

# ESTATE PLANNING

## CLASS INFORMATION & SYLLABUS

Spring 2017

*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 (4<sup>th</sup> ed. 2013).
2. GERRY W. BEYER, TEXAS ESTATE PLANNING STATUTES WITH COMMENTARY (2016-2017 ed.).<sup>1</sup>

### **Course Materials – Recommended:**

GERRY W. BEYER, WILLS, TRUSTS, AND ESTATES – EXAMPLES AND EXPLANATIONS (6<sup>th</sup> ed. 2016).

### **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

Text/Cell: (806) 392-6998

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](mailto:gwb@professorbeyer.com)

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

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

Twitter: Gerry\_Beyer

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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:**

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.; 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 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 more than four 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.

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 including cell phones 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 LinkedIn 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>	<u>Texas Statutes</u>
Jan. 18, 2017	Introduction	v-vi, 1-10	
Jan. 23, 2017	Client Contact – Introduction Securing Employment in the Estate Planning Field Obtaining Clients Client Interview	544-552 552-553 554-555 555-563	

<u>Date</u>	<u>Topic</u>	<u>Text</u>	<u>Texas Statutes</u>
Jan. 25, 2017	Client Interview (continued) Information and Document Collection	563-568 569-570	
Jan. 30, 2017	[Receive Intestacy, Wills, and Trusts Problem Set]  Intestacy, Wills, and Trusts Review [not covered in class]  Attorney-Client Relationship Fees	  22-77  570-572 572-580	
Feb. 1, 2017	Fiduciary Selection Professional Responsibility	580-592 592-639	Est. Code § 254.003
Feb. 6, 2017	<b><i>Client Interview – General &amp; Property Disposition</i></b>  Clients with Special Circumstances	  725-859 [reference]	
Feb. 8, 2017	<b>DUE: Intestacy, Wills, and Trusts Problem Set</b>  Professional Responsibility (continued)	  592-639	
Feb. 13, 2017	Malpractice Role of Legal Assistants	639-651 651-659	
Feb. 15, 2017	Self-Help Techniques Used by Non-Attorneys Enhancing Professional Status	659-675 675-676	
Feb. 20, 2017	Overview of Document Drafting Document Formatting	10-19 860-866	
Feb. 22, 2017	Forms Common Drafting Errors	866-871 871-875	
Feb. 27, 2017	<b>DUE: Engagement Letter</b>  Disability Planning – Property Management – Introduction Durable Power of Attorney Self-Designation of Guardian of the Estate	  296-297 297-335 335-343	  Est. Code § 751.001-.115 Est. Code § 1104.201-.212
March 1, 2017	Custodial Trusts Disability Income Insurance Disability Planning – Health Care – Introduction Statutory Surrogates	343-359 359-361 362 362-371	   H&S Code ch. 313
March 6, 2017	Medical Power of Attorney HIPAA Declaration for Mental Health Treatment Self-Designation of Guardian of the Person Long-Term Care Insurance	371-393 393-397  397-398 398-405	H&S Code ch. 166(D)  CP&R Code ch. 137 Est. Code § 1104.201-.212

<u>Date</u>	<u>Topic</u>	<u>Text</u>	<u>Texas Statutes</u>
March 8, 2017	Accelerated Life Insurance Payments and Viatical Settlements Home Care Contracts Medicaid Planning	405-415 416-421 421-435	Insurance Code ch. 1111
March 13-17, 2017	Spring Break – no classes		
March 20, 2017	<b>Due: Will Draft</b>  <i>Client Interview – Disability Planning for Property</i>		
March 22, 2017	Planning for Physical Aspects of Death – Introduction Living Wills, DNR Orders, & POLST Assisted Suicide	436-449 449-461 461-492	H&S Code ch. 166(A)-(D) Penal Code § 22.08
March 27, 2017	<b>DUE: Disability Plan for Property</b>  <i>Client Interview – Disability Planning for Health Care</i>		
March 29, 2017	Anatomical Gifts  Disposition of Body	493-532  532-542	H&S Code chs. 691, 692, & 693 H&S Code §§ 711.002 & 711.039
April 3, 2017	Wealth Transfer Taxation Overview	128-295 [reference]	
April 5, 2017	<b>DUE: Disability Plan for Health Care</b>  <i>Client Interview – Physical Aspects of Death</i>		
April 10, 2017	Probate Avoidance Techniques – Introduction Reasons to Avoid Probate Inter Vivos Gifts Powers of Appointment	78-79 79-82 83-93 93-95	Prop. Code ch. 181
April 12, 2017	Joint Tenancies Multiple-Party Bank Accounts	95-98 98-109	Est. Code § 101.001 Est. Code §§ 113.001-210
April 17, 2017	Day of No Classes		
April 19, 2017	<b>DUE: Plan for Physical Aspects of Death</b>  Pay/Transfer on Death Property  Life Insurance Annuities Retirement Plans	109-115  115-123 123-124 124-127	Est. Code § 111.051-053; Trans. Code § 501.031

<u>Date</u>	<u>Topic</u>	<u>Text</u>	<u>Texas Statutes</u>
April 24, 2017	Selecting Witnesses Document Execution Procedure	875-877 877-884	
April 26, 2017	<b>DUE: Will Final Version</b>  Video-recording the Will Execution Ceremony Safekeeping of Documents Review of Estate Plan Will Contest Prevention	  884-895 895-896 896-898 677-724	
May 1, 2017	<i>Client Document Execution</i>		
May 3, 2017	Conclusion		
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.
- 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.
- Assess the role of legal assistants in the estate planning process.

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

- 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
- 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>
February 8, 2017	Intestacy, Wills, and Trusts Problem Set	150
February 27, 2017	Engagement Letter	50
March 20, 2017	Will Draft	50 <sup>4</sup>
March 27, 2017	Disability Plan for Property Durable Power of Attorney Self-Designation of Estate Guardian	50 25
April 5, 2017	Disability Plan for Health Care Medical Power of Attorney HIPAA Authorization Self-Designation of Personal Guardian Mental Health Treatment Declaration	50 25 25 50
April 19, 2017	Physical Aspects of Death Plan Living Will Anatomical Gift Disposition of Body	50 50 50
April 26, 2017	Will Final Version	100-200 <sup>5</sup>

**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.

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<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.

<sup>5</sup> Point value will depend on complexity of client's situation and will be announced several weeks prior to the due date.



## 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 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 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.

### 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

Academic honesty is required at all times. Please review Texas Tech OP 34.12. Like the legal profession, the School of Law is governed by ethical principles, which are set forth in the School of Law’s Honor Code. 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 School of Law.

### **Disability Statement: OP 34.22**

Any student who, because of disability, may require special arrangements in order to meet the course requirements should contact John Delony, Associate Dean for Student Life, as soon as possible to make any necessary arrangements. Students should present appropriate verification from Student Disability Services to Dean Delony. 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 at 335 West Hall or 806-742-2405.

### **Observance of a 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.

### **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 the Office for Student Rights & Resolution, (806)-742-SAFE (7233) or file a report online at [titleix.ttu.edu/students](http://titleix.ttu.edu/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/\(Provides confidential support on campus.\)](https://www.depts.ttu.edu/scc/(Provides%20confidential%20support%20on%20campus.)) 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/ttpd/> (To report criminal activity that occurs on or near Texas Tech campus.)