

# ESTATE PLANNING

## CLASS INFORMATION & SYLLABUS

Spring 2022

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*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 (2021-2023 ed.).<sup>1</sup>

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

GERRY W. BEYER, WILLS, TRUSTS, AND ESTATES – EXAMPLES AND EXPLANATIONS (7<sup>th</sup> 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](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.

**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:** [TTU OP 34.04\(4\)](#) 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:

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.
- 100 points of your grade are based on in-class quizzes and your 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>
Jan. 12, 2022	Introduction	v-vi, 1-10	
Jan. 17, 2022	No class – MLK Day		
Jan. 19, 2022	Client Contact – Introduction Securing Employment in the Estate Planning Field Obtaining Clients Client Interview	544-552 552-553 554-555 555-563	
Jan. 24, 2022	Client Interview (continued) Information and Document Collection	563-568 569-570	
Jan. 26, 2022	Attorney-Client Relationship Fees	570-572 572-580	
Jan. 31, 2022	Fiduciary Selection Professional Responsibility  <b>DUE: Intestacy, Wills, and Trusts Problem Set</b>	580-592 592-639  22-77	Est. Code § 254.003

<u>Date</u>	<u>Topic</u>	<u>Text</u>	<u>Texas Statutes</u>
Feb. 2, 2022	<i>Client Interview – General &amp; Property Disposition</i> Clients with Special Circumstances	725-859 [reference]	
Feb. 7, 2022	Professional Responsibility (continued)	592-639	
Feb. 9, 2022	Malpractice Role of Legal Assistants	639-651 651-659	
Feb. 14, 2022	Self-Help Techniques Used by Non-Attorneys Enhancing Professional Status  <b>DUE: Engagement Letter</b>	659-675 675-676	
Feb. 16, 2022	Overview of Document Drafting Document Formatting	10-19 860-866	
Feb. 21, 2022	Forms Common Drafting Errors	866-871 871-875	
Feb. 23, 2022	Disability Planning – Property Management – Introduction Durable Power of Attorney Self-Designation of Guardian of the Estate  <b>Due: Will Draft</b>	296-297 297-335  335-343	Est. Code § 751.001- 752.115 Est. Code § 1104.201-.212
Feb. 28, 2022	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 2, 2022	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
March 7, 2022	<i>Client Interview – Disability Planning for Property</i>		
March 9, 2022	Wealth Transfer Taxation Overview [no in-person class; recorded lecture]	128-295 [reference]	
March 14-18, 2022	No classes – Spring Break		
March 21, 2022	Accelerated Life Insurance Payments and Viatical Settlements Home Care Contracts Medicaid Planning	405-415 416-421 421-435	Ins. Code ch. 1111A

<u>Date</u>	<u>Topic</u>	<u>Text</u>	<u>Texas Statutes</u>
March 23, 2022	<b>DUE: Disability Plan for Property</b> <i>Client Interview – Disability Planning for Health Care</i>		
March 28, 2022	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 30, 2022	Anatomical Gifts  Disposition of Body	493-532  532-542	H&S Code chs. 691, 692, & 693 H&S Code §§ 711.002 & 711.039
April 4, 2022	<b>DUE: Disability Plan for Health Care</b> <i>Client Interview – Physical Aspects of Death</i>		
April 6, 2022	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 11, 2022	Joint Tenancies Multiple-Party Bank Accounts  <b>DUE: Plan for Physical Aspects of Death</b>	95-98 98-109	Est. Code § 101.001 Est. Code §§ 113.001-.210
April 13, 2022	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 18, 2022	Day of No Classes		
April 20, 2022	<b>DUE: Will Final Version</b>  Selecting Witnesses Document Execution Procedure	875-877 877-884	
April 25, 2022	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 27, 2022	<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.

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.

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<sup>2</sup> 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>	<u>Point Value</u> <sup>3</sup>
January 31, 2022	Intestacy, Wills, and Trusts Problem Set	140
February 14, 2022	Engagement Letter	50
February 23, 2022	Will Draft	25 <sup>4</sup>
March 23, 2022	Disability Plan for Property Durable Power of Attorney Self-Designation of Estate Guardian	50 25

<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</u> <sup>3</sup>
April 4, 2022	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 11, 2022	Physical Aspects of Death Plan Living Will Anatomical Gift Disposition of Body	50 50 50
April 20, 2022	Will Final Version	100-200 <sup>5</sup>
Random class days	In-class quizzes and your work with our in-class client such as preparation of questionnaires, interviews, drafting final documents, participating in the document execution ceremony, etc.	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.

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

### **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.

### **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 University Operating Policy/Procedure 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 “cheating,” “plagiarism,” “collusion,” “falsifying academic records,” and “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 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 School of Law.

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.

### **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/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 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.

### **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**

The Office of LGBTQIA Education & Engagement 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 LGBTQIA community, and I am available to listen and support you in an affirming manner. LGBTQIA services and resources are available through the Office of LGBTQIA Education & Engagement, Student Union Building Room 201, 806.742.5433, <https://www.depts.ttu.edu/lgbtqia/>.

## **COVID-19 University Mandated Syllabus Statements**

**Potential Changes:** The University will continue to monitor CDC, State, and TTU System guidelines in continuing to manage the campus implications of COVID-19. Any changes affecting class policies or delivery modality will be in accordance with those guidelines and announced as soon as possible. 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 be advised of technical and equipment requirements, such as web cam, microphone, and remote proctoring software.

**Vaccinations:** Texas Tech University strongly recommends students adhere to CDC guidelines on COVID-19, including obtaining COVID-19 vaccinations. If you were unable to obtain a vaccination prior to your arrival on campus, the COVID-19 vaccine is available at Student Health Services by appointment. You can find additional information about the vaccine and campus vaccine clinics [here](#).

**Face Covering Policy:** As of May 19, 2021, face coverings are optional in TTU facilities and classrooms but, based on CDC guidelines, are recommended and welcome, especially for those who have not been vaccinated for COVID-19 or who may have susceptibilities to the virus. Face coverings are required in public transportation (e.g., Citibus) and in the Student Health Clinic.

**Seating Charts and Social Distancing:** There is not a mandated social distancing protocol for classroom seating, but using a seating chart and taking attendance are recommended in support of campus contact tracers if needed. Social distancing is recommended in rooms that will enable it.

**Personal Hygiene:** We all should continue to practice frequent hand washing, use hand sanitizers after touching high-touch points (e.g., door handles, shared keyboards, etc.), and cover faces when coughing or sneezing.

**Illness-related Absences:** Student absences due to illness are to be considered as they were prior to the pandemic, with consideration given to the fact that students who are isolating with COVID-19 and students who are quarantining for symptoms or direct exposure may have extended days of absence. Makeup opportunities should be provided in a reasonable timeframe. Direct students to the guidance for students at <https://ttucovid19.ttu.edu/User/Consent.>]

**In-Person Office Hours:** For in-person office hours, masks are optional and welcome. Virtual office hours are also available.