

# ESTATE PLANNING

## CLASS INFORMATION & SYLLABUS

Fall 2024

*Dr. 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 (5<sup>th</sup> ed. 2023).
2. GERRY W. BEYER, TEXAS ESTATE PLANNING STATUTES WITH COMMENTARY (2023-2025 ed.).<sup>1</sup>

### Course Materials – Recommended:

GERRY W. BEYER, WILLS, TRUSTS, AND ESTATES – EXAMPLES AND EXPLANATIONS (8<sup>th</sup> ed. 2022).

### Contact Information:

Office: Law 310

Telephone (office): (806) 834-4270 (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

Cell/Text: (806) 392-6998

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

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

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

Twitter: Gerry\_Beyer

Instagram: Prof\_Gerry

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<sup>1</sup> If you plan to practice in a state other than Texas, please contact me before purchasing this book.

### **Office Hours (in-person or Zoom):**

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

#### **Monday through Thursday:**

10:00 a.m. to 11:00 a.m. and 2:00 p.m. to 5:00 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. Please place my two e-mail addresses, [gwb@professorbeyer.com](mailto:gwb@professorbeyer.com) and [gerry.beyer@ttu.edu](mailto:gerry.beyer@ttu.edu), in your “safe senders” list.

### **Attendance:**

Your grade will be affected by class participation (details below) and attendance (in-person or virtual). 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 or on-line and ready to begin when class is scheduled to start. It is unprofessional and impolite to arrive or log-in at or after the start of class. Attendance will be taken via TopHat immediately *before* class starts.
- **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.

- **Student Absence for Observance of Religious Holy Day:** Section 51.911(b) of the Texas Education Code, which is reflected in TTU OP 34.19, provides excused absences for religious holy days. A student who intends to observe a religious holy day should make that intention known in writing to the professor prior to the absence. A student who is absent from class for the observation of a religious holy day shall be allowed to take an examination or complete an assignment scheduled for that day within a reasonable time after the absence. A student who is excused from class under this policy may not be penalized for the absence; however, the professor may respond appropriately if the student fails to complete the assignment satisfactorily.
- **Student Absence for Official University Business:** Department chairpersons, directors, or others responsible for a student representing the University on officially approved trips must notify the student's instructors of the departure and return schedules. The instructor so notified must not penalize the student, although the student is responsible for material missed. Any student absent because of University business must be allowed to make up missed work within a reasonable span of time or have alternate grades substituted for work due to an excused absence. Students absent because of University business must be given the same privileges as other students.

### **Class Preparation:**

- You must be prepared for every class.
- You must be prepared to discuss the assigned material.
- You must be prepared for in-class quizzes and to work with our in-class client such as preparation of questionnaires, interviews, drafting final documents, participating in the document execution ceremony, etc.

The American Bar Association standards for accrediting law schools contain a formula for calculating the amount of work that constitutes one credit hour. According to ABA Standard 310(b)(1), a “credit hour” is “an amount of work that reasonably approximates: (1) not less than one hour of classroom or direct faculty instruction and two hours of out-of-class student work per week for fifteen weeks, or the equivalent amount of work over a different amount of time . . . .” This is a two-credit class, meaning that we will spend two 50-minute blocks of time together in the classroom each week and you will spend at least two hours working outside of the classroom for each class. All told, applying the ABA standard to the number of credits offered for this class, you should plan on spending a minimum of 6 hours per week (2 in class and at least 4 preparing for class) on course-related work.

**Technology Etiquette:**

- Turn off all mobile communication devices including cell phones prior to the beginning of class unless you are using them for TopHat.
- 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, post on Instagram, tweet, work on your Facebook or LinkedIn page, 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>	<u>Texas Statutes</u>
August 19, 2024	Will Execution Ceremony Introduction	v-vi, 1-11	
August 21, 2024	Client Contact – Introduction Securing Employment in the Estate Planning Field Obtaining Clients Client Interview	565-573 573-575 575-577 577-586	
August 26, 2024	Client Interview (continued) Information and Document Collection	586-592 592-594	
August 28, 2024	Attorney-Client Relationship Fees	594-598 598-606	
September 2, 2024	Labor Day – No Class		
September 4, 2024	Fiduciary Selection Professional Responsibility  <b>DUE: Intestacy, Wills, and Trusts Problem Set</b>	606-618 619-643  23-80	Est. Code § 254.003
September 9, 2024	<i>Client Interview – General &amp; Property Disposition</i>  Clients with Special Circumstances	759-918 [reference]	

<u>Date</u>	<u>Topic</u>	<u>Text</u>	<u>Texas Statutes</u>
September 11, 2024	Professional Responsibility (continued)	643-667	
September 16, 2024	Malpractice Role of Legal Assistants	668-679 680-688	
September 18, 2024 [special instructions TBA]	Using Artificial Intelligence in an Estate Planning Practice		
September 23, 2024	Self-Help Techniques Used by Non-Attorneys Enhancing Professional Status  <b>DUE: Engagement Letter</b>	688-705 705-706	
September 25, 2024	Overview of Document Drafting Document Formatting	11-20 919-926	
September 30, 2024	Forms Common Drafting Errors	926-931 931-935	
October 2, 2024	Disability Planning – Property Management – Introduction Durable Power of Attorney Self-Designation of Guardian of the Estate  <b>Due: Will Draft</b>	303-304 304-347 347-355	Est. Code § 751.001- 752.115 Est. Code § 1104.201-.212
October 7, 2024	Custodial Trusts Disability Income Insurance Disability Planning – Health Care – Introduction Statutory Surrogates	355-373 373-374 375 375-385	H&S Code ch. 313
October 9, 2024	Wealth Transfer Taxation Overview	139-301 [reference]	
October 14, 2024	<b>Due: Wealth Transfer Taxation</b>  <i>Client Interview – Disability Planning for Property</i>		
October 16, 2024 [class starts at 1:15 p.m.]	Medical Power of Attorney HIPAA Declaration for Mental Health Treatment Self-Designation of Guardian of the Person Long-Term Care Insurance	385-409 409-413  413-414 414-418	H&S Code ch. 166(D)  CP&R Code ch. 137 Est. Code § 1104.201-.212
October 21, 2024	Accelerated Life Insurance Payments and Viatical Settlements Home Care Contracts Medicaid Planning	419-429 430-433 433-447	Ins. Code ch. 1111A

<u>Date</u>	<u>Topic</u>	<u>Text</u>	<u>Texas Statutes</u>
October 23, 2024	<b>DUE: Disability Plan for Property</b> <i>Client Interview – Disability Planning for Health Care</i>		
October 28, 2024	Planning for Physical Aspects of Death – Introduction Living Wills, DNR Orders, & POLST Assisted Suicide	449-463 463-475 475-509	H&S Code ch. 166(A)-(D) Penal Code § 22.08
October 30, 2024	Anatomical Gifts  Disposition of Body	510-552  552-562	H&S Code chs. 691, 692, & 693 H&S Code §§ 711.002 & 711.039
November 4, 2024	<b>DUE: Disability Plan for Health Care</b> <i>Client Interview – Physical Aspects of Death</i>		
November 6, 2024	Probate Avoidance Techniques – Introduction Reasons to Avoid Probate Inter Vivos Gifts Powers of Appointment	81 82-85 86-97 97-99	Prop. Code ch. 181
November 11, 2024	Joint Tenancies Multiple-Party Bank Accounts  <b>DUE: Plan for Physical Aspects of Death</b>	99-101 101-112	Est. Code § 101.001 Est. Code §§ 113.001-210
November 13, 2024	Pay/Transfer on Death Property  Life Insurance Annuities Retirement Plans	112-123  124-132 132-134 134-137	Est. Code § 111.051-053; ch. 115, Trans. Code §§ 501.031 & 501.0315
November 18, 2024	Selecting Witnesses Document Execution Procedure	935-937 937-945	
November 20, 2024	Video-recording the Will Execution Ceremony Safekeeping of Documents Review of Estate Plan Will Contest Prevention	945-956 956-957 957-959 707-757	
November 25, 2024	<i>Client Document Execution</i>		
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.<sup>2</sup>

### **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.
- Conduct interviews of 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.
- Understand how to use artificial intelligence in an estate planning practice.
- Avoid malpractice.
- Assess 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
  - Disposition of body documents

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

- Recognize common errors in drafting estate planning documents.
- Supervise the execution, witnessing, and acknowledgment of estate planning documents.
- 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> <sup>3</sup>
September 4, 2024	Intestacy, Wills, and Trusts Problem Set	120
September 23, 2024	Engagement Letter	50
October 2, 2024	Will Draft	50 <sup>4</sup>
October 14, 2024	Wealth Transfer Taxation	50

<sup>3</sup> 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.

<sup>4</sup> 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<sup>3</sup></u>
October 23, 2024	Disability Plan for Property Questions and Documents	100
November 4, 2024	Disability Plan for Health Care Questions and Documents	100
November 11, 2024	Physical Aspects of Death Plan Questions and Documents	100
November 13-25, 2024	Tasks relating to finalizing Will and Estate Plan such as drafting final documents, participating in the document execution ceremony, etc.	50-100
Random and scheduled class days	In-class quizzes and your work with our in-class client such as preparation of questionnaires, interviews, etc.	100-200

**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.

**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 a state other than Texas, 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 which supports your answers.

**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* unless otherwise indicated. You may, however, consult any materials you wish.

**7. Use of Artificial Intelligence**

You may use artificial intelligence programs to assist with your research and drafting provided you include a statement substantially as follows which is similar to what a growing number of courts are requiring for pleadings and briefs:

I used generative artificial intelligence (AI) tools in the [preparation or drafting] of this assignment. Specifically, I used [tool name (e.g., ChatGPT, Gemini, Lexis+AI)] to [conduct legal research or draft the document]. The undersigned hereby certifies that the undersigned independently verified as accurate each and every legal assertion and/or citation to the law.

**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 Integrity**

Academic integrity is taking responsibility for one’s own class and/or course work, being individually accountable, and demonstrating intellectual honesty and ethical behavior. Academic integrity is a personal choice to abide by the standards of intellectual honesty and responsibility. Because education is a shared effort to achieve learning through the exchange of ideas, students, faculty, and staff have the collective

responsibility to build mutual trust and respect. Ethical behavior and independent thought are essential for the highest level of academic achievement, which then must be measured. Academic achievement includes scholarship, teaching, and learning, all of which are shared endeavors. Grades are a device used to quantify the successful accumulation of knowledge through learning. Adhering to the standards of academic integrity ensures grades are earned honestly. Academic integrity is the foundation upon which students, faculty, and staff build their educational and professional careers.

[Texas Tech University Operating Policy 34.12](#) also sets forth the definitions of “cheating,” “plagiarism,” “collusion,” “falsifying academic records,” and “misrepresenting facts.” Like the legal profession, the Law School is governed by ethical principles, which are set forth in the Law School’s [Honor Code](#) and the [University’s Student Handbook](#), which includes the Code of Conduct. Please refer to these Codes so that you are familiar with the policies governing academic integrity. Attempts by students to present as their own work any work that they have not honestly performed is regarded by the faculty and administration as a serious offense and renders offenders liable to serious consequences, including even suspension or expulsion from the Law School.

### **Reasonable Accommodations for Students with Disabilities**

Any student who, because of disability, may require special arrangements in order to meet the course requirements should contact the Registrar’s Office at the School of Law and provide appropriate verification from Student Disability Services. 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 at 335 West Hall or 806-742-2405.

### **Accommodations for Pregnant Students**

Any pregnant student will be provided reasonable accommodations as would be provided a student with a temporary medical condition including: 1) ability to maintain a safe distance from hazardous substances, areas, or activities; 2) excused absences; 3) ability to make up missed assignments or assessments; 4) additional time for assignment completion; and 5) access to instructional materials and recordings of classes for which the student has an excused absence.

Any student who is pregnant or parenting a child up to age 18 may contact Texas Tech’s designated Pregnancy and Parenting Liaison to discuss support available through the University. The Liaison can be reached by emailing [titleix@ttu.edu](mailto:titleix@ttu.edu) or calling 742-7233. Additional information is available online.

## **Discrimination, Harassment, and Sexual Violence**

Texas Tech University is committed to providing and strengthening an educational, working, and living environment where students, faculty, staff, and visitors are free from gender and/or sex discrimination of any kind. Sexual assault, discrimination, harassment, and other Title IX violations are not tolerated by the university. Report any incidents to (806)-742-SAFE (7233) or file a report online at <https://www.depts.ttu.edu/titleix/students/>. Faculty and staff members at TTU are committed to connecting you to resources on campus. Some of these available resources are:

- TTU Student Counseling Center, 806-742-3674, <https://www.depts.ttu.edu/scc/> ([provides](#) confidential support on campus.)
- TTU 24-hour Crisis Helpline, 806-742-5555, (assists students who are experiencing a mental health or interpersonal violence crisis). If you call the helpline, you will speak with a mental health counselor.
- Voice of Hope Lubbock Rape Crisis Center, 806-763-7273, [voiceofhopelubbock.org](http://voiceofhopelubbock.org) (24-hour hotline that provides support for survivors of sexual violence)
- The Risk, Intervention, Safety and Education (RISE) Office, 806-742-2110, <https://www.depts.ttu.edu/rise/> (provides a range of resources and support options focused on prevention education and student wellness)
- Texas Tech Police Department, 806-742-3931, <http://www.depts.ttu.edu/ttpe/> (to report criminal activity that occurs on or near Texas Tech campus)

## **Wellness Resources:**

The Law School wants you to be successful—academically and personally. Thus, your well-being matters. Please seek help when you need it and encourage others to seek help as well. The Associate Dean for Student Life and other members of the Law School community work with law students to resolve issues that might impact their wellness and ultimate success. Never hesitate to reach out!

Click [here](#) to view a “toolkit” with more information about the Law School’s support and wellness resources. Additional information about student support is located [here](#).

Any student who faces challenges securing their food or housing and believes this may affect their performance is urged to contact the Associate Dean for Student Life for

support. Furthermore, the Law School maintains a Food Pantry that is available to all law students. Law students may also visit [Raider Red's Food Pantry](#) on main campus, which is located in Doak 117.

Also, don't forget that the Texas Lawyers Assistance Program (TLAP) from the State Bar of Texas is a resource—not only for practicing lawyers, but for law students as well. TLAP offers confidential crisis counseling, referrals, and peer assistance relating to alcohol and drug abuse, mental health issues, and wellness. Contact TLAP through <https://tlaphelps.org> or by calling 800.343.8527 (available 24/7). Additionally, the Center for Collegiate Recovery Communities at Texas Tech offers students in recovery a nurturing and supportive community. Click [here](#) to learn more about the Center and the services it provides to students.

For an emergency after business hours, please call 911. And for a non-emergency situation, keep in mind that the TTU Crisis Helpline (806.742.5555) is available 24 hours a day, 365 days a year.

### **Civility Statement**

Texas Tech University is a community of faculty, students, and staff that enjoys an expectation of cooperation, professionalism, and civility during the conduct of all forms of university business, including the conduct of student–student and student–faculty interactions in and out of the classroom. Further, the classroom is a setting in which an exchange of ideas and creative thinking should be encouraged and where intellectual growth and development are fostered. Students who disrupt this classroom mission by rude, sarcastic, threatening, abusive or obscene language and/or behavior will be subject to appropriate sanctions according to university policy. Likewise, faculty members are expected to maintain the highest standards of professionalism in all interactions with all constituents of the university.

### **Student Support Statement**

The Office of Campus Access and Engagement works across Texas Tech University to foster, affirm, celebrate, engage, and strengthen all student communities. For more information about services, opportunities for participation, and ways in which Texas Tech can support your success at the Law School, please call main campus at (806) 742-7025 or contact the Law School's Associate Dean for Student Life.