

WILLS & TRUSTS

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

GERRY W. BEYER, TEXAS WILLS AND ESTATES: CASES & MATERIALS (7th ed. 2015).

GERRY W. BEYER, TEXAS TRUST LAW: CASES & MATERIALS (3rd ed. 2017) (to be released by February 1, 2017).

GERRY W. BEYER, TEXAS ESTATE PLANNING STATUTES WITH COMMENTARY (2015-2017 ed.).

Course Materials – Optional

GERRY W. BEYER, WILLS, TRUSTS, AND ESTATES – EXAMPLES & EXPLANATIONS (6th ed. 2015).

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

Home: (806) 698-9334 (If I am not home, please leave a message with Margaret or on our voice mail and I will return your call.)

E-mail: gwb@professorbeyer.com

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

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

Twitter: Gerry_Beyer

Office Hours:

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

Monday through Thursday:

10:00 a.m. to 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 are not already receiving class announcements.

Class Attendance and Participation:

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

- You are expected to attend **every** class meeting.
- **Prompt Arrival:** You are expected to be in your seat and ready to begin when class is scheduled to start. It is unprofessional and impolite to arrive at or after the start of class. 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.

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

Class Preparation:

- You must be prepared for every class.
- You must be prepared to discuss the assigned material.
- Twenty percent of your grade is 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 four-credit class, meaning that we will spend four 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 **12 hours per week (4 in class and at least 8 preparing for class) on course-related work.**

Technology Etiquette:

- Turn off all mobile communication devices such as cell telephone and pagers prior to the beginning of class.
- Boot up computers before class starts.
- Turn off computer audio.
- Disable distracting screen savers.
- Use an adequately charged battery or a power cord to avoid running out of power and the associated low battery warning noises.
- Do not use your computer for purposes that are not related to class. For example, do not write or reply to e-mail or instant messages, surf the Internet, work on your Facebook or LinkedIn page, tweet, etc.

Syllabus:

Assignments are subject to change. Updates will be sent to all students via e-mail.

Classes marked with an asterisk will either be (1) video classes via Panopto or (2) made up during evening sessions (times and dates to be announced).

<u>Date</u>	<u>Topic</u>	<u>Text</u>
	INTRODUCTION	
January 18, 2017	Introduction & Class Procedure Overview & Terminology	1-2
January 19, 2017	Intestate Succession – Introduction Basic Distribution Scheme	3 3-12
January 23, 2017	Basic Distribution Scheme (continued)	reread 3-12
January 24, 2017	Half & Whole Blooded Heirs Adopted Children	12-13 13-30
January 25, 2017	Non-Marital Children Children From Alternative Reproduction Technologies	30-36 36-38
January 26, 2017	Unworthy Heirs Survival	38-47 47-51
January 30, 2017	Advancements Disclaimers	51-52 52-58
January 31, 2017	Release and Conveyance of Expectancy Equitable Conversion Other Intestacy Matters	58-65 65-68 68-75
February 1, 2017	Wills – Introduction Legal Capacity Testamentary Capacity	77 77-78 78-87
February 2, 2017*	Testamentary Intent Attested Wills	87-92 92-111
February 6, 2017	Attested Wills (continued)	Linked article
February 7, 2017	Holographic Wills Nuncupative Wills Military Testaments Statutory Wills Notarized Wills	120-129 129-130 130 130-131 131
February 8, 2017	Prepare Your Will Will Execution Ceremony	

<u>Date</u>	<u>Topic</u>	<u>Text</u>
February 9, 2017	Types of Testamentary Gifts Ademption	133-140 140-149
February 13, 2017	Satisfaction Exoneration Changes in Value	149-153 153-157 157-162
February 14, 2017	Abatement Tax Apportionment Marriage Divorce and Annulment	162-163 163-167 167-168 168
February 15, 2017	Pretermitted Children	169-173
February 16, 2017	Lapse	173-177
February 20, 2017	Will Revocation – Introduction Revocation by Operation of Law Revocation by Physical Act	179 179-186
February 21, 2017	Revocation by Subsequent Writing Burden of Proof Revival	186-187 187-194 194-196
February 22, 2017	Conditional Revocation Republication Multiple Originals Will Interpretation & Construction – Introduction	196-199 199-201 201-204 205
February 23, 2017	Ambiguity Integration	205-223 223-225
February 27, 2017	Incorporation by Reference Facts of Independent Significance Pour-Over Provisions	225-232 232-236 236-242
February 28, 2017	Contents Precatory Language Class Gifts Dead Person’s Statute Will Contests – Introduction Procedural Matters	242 242-243 243-247 247-248 249-250
March 1, 2017	Review of Will Contest Grounds Previously Covered Insane Delusions Undue Influence & Duress Fraud	250 250-254 255-270 270
March 2, 2017	Mistake Remedies Will Contest Prevention	270-274 274-278 278-288

<u>Date</u>	<u>Topic</u>	<u>Text</u>
March 6, 2017	Will Contest Prevention (continued) Ante-Mortem Probate Family Settlement Agreements	288-296 296-298 299-304
March 7, 2017	Conditional Wills Conditional Gifts	305-311 311-312
March 8, 2017	Combination Wills Election Wills Burial Plots [end of material covered on mid-term exam]	313-327 327-330 330
TBD	Review Session for Mid-Term Examination	
March 9, 2017	Trusts – Basic Operation Purposes and Uses of Trusts Texas Trust Legislation	1-3 3-7 7-9
March 13-17, 2017	Spring Break – No Classes	
March 20, 2017	Trust Creation – Introduction Trust Intent	11-12 12-21
March 21, 2017*	Trust Intent (continued)	21-32
March 22, 2017*	Methods of Express Trust Creation Relevance of Consideration	32 33
March 23, 2017*	Statute of Frauds	33-41
March 27, 2017	Rule Against Perpetuities Trust Purposes	41-48 48-60
March 28, 2017	The Settlor	60-69
March 29, 2017	Trust Property	69-75
March 30, 2017	The Trustee	75-80
April 3, 2017	The Beneficiary	80-87
April 4, 2017	Spendthrift Trusts	87-90
April 5, 2017	Discretionary Trusts Support Trusts	91-96 96-104
April 6, 2017	Charitable Trusts Pour-Over Wills (review)	104-113 113-118

<u>Date</u>	<u>Topic</u>	<u>Text</u>
April 7, 2017	Mid-Term Examination – 4:00 p.m. to 6:00 p.m.	
April 10, 2017	Life Insurance Trusts Trust Administration – Introduction	119-120 121-124
April 11, 2017	Standard of Care & Investments	124-128
April 12, 2017	Trustee Powers	128-130
April 13, 2017	Trust Distributions Duty of Loyalty	130-131 131-134
April 17, 2017	Day of No Classes	
April 18, 2017	Duty of Loyalty (continued)	135-140
April 19, 2017	Contract Liability of Trustee Tort Liability of Trustee	140-141 141-142
April 20, 2017	Allocation of Burdens and Benefits to Principal or Income	142-146
April 24, 2017	Allocation (continued) Trustee’s Duty to Inform Beneficiaries	146-149 149-150
April 25, 2017*	Accounting Trustee Compensation	150-155 155-156
April 26, 2017	Trust Modifications by the Court (Deviation and Cy Pres)	156-165
April 27, 2017	Trust Modification by the Parties Trust Termination	165-177 177-179
May 1, 2017	Trust Enforcement – Procedural Matters Remedies Against the Trustee	181-184 184-193
May 2, 2017	Remedies Against the Beneficiary Remedies Against Trust Property	193 194-197
May 3, 2017	Causes of Action Against Third Parties Enforcement of Charitable Trusts Barring of Remedies Trust Depository Accounts	197 197-203 203-213 215-223
May 4, 2017	Resulting Trusts Constructive Trusts Conclusion	223-229 229-235
TBD	Review Session for Final Examination	
May 9, 2017	Final Exam – 8:00 a.m. to 10:00 a.m.	

Course Purpose:

The purpose of this course is to provide students with a background of the Texas law of intestate succession, wills, and trusts.

Expected Learning Outcomes:

Upon completion of this course, a student will have acquired knowledge of how property passes when a person dies intestate or with a will. In addition, the student will learn how to create, administer, and enforce trusts. The specific tasks the student will be able to complete include the following:

- How to distribute property under Texas law when a person dies intestate and the impact of facts relating to family circumstances and actions taken by a potential heir.
- Determine whether a will is valid under Texas law.
- Differentiate among the various types of wills.
- Analyze the impact of changes that occur to property after will execution.
- Determine the effect of changes that occur to a potential beneficiary after will execution.
- Interpret and construe wills using appropriate statutory and judicial rules.
- Recognize situations which may increase the likelihood of a will contest.
- Ascertain whether a will may be successfully contested and if so, on what ground or grounds.
- Protect a will from contest.
- Recognize other issues that may arise in a will context.
- Explain why a person would elect to create a trust.
- Identify the elements of a valid trust and the different types of trusts.
- Determine whether a valid trust was created.
- Ascertain the roles played by the settlor, trustee, and beneficiary in a trust context.
- Plan how to limit the interest the settlor grants to the beneficiary.
- Identify the trustee's fiduciary duties such as the standard of care and duty of loyalty.
- Determine the liability of a trustee in contract and tort contexts.

- Allocate receipts and expenditures between principal and income.
- Explain how a trustee must account to the beneficiaries.
- Recognize how a trust may be altered by the court or the parties.
- Enforce trusts and obtain remedies.
- Explain the workings of trust bank accounts, resulting trusts, and constructive trusts.

Method of Assessing Learning Outcomes:

Examinations:

- Midterm exam on April 7, 2017 (40%).
- Final exam on May 9, 2017 (40%).

Both exams will include essay and objective questions.

Class Preparation:

- Brief in-class quizzes (not announced ahead of time) (20%).

Criteria for Grade Determination:

The following factors will be considered in grading the examinations and quizzes: accuracy (e.g., legally correct), completeness (e.g., number of issues spotted), and analysis (including organization, clarity, quality, and presentation).

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. 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.)