

WILLS & TRUSTS

CLASS INFORMATION & SYLLABUS

Spring 2022

Dr. 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 , TRUSTS, AND ESTATES (2018).

GERRY W. BEYER, TEXAS ESTATE PLANNING STATUTES WITH COMMENTARY (2021-2023 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\(4\)](#) 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.
- 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 11, 2022	Introduction & Class Procedure Overview & Terminology	xxxiii-xxxvii 3-4
January 12, 2022	Intestate Succession – Introduction Basic Distribution Scheme	5 5-11
January 13, 2022	Basic Distribution Scheme (continued)	reread 5-11
January 17, 2022	MLK Day – No Class	
January 18, 2022	Half & Whole Blooded Heirs Adopted Children	11-12 12-30
January 19, 2022	Non-Marital Children Children from Alternative Reproduction Technologies	30-35 35-37
January 20, 2022	Unworthy Heirs Survival	37-45 45-48

<u>Date</u>	<u>Topic</u>	<u>Text</u>
January 24, 2022	Advancements Disclaimers	48-49 49-54
January 25, 2022	Release and Conveyance of Expectancy Equitable Conversion Other Intestacy Matters	54-60 60-63 63-77
January 26, 2022	Wills – Introduction Legal Capacity Testamentary Capacity	79 79 79-88
January 27, 2022	Testamentary Intent Attested Wills	88-92 92-115
January 31, 2022	Attested Wills (continued)	reread 92-115
February 1, 2022	Holographic Wills Nuncupative Wills Military Testaments Statutory Wills Notarized Wills	115-122 122-123 123 123-124 124
February 2, 2022	Prepare Your Will Will Execution Ceremony	review 783- 98 reread 108-15
February 3, 2022	Types of Testamentary Gifts Ademption	125-131 131-138
February 7, 2022	Satisfaction Exoneration Changes in Value	138-142 142-145 146-150
February 8, 2022	Abatement Tax Apportionment Marriage Divorce and Annulment	150 150-154 155 155-156
February 9, 2022	Pretermitted Children	156-159
February 10, 2022	Lapse	159-163
February 14, 2022	Will Revocation – Introduction Revocation by Operation of Law Revocation by Physical Act	165 165-171
February 15, 2022	Revocation by Subsequent Writing Burden of Proof Revival	171-172 172-179 180-181

<u>Date</u>	<u>Topic</u>	<u>Text</u>
February 16, 2022	Conditional Revocation Republication Multiple Originals Will Interpretation & Construction – Introduction	181-184 184-185 186-188 189
February 17, 2022	Ambiguity Integration	189-205 205-206
February 21, 2022	Incorporation by Reference Facts of Independent Significance Pour-Over Provisions	206-213 213-216 216-221
February 22, 2022	Contents Precatory Language Class Gifts Dead Person’s Statute Will Contests – Introduction Procedural Matters	221 222 222-226 226-227 229-230
February 23, 2022	Review of Will Contest Grounds Previously Covered Insane Delusions Undue Influence & Duress Fraud	230 230-234 234-247 247
February 24, 2022	Mistake Public Policy Remedies Will Contest Prevention	247-250 250-253 254-257 257-266
February 28, 2022	Will Contest Prevention (continued) Ante-Mortem Probate Family Settlement Agreements	266-272 272-274 275-279
March 1, 2022	Conditional Wills Conditional Gifts	281-286 287
March 2, 2022	Combination Wills Election Wills Burial Plots [end of material covered on mid-term exam]	287-299 299-302 302
TBA	Review Session for Mid-Term Examination	
March 3, 2022	Question & Answer Session for Mid-Term Examination (optional attendance)	

<u>Date</u>	<u>Topic</u>	<u>Text</u>
March 4, 2022	Mid-Term Examination – 8:00 a.m. to 10:00 a.m..	
March 7, 2022	Trusts – Basic Operation Purposes and Uses of Trusts Texas Trust Legislation	493-494 494-498 498-500
March 8, 2022	Trust Creation – Introduction Trust Intent	501 501-511
March 9, 2022	Trust Intent (continued)	511-518
March 10, 2022 [no in-person class; recorded lecture]	Methods of Express Trust Creation Relevance of Consideration Statute of Frauds	519 519-520 520-527
March 14-18, 2022	Spring Break – No Classes	
March 21, 2022	Rule Against Perpetuities Trust Purposes	527-533 533-543
March 22, 2022	The Settlor Trust Property	543-550 550-553
March 23, 2022	The Trustee	554-558
March 24, 2022	The Beneficiary	559-564
March 28, 2022	Spendthrift Trusts	564-569
March 29, 2022	Discretionary Trusts Support Trusts	569-572 572-579
March 30, 2022	Charitable Trusts Pour-Over Wills (review)	579-587 587
March 31, 2022	Life Insurance Trusts Trust Administration – Introduction	587-589 589-592
April 4, 2022	Standard of Care & Investments	592-596
April 5, 2022	Trustee Powers	596-599
April 6, 2022	Trust Distributions Duty of Loyalty	599-600 600-607
April 7, 2022	Liability of Trustee to Third Parties – Contract Liability Liability of Trustee to Third Parties – Tort Liability	607-608 608-609
April 11, 2022	Allocation of Receipts and Expenses	609-614

<u>Date</u>	<u>Topic</u>	<u>Text</u>
April 12, 2022	Allocation (continued) Trustee's Duty to Inform Beneficiaries Accountings	614-615 616 617-620
April 13, 2022	Trustee Compensation Trust Modifications by the Court (Deviation and Cy Pres)	620-621 621-630
April 14, 2022	Trust Modification by the Parties Trust Termination	630-640 640-642
April 18, 2022	Day of No Classes	
April 19, 2022	Trust Enforcement – Procedural Matters Remedies Against the Trustee	643-646 646-654
April 20, 2022	Remedies Against the Beneficiary Remedies Against Trust Property	654 654-656
April 21, 2022	Causes of Action Against Third Parties Enforcement of Charitable Trusts Barring of Remedies	657 657-662 662-679
April 25, 2022	Trust Depository Accounts Resulting Trusts	681-687 687-692
April 26, 2022 [no in-person class; recorded lecture]	Constructive Trusts	693-695
April 27, 2022	Optional Review Session for Final Examination (Part 1)	
April 28, 2022	Optional Review Session for Final Examination (Part 2)	
May 3, 2022	Final Exam – 8:00 a.m. – 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.

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 4, 2022 (40%).
- Final exam on May 3, 2022 (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 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 (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/ttspd/> (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.