

WILLS & TRUSTS

Syllabus—Summer 2022

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Course overview

This course covers the law and policy of the two main legal vehicles for controlling the posthumous distribution of one's property: wills and trusts. Specific coverage includes introductory matters (freedom of disposition and the mechanics of succession); intestate succession (basic structure, transfers to children, and bars to succession); the law of wills (formalities, contests, and construction); the law of trusts (creation, administration, alienation, appointment powers, and duration); and related issues (other will substitutes, planning for incapacity, and limits on freedom of disposition).

This course's learning outcomes are to gain a strong understanding of common law principles governing wills and trusts, corollary aspects of both the Uniform Probate Code and relevant Texas state law, and theoretical and policy issues relating to the posthumous disposition of property.

Class meetings

We will meet Mondays through Thursdays from 10am-1.15pm via Zoom. To join the meeting, use [[link to come](#)]. I will also post this link to a post in the TWEN forums. I will share the password for the Zoom meeting via email and on TWEN. There will be no class on Monday, May 31 due to Memorial Day.

If you are on panel, it is required that you have both video and be ready to unmute yourself to participate throughout the portion of class when you are on call. If you are not on panel, I ask that you keep the video on and audio muted throughout each class meeting. The default will be that all students are muted when the meeting begins. If you are facing a situation that renders it impossible or unreasonable to have video on, then you should turn video off. I will not actively enforce this issue for those not on call; it is a preference that I will leave to your judgment and discretion.

Texts

The main text for this course is Dukeminier & Sitkoff, *Wills, Trusts, and Estates* (11th ed. 2021). Please feel free to purchase any used copies of this book you find online. Do not buy an earlier edition of this text. The page numbers will not align with the reading assignments in the syllabus, and earlier editions will not have all the most recent cases.

There will also be numerous readings from Texas statutory law, primarily the Texas Estates Code and the Texas Property Code. Both of these sources are available online for free here: <https://statutes.capitol.texas.gov/>. These readings are as much a part of our course

assignments as the cases and materials from the text, and if you are on panel for a given day I expect that you have read these provisions carefully.

Readings from the Dukeminier text are indicated as “DS” in the assignment section of the syllabus. Statutory readings are indicated as either “TEC” (Texas Estate Code) or “TPC” (“Texas Property Code”).

Class discussion

The structure of class sessions will be dialogic (though not strictly Socratic), and your participation in the discussion is both required and encouraged. I expect students to carefully prepare the assigned reading, including both the text and statutory materials.

I have created based on the current class roster, as well as a list of which panels are responsible for which class periods. Our three-hour course is divided into two halves. I will assign one panel to the first half of each class session, and another panel to the second half. These assignments are included in the panel list. I will circulate the panel list via email separately and will also post it to TWEN.

You are responsible for any material covered for the time when you are on panel. So for example, if we do not get to a case during the first half of class, and you are on panel for the second half of class, you should be prepared to discuss it during the second half of class, even though it was not originally planned for discussion during the time when you are on panel.

If for some reason (e.g., religious observance, planned travel) you cannot participate during your panel day, you need to tell me as far in advance as possible so I can make other arrangements. **I reserve the right to give students who are unprepared on a panel day no credit for the course.**

Attendance

Attendance is mandatory and will be taken every class via a Google Form link that I will distribute during the first class. I will share a unique passcode for each class that you will enter along with your name into the Google Form to that your attendance is verified.

UHLC’s Honor Code applies to this sign-in process. Sign in only your own name. As a default, I will opt not to use the Zoom instrumentality for verifying attention and attendance, but if either becomes a problem I will.

In light of the still-ongoing coronavirus pandemic, I will be flexible in applying the UHLC or ABA 20% attendance policies. That said, if you have an issue that will prevent you from attending class, *especially on a day when you are on panel*, please make every effort to give me advance notice.

Assessment

The grade for this course will be primarily determined by a final examination. The examination will consist of at least one essay question. Grades will be assigned either on a graded or on a pass/no credit basis. Students have the right to choose either option.

I may assign a grade of “no credit” in the event of poor class participation or unexcused absences.

Laptops and other electronic devices

Classes will be recorded and archived via Zoom. I will share the recording of the day’s class when I receive it. I will post the links to a TWEN thread titled, “Class recordings.”

Office hours

I hold **office hours by appointment**. Email me to set something up, and then we can meet virtually, using the same Zoom link as for our class. You are also most welcome ask me questions via email or post questions to the TWEN discussion boards.

TWEN

I will maintain a course TWEN page. It will host course documents (latest updated syllabus, PowerPoint slides from class, as well as any other materials) and provide a forum to which you are all invited to post to discuss procedural and substantive issues from the class. You are responsible for remaining up to date on any information posted to TWEN, so be sure to check it frequently, and consider setting up email alerts for new postings to the site.

Names

If you have a preference that I refer to you in any terms—nickname or pronoun, for example—that is not relatively clear from the roster sheet, please let me know and I’ll be happy to do that.

Professionalism and expectations

My goal is to make Zoom-based classes approximate as closely as possible IRL classes. Hence my expectations are the same as in those classes. You should join the meeting on time; stay physically and mentally present throughout class; and be prepared when on panel.

***CAPS (this paragraph is now a requirement per Provost)**

Counseling and Psychological Services (CAPS) can help students who are having difficulties managing stress, adjusting to the demands of a professional program, or feeling sad and hopeless. You can reach CAPS (www.uh.edu/caps) by calling 713-743-5454 during and after business hours for routine appointments or if you or someone you know is in crisis. No appointment is necessary for the “Let's Talk” program, a drop-in consultation service at convenient locations and hours around campus. http://www.uh.edu/caps/outreach/lets_talk.html

COURSE TOPICS & READINGS

I. Introduction

Date	Topic	Reading
5.16	Course intro; freedom of disposition; mechanics of succession	DS 1-9; 41-52; TEC §§ 256.051-053; 256.151-152; 256.201; 258.001-003; 258.051; 301.002; 301.051-052; 301.151-152; 303.001-002; 308.001-003; 308.054; 401.001; 402.001-002

II. Intestate succession

Date	Topic	Reading
5.16	Introduction; basic structure of intestate succession	DS 65-88; TEC §§ 201.001-.003; 201.056-.057; 201.101; 201.151-.152
5.17	Transfers to children; bars to succession	DS 92-99; 109-11; 123-26; 129-34; 138; TEC §§ 201.058; 122.001-.002; 201.051-.052; 201.054-.055

III. Wills

Date	Topic	Reading
5.17	Introduction; formalities; execution	DS 143-55; 159-67; TEC §§ 251.051; 251.101-.105; 254.002; 256.153
5.18	Curing execution defects; e-wills; holographic wills	DS 167-78; 181-83; 194-201; 205-11; TEC §§ 251.052, 251.107
5.18	Holographic wills (cont'd); revocation of wills	DS 211-29; TEC §§ 253.002; 123.001- .002
5.19	Revocation of wills (cont'd); revival of wills	DS 229-48
5.19	Components of a will; contracts relating to wills	DS 248-69; TEC § 254.004
5.23	Construction of wills	DS 333-58; TEC §§ 255.451
5.23	Lapse and anti-lapse of devises; ademption; abatement; exoneration of liens; abatement	DS 359-70; 377-83; 389-94; TEC §§ 255.151-.154; 355.109; 255.301- .303; 355.151; 355.153; 255.101- .102
5.24	Capacity I: mental competency; absence of insane delusion; undue influence	DS 271-91; TEC §§ 251.001; 256.152
5.24	Capacity II: duress; fraud; tortious interference with expectancy	DS 291-98; 304-16; 318-26; 329-32; TEC § 254.005

IV. Trusts

5.25	Introduction to trusts; intent to create a trust	DS 395-424; TPC §§ 111.002-.003; 111.005; 112.001-.009; 112.034; 112.038; 111.035
5.25	Trust property; trust beneficiaries; written instrument	DS 424-32; 443-46; TPC §§ 112.004; 112.005; 112.037
5.26	Revocable trusts	DS 454-80; TPC § 112.051; TEC § 254.001
5.26	Discretionary trusts; spendthrift trusts; self-settled trusts; trusts for the state supported	DS 701-21, 726-32; TPC §§ 114.007; 112.035; 112.029
5.31	Modification and termination of trusts; trust decanting	DS 732-58; TPC §§ 112.051; 112.054; 112.071-.087; 112.081-.083
5.31	Trustee removal; trust administration (part one)—scope, nature, and trustee powers	DS 758-65; 599-608; TPC §§ 113.001-.002; 113.004-.020; 113.024
6.1	Trust administration (part two)—duty of loyalty, duty of prudence in distribution decisions	DS 608-35; TPC §§ 113.051-.055; 113.085; 113.015; 117.007
6.1	Trust administration (part three)—duty of prudence in investment decisions	DS 635-56; <i>Wood</i> (TWEN); TPC §§ 114.08211 114.083-.084; 114.006; 117.001-.012
6.2	Trust administration (part four)—duty of prudence in investment decisions (cont'd), duty of prudence in delegation, and custodial & administrative functions	DS 656-73; TPC §§ 117.011; 113.085; 114.0031
6.2	Trust administration (part five)—duty of impartiality; distinguishing principal and income; duty to inform and account	DS 673-92, 697-99; TPC §§ 116.001-.006; 116.051-.052; 116.101-.103; 116.151; 116.161;

		116.176; 116.201- .202; 113.151-.152
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6.3 Review day, extended office hours

6.4 Final exam