

# WILLS & TRUSTS

## CLASS INFORMATION & SYLLABUS

Spring 2023

*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 (8<sup>th</sup> ed. 2022).

### 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) or [gerry.beyer@ttu.edu](mailto:gerry.beyer@ttu.edu)

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:**

9:00 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. Please place my two e-mail addresses, [gwb@professorbeyer.com](mailto:gwb@professorbeyer.com) and [gerry.beyer@ttu.edu](mailto:gerry.beyer@ttu.edu), in your “safe senders” list.

### **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:** 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 taken via TopHat.

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>
	<b>INTRODUCTION</b>	
January 11, 2023	Introduction & Class Procedure Overview & Terminology	xxxiii-xxxvii 3-4
January 12, 2023	Intestate Succession – Introduction Basic Distribution Scheme	5 5-11
January 16, 2023	MLK Day – No Class	
January 17, 2023	Basic Distribution Scheme (continued)	reread 5-11
January 18, 2023	Half & Whole Blooded Heirs Adopted Children	11-12 12-30
January 19, 2023	Non-Marital Children Children from Alternative Reproduction Technologies	30-35 35-37
January 23, 2023	Unworthy Heirs Survival	37-45 45-48
January 24, 2023	Advancements Disclaimers	48-49 49-54
January 25, 2023	Release and Conveyance of Expectancy Equitable Conversion Other Intestacy Matters	54-60 60-63 63-77

<b><u>Date</u></b>	<b><u>Topic</u></b>	<b><u>Text</u></b>
January 26, 2023	Wills – Introduction Legal Capacity Testamentary Capacity	79 79 79-88
January 30, 2023	Testamentary Intent Attested Wills	88-92 92-115
January 31, 2023	Attested Wills (continued)	reread 92-115
February 1, 2023	Holographic Wills Nuncupative Wills Military Testaments Statutory Wills Notarized Wills	115-122 122-123 123 123-124 124
February 2, 2023	Prepare Your Will  Will Execution Ceremony Types of Testamentary Gifts	review 783-98 reread 108-15 125-131
February 6, 2023	Ademption Satisfaction Exoneration Changes in Value	131-138 138-142 142-145 146-150
February 7, 2023	Abatement Tax Apportionment Marriage Divorce and Annulment	150 150-154 155 155-156
February 8, 2023	Pretermitted Children	156-159
February 9, 2023	Lapse	159-163
February 13, 2023	Will Revocation – Introduction Revocation by Operation of Law Revocation by Physical Act	165 165-171
February 14, 2023	Revocation by Subsequent Writing Burden of Proof Revival	171-172 172-179 180-181
February 15, 2023	Conditional Revocation Republication Multiple Originals Will Interpretation & Construction – Introduction	181-184 184-185 186-188 189
February 16, 2023	Ambiguity Integration	189-205 205-206

<u>Date</u>	<u>Topic</u>	<u>Text</u>
February 20, 2023	Incorporation by Reference Facts of Independent Significance Pour-Over Provisions	206-213 213-216 216-221
February 21, 2023	Contents Precatory Language Class Gifts Dead Person's Statute Will Contests – Introduction Procedural Matters	221 222 222-226 226-227  229-230
February 22, 2023	Review of Will Contest Grounds Previously Covered Insane Delusions Undue Influence & Duress Fraud	230 230-234 234-247 247
February 23, 2023	Mistake Public Policy Remedies Will Contest Prevention	247-250 250-253 254-257 257-266
February 27, 2023	Will Contest Prevention (continued) Ante-Mortem Probate Family Settlement Agreements	266-272 272-274 275-279
February 28, 2023	Conditional Wills Conditional Gifts	281-286 287
March 1, 2023	Combination Wills Election Wills Burial Plots  [end of material covered on mid-term exam]	287-299 299-302 302  
<b>TBA</b>	<b>Review Session for Mid-Term Examination</b>	
March 2, 2023	Study Day for Mid-Term Examination (no class)	
March 3, 2023	<b>Mid-Term Examination</b> – 9:00 a.m. to 11:00 a.m..	
March 6, 2023	Trusts – Basic Operation Purposes and Uses of Trusts Texas Trust Legislation	493-494 494-498 498-500
March 7, 2023	Trust Creation – Introduction Trust Intent	501 501-511
March 8, 2023	Trust Intent (continued)	511-518
March 9, 2023	Methods of Express Trust Creation Relevance of Consideration Statute of Frauds	519 519-520 520-527

<u>Date</u>	<u>Topic</u>	<u>Text</u>
March 13-17, 2023	Spring Break – No Classes	
March 20, 2023	Rule Against Perpetuities Trust Purposes	527-533 533-543
March 21, 2023	The Settlor Trust Property	543-550 550-553
March 22, 2023	The Trustee	554-558
March 23, 2023	The Beneficiary	559-564
March 27, 2023	Spendthrift Trusts	564-569
March 28, 2023	Discretionary Trusts Support Trusts	569-572 572-579
March 29, 2023	Charitable Trusts Pour-Over Wills (review)	579-587 587
March 30, 2023	Life Insurance Trusts Trust Administration – Introduction	587-589 589-592
April 3, 2023	Standard of Care & Investments	592-596
April 4, 2023	Trustee Powers	596-599
April 5, 2023	Trust Distributions Duty of Loyalty	599-600 600-607
April 6, 2023	Liability of Trustee to Third Parties – Contract Liability Liability of Trustee to Third Parties – Tort Liability	607-608 608-609
April 10, 2023	Day of No Classes	
April 11, 2023	Allocation of Receipts and Expenses	609-614
April 12, 2023	Allocation (continued) Trustee’s Duty to Inform Beneficiaries Accountings	614-615 616 617-620
April 13, 2023	Trustee Compensation Trust Modifications by the Court (Deviation and Cy Pres)	620-621 621-630
April 17, 2023	Trust Modification by the Parties Trust Termination	630-640 640-642
April 18, 2023	Trust Enforcement – Procedural Matters Remedies Against the Trustee	643-646 646-654

<u>Date</u>	<u>Topic</u>	<u>Text</u>
April 19, 2023	Remedies Against the Beneficiary Remedies Against Trust Property	654 654-656
April 20, 2023	Causes of Action Against Third Parties Enforcement of Charitable Trusts Barring of Remedies	657 657-662 662-679
April 24, 2023	Trust Depository Accounts Resulting Trusts	681-687 687-692
April 25, 2023 [no in-person class; recorded lecture]	Constructive Trusts	693-695
April 26, 2023	<b>Optional Review Session for Final Examination (Part 1)</b>	
April 27, 2023	<b>Optional Review Session for Final Examination (Part 2)</b>	
May 2, 2023	<b>Final Exam</b> – 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 3, 2023 (40%).
- Final exam on May 2, 2023 (40%).

Both exams will include essay and objective questions.

### **Class Preparation:**

- Brief in-class quizzes administered via TopHat (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 the Registrar's Office at the School of Law and provide appropriate verification from Student Disability Services. 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).

### **Wellness Resources:**

The Law School wants you to be successful—academically and personally. Thus, your well-being matters. Please seek help when you need it and encourage others to seek

help as well. The Associate Dean for Student Life and other members of the Law School community work with law students to resolve issues that might impact their wellness and ultimate success. Never hesitate to reach out!

Click [here](#) to view a “toolkit” with more information about the Law School’s wellness resources including counseling services, assistance with food/supplies, etc. Additional information about student support is located [here](#).

Also, don’t forget that the Texas Lawyers Assistance Program (TLAP) from the State Bar of Texas is a resource—not only for practicing lawyers, but for law students as well. TLAP offers confidential crisis counseling, referrals, and peer assistance relating to alcohol and drug abuse, mental health issues, and wellness. Contact TLAP through <https://tlaphelps.org> or by calling 800.343.8527 (available 24/7).

For an emergency after business hours, please call 911. And for a non-emergency situation, keep in mind that the TTU Crisis Helpline (806.742.5555) is available 24 hours a day, 365 days a year.

### **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.

### **Classroom Engagement & Interaction Statement**

By its very design, some law 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 Allyship**

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.

**CDC Guidelines:** Texas Tech University strongly recommends students adhere to CDC guidelines on COVID-19, including obtaining COVID-19 vaccinations and boosters when eligible. You can find information about the COVID-19 testing and vaccine availability [here](#).

**Face Coverings:** Face coverings are optional in all TTU facilities but are strongly recommended by CDC Guidelines for public indoor settings such as classrooms on campus. Face coverings are required for all visitors to the Student Health Clinic.

**Social Distancing:** There is not a mandated social distancing protocol for classroom seating, but social distancing is recommended in rooms that will enable it.

**Personal Hygiene:** Please continue practicing good personal hygiene including frequent hand washing, the use of hand sanitizers after touching high-touch points (e.g., door handles, shared keyboards, etc.), and covering your face 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, if necessary. Makeup opportunities will be provided in a reasonable timeframe.

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