ESTATE PLANNING

CLASS INFORMATION & SYLLABUS Spring 2021

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Governor Preston E. Smith Regents Professor of Law Texas Tech University School of Law

The Estate Planning Class Information & Syllabus begins with the COVID-19 disclosures mandated by the Texas Tech University. You are *required* to read them and agree to abide by them.

The substantive part of the syllabus begins on page 4.

University Mandated COVID-19 Disclosures:

Possible Change in Instructional Modality

If Texas Tech University campus operations are required to change because of health concerns related to the COVID-19 pandemic, it is possible that this course will move to a fully online delivery format. Should that be necessary, students will need to have access to a webcam and microphone for remote delivery of the class. Additionally, students will need to have access to a computer with Internet access.

Required Use of Mask/Face Coverings

The Texas Tech University System has implemented a mandatory Facial Covering Policy to ensure a safe and healthy classroom experience. Current research on the COVID-19 virus suggests that there is a significant reduction in the potential for transmission of the virus from person to person by wearing a mask/facial covering that covers the nose and mouth areas. Because of the potential for transmission of the virus, and to be consistent with the University's requirement, students in this class are to wear a mask/facial covering before, during, and after class. Observing safe distancing practices within the classroom by spacing out and wearing a mask/facial covering will greatly improve our odds of having a safe and healthy in-person class experience. Any student choosing not to wear a mask/facial covering during class will be directed to leave the class and will be responsible to make up any missed class content or work.

COVID-19 Class Attendance & Accommodation Requests

In the interest of your own health and safety as well as the health and safety of the entire law school community, if at any time during this semester you feel ill, you are strongly encouraged not to attend any face-to-face class meetings or other University activities. Further, as explained below, the Law School provides the flexibility necessary to make reasonable, instructional accommodations for students to avoid exposure to COVID-19 and to maintain their health and safety.

If you are feeling ill and think the symptoms might be related to COVID-19:

- a. Promptly call Student Health Services at 806.743.2848 or your health care provider. Please note that Student Health Services and many other health care providers offer virtual visits.
- b. Self-report your symptoms as soon as possible to the Associate Dean for Student Life, Sofia Chapman, at sofia.chapman@ttu.edu or (806) 834-2468.
- c. If your illness is determined to be COVID-19, it is imperative that you inform Associate Dean Chapman immediately. Please note that all communication with professors and staff will be handled through the Office for Student Life and/or the Registrar's Office, and that the Office for Student Life may request documentation of your illness.

Class Attendance

If You Are Feeling Ill and Can Attend a Class Remotely:

If you are not attending a class in person due to feeling ill, a self-quarantine/self-isolation, or some other circumstance related to the COVID-19 pandemic, but you are able to attend your classes remotely, please contact your professors as soon as possible via email to inform them so they can account for your remote attendance. If a course is not already set up for remote instruction, your professor will take the necessary steps to make reasonable instructional accommodations during the pendency of the illness, self-quarantine/self-isolation, or other COVID-19-related circumstance.

If you miss any class material during your shift to remote learning, please contact your professors for information on how to obtain the class material and. In addition, if you will miss any assignment deadline, quiz, exam, etc. due to a

circumstance related to COVID-19, please contact your professor to request a reasonable extension.

If You Are Not Well Enough to Attend a Class Remotely:

If you are unable to attend class remotely due to an illness related to COVID-19, please follow the steps (a)-(c) above to ensure your absence will be properly recorded by the Law School. These steps apply to being unable to attend (1) an in-person class (a face-to-face class or a hybrid/hyflex class with alternating attendance); (2) a synchronous online class; and (3) an asynchronous online class in which you will miss an assignment deadline or quiz/exam.

Technology and Equipment Requirements

Our synchronous (live) classes will be held via Blackboard Collaborate Ultra or Zoom, and regular attendance policies remain in effect (see also the COVID-19 Class Attendance and Accommodation Requests syllabus statement). My baseline expectation is that you will be present for the entirety of every single synchronous session held at our usual time, and that you will have your camera turned on and your microphone muted unless called on. If you are unable to have your camera turned on due to technology barriers, please let me know.

To use Blackboard Collaborate Ultra or Zoom, you need a computer with a webcam, speakers, and a microphone. Most computers have all this necessary equipment built in, but you also can add these devises to your computer. Please contact Associate Dean Sofia Chapman if you have any equipment needs.

Examination Proctoring

All students must review the syllabus and the requirements including the online terms and video testing requirements to determine if they wish to remain in the course. Enrollment in the course is an agreement to abide by and accept all terms. Any student may elect to drop or withdraw from this course before the end of the drop/add period.

Online exams and quizzes within this course may require online proctoring. Therefore, students will be required to have a webcam (USB or internal) with a microphone when taking an exam or quiz. Students understand that this remote recording device is purchased and controlled by the student and that recordings from any private residence must be done with the permission of any person residing in the residence. To avoid any concerns in this regard, students should select private spaces for the testing. The University library and other academic

sites at the University offer secure private settings for recordings and students with concerns may discuss location of an appropriate space for the recordings with their instructor or advisor. Students must ensure that any recordings do not invade any third-party privacy rights and accept all responsibility and liability for violations of any third-party privacy concerns. Setup information will be provided prior to taking the proctored exam. For additional information about online proctoring, you can visit the online proctoring student FAQ.

Course Materials – Required:

- GERRY W. BEYER, TEACHING MATERIALS ON ESTATE PLANNING (4th ed. 2013).
- 2. GERRY W. BEYER, TEXAS ESTATE PLANNING STATUTES WITH COMMENTARY (2019-2021 ed.).¹

Course Materials – Recommended:

GERRY W. BEYER, WILLS, TRUSTS, AND ESTATES – EXAMPLES AND EXPLANATIONS (7th ed. 2019).

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

Website: http://www.ProfessorBeyer.com

Blog: http://www.BeyerBlog.com

Twitter: Gerry Beyer

Instagram: Prof Gerry

¹ 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 <u>official</u> 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:

Your grade will be affected by class participation (details below) and attendance (inperson 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 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.

- 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: TTU OP 34.04 provides for excused absences for students conducting official university business, with proper notice to the faculty member. More specifically, the faculty or staff member sponsoring the student's absence for officially approved trips or activities must notify the student's professors of the departure and return schedules. TTU OP 34.04 further explains the following:

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, e.g., if other students are given the choice of dropping one of four tests, then students with excused absences must be given the same privilege.

Class Preparation:

- You must be prepared for every class.
- You must be prepared to discuss the assigned material.
- 100 points of your grade are based on short in-class quizzes.

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>	Texas Statutes
Jan. 20, 2021	Introduction	v-vi, 1-10	
Jan. 25, 2021	Client Contact – Introduction Securing Employment in the Estate Planning Field Obtaining Clients Client Interview	544-552 552-553 554-555 555-563	
Jan. 27, 2021	Client Interview (continued) Information and Document Collection	563-568 569-570	
Feb. 1, 2021	Attorney-Client Relationship Fees	570-572 572-580	
Feb. 3, 2021	Fiduciary Selection Professional Responsibility DUE: Intestacy, Wills, and Trusts Problem Set	580-592 592-639 22-77	Est. Code § 254.003
Feb. 8, 2021	Client Interview – General & Property Disposition		
	Clients with Special Circumstances	725-859 [reference]	

<u>Date</u>	<u>Topic</u>	<u>Text</u>	<u>Texas Statutes</u>
Feb. 10, 2021	Professional Responsibility (continued)	592-639	
Feb. 15, 2021	Malpractice Role of Legal Assistants	639-651 651-659	
Feb. 17, 2021	Self-Help Techniques Used by Non-Attorneys Enhancing Professional Status	659-675 675-676	
	DUE: Engagement Letter		
Feb. 22, 2021	Overview of Document Drafting Document Formatting	10-19 860-866	
Feb. 24, 2021	Forms Common Drafting Errors	866-871 871-875	
March 1, 2021	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- 752.115 Est. Code § 1104.201212
	Due: Will Draft		
March 3, 2021	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 8, 2021	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 § 1104.201212
March 10, 2021	Wealth Transfer Taxation Overview	128-295 [reference]	
March 15, 2021	Client Interview – Disability Planning for Property		
March 17, 2021	Accelerated Life Insurance Payments and Viatical Settlements Home Care Contracts Medicaid Planning	405-415 416-421 421-435	Ins. Code ch. 1111A
March 22, 2021	DUE: Disability Plan for Property		
	Client Interview – Disability Planning for Health Care		

<u>Date</u>	<u>Topic</u>	Text	<u>Texas Statutes</u>
March 24, 2021	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 29, 2021	Anatomical Gifts Disposition of Body	493-532 532-542	H&S Code chs. 691, 692, & 693 H&S Code §§ 711.002 & 711.039
March 31, 2021	DUE: Disability Plan for Health Care Client Interview – Physical Aspects of Death		
April 5, 2021	Day of No Classes		
April 7, 2021	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, 2021	Joint Tenancies Multiple-Party Bank Accounts DUE: Plan for Physical Aspects of Death	95-98 98-109	Est. Code § 101.001 Est. Code §§ 113.001210
April 14, 2021	Pay/Transfer on Death Property Life Insurance Annuities Retirement Plans	109-115 115-123 123-124 124-127	Est. Code § 111.051-053; ch. 115, Trans. Code §§ 501.031 & 501.0315
April 19, 2021	DUE: Will Final Version Selecting Witnesses Document Execution Procedure	875-877 877-884	
April 21, 2021	Video-recording the Will Execution Ceremony Safekeeping of Documents Review of Estate Plan Will Contest Prevention	884-895 895-896 896-898 677-724	
April 26, 2021	Client Document Execution		
April 28, 2021	Conclusion		
Exam Period	No final exam!		

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.²

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.

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

Recognize common errors in drafting estate planning documents.

Supervise the execution, witnessing, and acknowledgment of estate planning documents.

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

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>	Point Value ³
February 3, 2021	Intestacy, Wills, and Trusts Problem Set	140
February 17, 2021	Engagement Letter	50
March 1, 2021	Will Draft	25 ⁴
March 22, 2021	Disability Plan for Property Durable Power of Attorney Self-Designation of Estate Guardian	50 25

³ 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.

⁴ As this is a "learning" assignment, points will be awarded primarily on the effort reflected by the draft rather than the result.

Date Due	<u>Description</u>	Point Value ³
March 31, 2021	Disability Plan for Health Care Medical Power of Attorney HIPAA Authorization Self-Designation of Personal Guardian Mental Health Treatment Declaration	50 25 25 25 50
April 12, 2021	Physical Aspects of Death Plan Living Will Anatomical Gift Disposition of Body	50 50 50
April 19, 2021	Will Final Version	100-200 ⁵
Random class days	In-class quizzes and participation	100

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.

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

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.

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

Texas Tech OP 34.12 addresses academic integrity and explains that "academic integrity is taking responsibility for one's own class and/or course work, being individually accountable, and demonstrating intellectual honesty and ethical behavior." Students must understand the principles of academic integrity and abide by them in all course work at the University; therefore, please review OP 34.12 for definitions of "plagiarism," "collusion," "falsifying "cheating," academic records." "misrepresenting facts." 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 and the University's Student Code of Professional 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 School.

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.

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 Sofia Chapman, the Associate Dean for Student Life, as soon as possible to make any necessary arrangements. Students should present appropriate verification from Student Disability Services to Associate Dean Chapman. 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 (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 (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)

Civility Statement

Texas Tech University is a community of faculty, students, and staff sharing an expectation of cooperation, professionalism, and civility in all forms of university communication and business. This expectation applies to all interactions in a classroom setting where an exchange of ideas and creative thinking should be encouraged and where intellectual growth and development are fostered. Disruptive students may be subject to sanctions according to the Texas Tech University Code of Student Conduct. Faculty members are also expected to maintain the highest standards of professionalism constituents in all interactions with all of the university (www.depts.ttu.edu/ethics/matadorchallenge/ethicalprinciples.php).

Regarding the online classroom's civility, please remember one rule, "the online class setting is the same as the face-to-face class setting." Disruptive behavior may result in academic response or disciplinary sanctions. Disciplinary actions may be initiated pursuant to the Texas Tech University Code of Student Conduct. Students are expected to maintain online behaviors that are conducive to learning.

Examples of behavior that may be considered disruptive include:

- Using or posting inappropriate, obscene, or lewd comments, language, or content or discussing inappropriate topics online or via email.
- Enabling or participating in online classroom hijacking ("Zoombombing") by participating in online classroom streams without being enrolled in the course or by sharing streaming classroom links with parties not enrolled in the course.
- Spamming, hacking, or using TTU or Blackboard platforms for commercial purposes.
- Cyberbullying or online harassment.
- Interfering with or stopping instructional delivery.
- Using non-readable fonts or font sizes.
- Interrupting class discussion by speaking out of turn or having excessively distracting background noise(s) while unmuted.

Diversity Statement

By its very design, some courses may engage topics that some students might find difficult and/or controversial. It is important that the instructor and students create an environment that values and nurtures individual and group differences and encourages engagement and interaction. Understanding and respecting multiple experiences and perspectives will serve to challenge and stimulate all participants to learn about others, about the larger world, and about themselves. By promoting diversity and intellectual exchange not only mirrors society as it is but also model society as it should and can be.

LGBTQIA Statement

Within the Center for Campus Life, the Office of LGBTQIA serves the Texas Tech community through facilitation and leadership of programming and advocacy efforts. This work is aimed at strengthening the lesbian, gay, bisexual, transgender, queer, intersex, and asexual (LGBTQIA) community and sustaining an inclusive campus that welcomes people of all sexual orientations, gender identities, and gender expressions. I identify as an ally to the lesbian, gay, bisexual, transgender, queer, intersex, and asexual (LGBTQIA) community, and I am available to listen and support you in an affirming manner. Please note that LGBTQIA resources are available through the Office of

LGBTQIA within the Center for Campus Life, Student Union Building Room 201, 806.742.5433.