

# WILLS & TRUSTS

## CLASS INFORMATION & SYLLABUS

Fall 2012

*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 (6<sup>th</sup> ed. 2008).

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

GERRY W. BEYER, TEXAS ESTATE PLANNING STATUTES WITH COMMENTARY (2011-2013 ed.).

### Course Materials – Optional

GERRY W. BEYER, WILLS, TRUSTS, AND ESTATES – EXAMPLES & EXPLANATIONS (5<sup>th</sup> ed. 2012).

### 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 voice mail and I will return your call.)

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

10:00 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.

**Class Attendance and Participation:**

Your grade can be affected by class participation and attendance. I reserve the right to raise or lower your grade based on class participation and/or absences. I also reserve the right to lower grades for students whose absences exceed my policy. This includes the possibility of being removed from the class prior to the final exam and not receiving credit for the course.

- 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.

- **Absences due to Religious Holy Days and University Business:** Section 51.911(b) of the Texas Education Code provides excused absences for religious holy days, and Texas Tech Operating Policy and Procedure 34.04 provides excused absences for students conducting official university business, with proper notice to the faculty member. Please notify me if either of these will affect your attendance.

**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 cell telephone 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>
	<b>INTRODUCTION</b>	
August 20, 2012	Introduction & Class Procedure Overview & Terminology	1-2
August 21, 2012	Intestate Succession – Introduction Basic Distribution Scheme	3 3-11

<u>Date</u>	<u>Topic</u>	<u>Text</u>
August 22, 2012	Basic Distribution Scheme (continued)	reread 3-11
August 23, 2012	Half & Whole Blooded Heirs Adopted Children	11-12 12-28
August 27, 2012	Non-Marital Children Children From Alternative Reproduction Technologies	28-34 34-36
August 28, 2012	Unworthy Heirs Survival	36-46 46-50
August 29, 2012	Advancements Disclaimers	50-51 51-56
August 30, 2012	Release and Conveyance of Expectancy Equitable Conversion Other Intestacy Matters	57-63 63-67 67-73
Sept. 3, 2012	No class – Labor Day	
Sept. 4, 2012	Wills – Introduction Legal Capacity Testamentary Capacity	75 75-76 76-85
Sept. 5, 2012	Testamentary Intent Attested Wills	85-90 90-116
Sept. 6, 2012	Attested Wills (continued)	reread 90-116
Sept. 10, 2012	Holographic Wills Nuncupative Wills Military Testaments	116-125 125-126 126
Sept. 11, 2012	Types of Testamentary Gifts Ademption	127-134 134-143
Sept. 12, 2012	Satisfaction Exoneration Changes in Value	143-147 147-151 151-156
Sept. 13, 2012	Abatement Tax Apportionment Marriage Divorce	156-157 157-161 161-162 162-163
Sept. 17, 2012	Pretermitted Children	163-167
Sept. 18, 2012	Lapse	167-171

<u>Date</u>	<u>Topic</u>	<u>Text</u>
Sept. 19, 2012	Will Revocation – Introduction Revocation by Operation of Law Revocation by Physical Act	173 173-180
Sept. 20, 2012	Revocation by Subsequent Writing Burden of Proof Revival	180-181 181-188 188-190
Sept. 24, 2012	Conditional Revocation Republication Multiple Originals Will Interpretation & Construction – Introduction	190-193 193-195 195-198 199
Sept. 25, 2012	Ambiguity Integration	199-217 217-219
Sept. 26, 2012	Incorporation by Reference Facts of Independent Significance Pour-Over Provisions	219-226 226-230 231-236
Sept. 27, 2012	Contents Precatory Language Class Gifts Dead Person’s Statute Will Contests – Introduction Procedural Matters	236 236-237 237-241 241-242  243-244
October 1, 2012	Review of Will Contest Grounds Previously Covered Insane Delusions Undue Influence & Duress Fraud	244 244-248 248-263 257-264
October 2, 2012	Mistake Remedies Will Contest Prevention	264-268 268-272 272-282
October 3, 2012	Will Contest Prevention (continued) Ante-Mortem Probate Family Settlement Agreements	282-290 290-292 293-298
October 4, 2012	Conditional Wills Conditional Gifts	299-305 306-309
October 8, 2012	Combination Wills Election Wills Burial Plots  [end of material covered on mid-term exam]	310-323 323-327 327

<u>Date</u>	<u>Topic</u>	<u>Text</u>
October 9, 2012	Trusts – Basic Operation Purposes and Uses of Trusts Texas Trust Legislation	1-3 3-7 7-9
October 10, 2012	Trust Creation – Introduction Trust Intent	11-12 12-21
October 11, 2012	Trust Intent (continued)	21-32
October 15, 2012	Methods of Express Trust Creation Relevance of Consideration	32 33
October 16, 2012	Statute of Frauds	33-41
October 17, 2012	Rule Against Perpetuities Trust Purposes	41-48 48-60
October 18, 2012	The Settlor	60-69
October 19, 2012	<b>Mid-Term Examination</b> – 10:00 a.m. to noon	
October 22, 2012	Trust Property	69-75
October 23, 2012	The Trustee	75-80
October 24, 2012	The Beneficiary	80-87
October 25, 2012	Spendthrift Trusts	87-90
October 29, 2012	Discretionary Trusts Support Trusts	91-96 96-104
October 30, 2012	Charitable Trusts Pour-Over Wills (review)	104-113 113-118
October 31, 2012	Life Insurance Trusts Trust Administration – Introduction	119-120 121-124
November 1, 2012	Standard of Care & Investments	124-128
November 5, 2012	Trustee Powers	128-130
November 6, 2012	Trust Distributions Duty of Loyalty	130-131 131-134
November 7, 2012	Duty of Loyalty (continued)	135-140
November 8, 2012	Contract Liability of Trustee Tort Liability of Trustee	140-141 141-142

<u>Date</u>	<u>Topic</u>	<u>Text</u>
November 12, 2012	Allocation of Burdens and Benefits to Principal or Income	142-146
November 13, 2012	Allocation (continued) Trustee's Duty to Inform Beneficiaries	146-149 149-150
November 14, 2012	Accounting Trustee Compensation	150-155 155-156
November 15, 2012	Trust Modifications by the Court (Deviation and Cy Pres)	156-165
November 19, 2012	Trust Modification by the Parties Trust Termination	165-177 177-179
November 20, 2012	Trust Enforcement – Procedural Matters Remedies Against the Trustee	181-184 184-193
November 21, 2012	Thanksgiving Break	
November 22, 2012	Thanksgiving Break	
November 26, 2012	Remedies Against the Beneficiary Remedies Against Trust Property	193 194-197
November 27, 2012	Causes of Action Against Third Parties Enforcement of Charitable Trusts Barring of Remedies	197 197-203 203-213
November 28, 2012	Trust Depository Accounts Resulting Trusts	215-223 223-229
November 29, 2012	Constructive Trusts Conclusion	229-235
December 6, 2012	<b>Final Exam</b> – 1:00 p.m. to 3:00 p.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 October 19, 2012 and a two hour final examination on December 6, 2012. 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.

**Disability Statement: OP 34.22**

Any student who, because of a disability, may require special arrangements in order to meet the course requirements should contact the Associate Dean for Student Affairs and Diversity as soon as possible to make any necessary arrangements. Students should present appropriate verification from Student Disability Services during the Associate Dean’s office hours. Please note that classroom accommodations cannot be provided to a student until appropriate verification from Student Disability Services has been submitted. For additional information, you may contact the Student Disability Services office in 335 West Hall or 806-742-2405.