

WILLS & TRUSTS

CLASS INFORMATION & SYLLABUS

Spring 2021

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Governor Preston E. Smith Regents Professor of Law

Texas Tech University School of Law

The Wills & Trusts 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 devices 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, TEXAS WILLS , TRUSTS, AND ESTATES (2018).

GERRY W. BEYER, TEXAS ESTATE PLANNING STATUTES WITH COMMENTARY (2019-2021 ed.).

Course Materials – Optional

GERRY W. BEYER, WILLS, TRUSTS, AND ESTATES – EXAMPLES & 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

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 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.
- 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 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>
	INTRODUCTION	
January 19, 2021	Introduction & Class Procedure Overview & Terminology	xxxiii-xxxvii 3-4
January 20, 2021	Intestate Succession – Introduction Basic Distribution Scheme	5 5-11
January 21, 2021	Basic Distribution Scheme (continued)	reread 5-11
January 25, 2021	Half & Whole Blooded Heirs Adopted Children	11-12 12-30
January 26, 2021	Non-Marital Children Children from Alternative Reproduction Technologies	30-35 35-37
January 27, 2021	Unworthy Heirs Survival	37-45 45-48
January 28, 2021	Advancements Disclaimers	48-49 49-54
February 1, 2021	Release and Conveyance of Expectancy Equitable Conversion Other Intestacy Matters	54-60 60-63 63-77

<u>Date</u>	<u>Topic</u>	<u>Text</u>
February 2, 2021	Wills – Introduction Legal Capacity Testamentary Capacity	79 79 79-88
February 3, 2021	Testamentary Intent Attested Wills	88-92 92-115
February 4, 2021	Attested Wills (continued)	reread 92-115
February 8, 2021	Holographic Wills Nuncupative Wills Military Testaments Statutory Wills Notarized Wills	115-122 122-123 123 123-124 124
February 9, 2021	Prepare Your Will Will Execution Ceremony	review 783-98 reread 108-15
February 10, 2021	Types of Testamentary Gifts Ademption	125-131 131-138
February 11, 2021	Satisfaction Exoneration Changes in Value	138-142 142-145 146-150
February 15, 2021	Abatement Tax Apportionment Marriage Divorce and Annulment	150 150-154 155 155-156
February 16, 2021	Pretermitted Children	156-159
February 17, 2021	Lapse	159-163
February 18, 2021	Will Revocation – Introduction Revocation by Operation of Law Revocation by Physical Act	165 165-171
February 22, 2021	Revocation by Subsequent Writing Burden of Proof Revival	171-172 172-179 180-181
February 23, 2021	Conditional Revocation Republication Multiple Originals Will Interpretation & Construction – Introduction	181-184 184-185 186-188 189
February 24, 2021	Ambiguity Integration	189-205 205-206

<u>Date</u>	<u>Topic</u>	<u>Text</u>
February 25, 2021	Incorporation by Reference Facts of Independent Significance Pour-Over Provisions	206-213 213-216 216-221
March 1, 2021	Contents Precatory Language Class Gifts Dead Person's Statute Will Contests – Introduction Procedural Matters	221 222 222-226 226-227 229-230
March 2, 2021	Review of Will Contest Grounds Previously Covered Insane Delusions Undue Influence & Duress Fraud	230 230-234 234-247 247
March 3, 2021	Mistake Public Policy Remedies Will Contest Prevention	247-250 250-253 254-257 257-266
March 4, 2021	Will Contest Prevention (continued) Ante-Mortem Probate Family Settlement Agreements	266-272 272-274 275-279
March 8, 2021	Conditional Wills Conditional Gifts	281-286 287
March 9, 2021	Combination Wills Election Wills Burial Plots [end of material covered on mid-term exam]	287-299 299-302 302
March 10, 2021	Review Session for Mid-Term Examination	
March 11, 2021	Study Day for Mid-Term Examination	
March 12, 2021	Mid-Term Examination – 1:00 p.m. to 3:00 p.m..	
March 15, 2021	Trusts – Basic Operation Purposes and Uses of Trusts Texas Trust Legislation	493-494 494-498 498-500
March 16, 2021	Trust Creation – Introduction Trust Intent	501 501-511
March 17, 2021	Trust Intent (continued)	511-518
March 18, 2021	Methods of Express Trust Creation Relevance of Consideration	519 519-520

<u>Date</u>	<u>Topic</u>	<u>Text</u>
March 22, 2021	Statute of Frauds	520-527
March 23, 2021	Rule Against Perpetuities Trust Purposes	527-533 533-543
March 24, 2021	The Settlor Trust Property	543-550 550-553
March 25, 2021	The Trustee	554-558
March 29, 2021	The Beneficiary	559-564
March 30, 2021	Spendthrift Trusts	564-569
March 31, 2021	Discretionary Trusts Support Trusts	569-572 572-579
April 1, 2021	Charitable Trusts Pour-Over Wills (review)	579-587 587
April 5, 2021	Day of No Classes	
April 6, 2021	Life Insurance Trusts Trust Administration – Introduction	587-589 589-592
April 7, 2021	Standard of Care & Investments	592-596
April 8, 2021	Trustee Powers	596-599
April 12, 2021	Trust Distributions Duty of Loyalty	599-600 600-607
April 13, 2021	Liability of Trustee to Third Parties – Contract Liability Liability of Trustee to Third Parties – Tort Liability	607-608 608-609
April 14, 2021	Allocation of Receipts and Expenses	609-614
April 15, 2021	Allocation (continued) Trustee’s Duty to Inform Beneficiaries Accountings	614-615 616 617-620
April 19, 2021	Trustee Compensation Trust Modifications by the Court (Deviation and Cy Pres)	620-621 621-630
April 20, 2021	Trust Modification by the Parties Trust Termination	630-640 640-642
April 21, 2021	Trust Enforcement – Procedural Matters Remedies Against the Trustee	643-646 646-654

<u>Date</u>	<u>Topic</u>	<u>Text</u>
April 22, 2021	Remedies Against the Beneficiary Remedies Against Trust Property	654 654-656
April 26, 2021	Causes of Action Against Third Parties Enforcement of Charitable Trusts Barring of Remedies	657 657-662 662-679
April 27, 2021	Trust Depository Accounts Resulting Trusts	681-687 687-692
April 28, 2021	Constructive Trusts Conclusion	693-695
April 29, 2021	Optional Review Session for Final Examination	
May 4, 2021	Final Exam – 1:00 p.m. to 3:00 p.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.

Draft a basic will.

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 March 12, 2021 (40%).
- Final exam on May 4, 2021 (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 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 “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 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 in all interactions with all constituents 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.