methods of Express Trust Creation Relevance of Consideration	32 33
March 11, 2010	Statute of Frauds	33-41
March 15-19, 2010	Spring Break – No classes	

<u>Date</u>	<u>Topic</u>	<u>Text</u>
March 22, 2010	Rule Against Perpetuities Trust Purposes	41-48 48-60
March 23, 2010	The Settlor	60-69
March 24, 2010	Trust Property	69-75
March 25, 2010	The Trustee	75-80
March 26, 2010	Mid-Term Examination – 3:00 p.m. to 5:00 p.m.	
March 29, 2010	The Beneficiary Spendthrift Trusts	80-87 87-90
March 30, 2010	Discretionary Trusts Support Trusts	91-96 96-104
March 31, 2010	Charitable Trusts Pour-Over Wills (review)	104-113 113-118
April 1, 2010	Life Insurance Trusts Trust Administration – Introduction	119-120 121-124
April 5, 2010	Day of No Classes	
April 6, 2010	Standard of Care & Investments	124-128
April 7, 2010	Trustee Powers	128-130
April 8, 2010	Trust Distributions Duty of Loyalty	130-131 131-134
April 12, 2010	Duty of Loyalty (continued)	135-140
April 13, 2010	Contract Liability of Trustee Tort Liability of Trustee	140-141 141-142
April 14, 2010	Allocation of Burdens and Benefits to Principal or Income	142-146
April 15, 2010	Allocation (continued) Trustee's Duty to Inform Beneficiaries	146-149 149-150
April 19, 2010	Accounting Trustee Compensation	150-155 155-156
April 20, 2010	Trust Modifications by the Court (Deviation and Cy Pres)	156-165
April 21, 2010	Trust Modification by the Parties Trust Termination	165-177 177-179

<u>Date</u>	<u>Topic</u>	<u>Text</u>
April 22, 2010	Trust Enforcement – Procedural Matters Remedies Against the Trustee	181-184 184-193
April 26, 2010	Remedies Against the Beneficiary Remedies Against Trust Property	193 194-197
April 27, 2010	Causes of Action Against Third Parties Enforcement of Charitable Trusts Barring of Remedies	197 197-203 203-213
April 28, 2010	Trust Depository Accounts Resulting Trusts	215-223 223-229
April 29, 2010	Constructive Trusts Conclusion	229-235
May 5, 2010	Final Exam – 8:00 a.m. to 10:00 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 two hour mid-term exam on March 26, 2010 and a two hour final examination on May 5, 2010. 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 is 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.