

WILLS & TRUSTS
LAW 650 / SECTION 2
FALL 2017

ASSOCIATE DEAN & PROFESSOR
CASSANDRA L. HILL

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THE PROFESSOR

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LOCATION: Dean's Suite – 223E
OFFICE HOURS: TBA
(All other times by appointment only)

Class Meeting Times

This class meets on Monday, Tuesday, Wednesday, and Thursday from 3:00-3:50 p.m. in Room 210.

NOTE FROM THE PROFESSOR:

Welcome! I look forward to working with you this semester. Before beginning Wills & Trusts, I want to remind you of the course's overall goals and how it will attempt to achieve those goals. Knowing the course's goals and methodology will help you understand the purpose behind the assignments you will receive during this semester.

This course not only will assist you in your law practice, with regard to estate planning, but also will be crucial to your bar study. If you intend to sit for the Texas bar exam, this course will cover at least two of your essay questions. Your dedication to this course is essential not only to your success in this course but also to your success on the essay portion of the bar exam. It is my expectation that you will stay focused and remain engaged during our time together this semester.

“Death is not the end. There remains the litigation over the estate.”

– [Ambrose Bierce](#)

COURSE BOOKS & MATERIALS

The *required* textbook for this course is available in the Texas Southern University Bookstore and online and it is as follows:

GARY, BORISON, CAHN, & MONOPOLI, Contemporary Trusts and Estates: An Experiential Approach (2nd ed. Aspen/Wolters Kluwer 2014).

Purchase Link:

<http://www.directtextbook.com/isbn/9781454851424>

In addition to the textbook above, please note that you are required to have access to the following codes, whether you choose to purchase the codes or rely on free online access to the relevant material. **The Texas codes are our priority.** Here is a link to access the Texas Constitution and all statutes: <http://www.statutes.legis.state.tx.us/Index.aspx>. You also may access the relevant Texas codes at the links and websites below. (If you are having trouble with a hyperlink, copy and paste the URL in your browser.) The Uniform Probate Code (UPC) and Uniform Trust Code (UTC) provide helpful background and comparison information, especially for those of you who will likely take a bar exam in another jurisdiction.

- [Texas Estates Code](#)
 - <http://www.statutes.legis.state.tx.us/?link=ES>
- [Texas Property Code \(Texas Trust Code\)](#)
 - <http://www.statutes.legis.state.tx.us/?link=PR>
- [Texas Family Code](#)
 - <http://www.statutes.legis.state.tx.us/?link=FA>
- [Texas Civil Practice and Remedies Code](#)
 - <http://www.statutes.legis.state.tx.us/?link=CP>
- [Texas Government Code](#)
 - <http://www.statutes.legis.state.tx.us/?link=GV>
- [Texas Insurance Code](#)
 - <http://www.statutes.legis.state.tx.us/?link=IN>
- [Texas Constitution](#)
 - <http://www.constitution.legis.state.tx.us/>

The *recommended* (but not required) resource for this course is below:

GERRY W. BEYER, Examples & Explanations: Wills Trusts & Estates (6th ed.).
ISBN-13: 978-1454850052
ISBN-10: 1454850051

https://www.amazon.com/Examples-Explanations-Wills-Trusts-Estates/dp/1454850051/ref=pd_sbs_14_img_0?encoding=UTF8&psc=1&refRID=EDSXW35JK06EXXGRJC5K

Please bookmark all of the sites on which the text and resources listed above can be found (for easy access). Whether in hard copy or e-book format, bring the required texts to class or make sure you have

electronic access to the textbook and codes. As mentioned, the required Wills & Trusts textbook (above) is available at the Texas Southern University's Bookstore in the Student Life Center. Additionally, competitive online pricing for the textbook can be found at the link provided below the textbook title. If you have not done so already, you should purchase the textbook right away, as we will begin to use it immediately.

NOTE: The required Wills & Trusts textbook for this course includes various questions and examples. You *need not* prepare the problems or exercises for class unless instructed otherwise. We will generally cover questions relevant to Texas law and other concepts in class as we discuss the related material. You will need to have the required textbook and access to the Texas codes in class to fully participate.

Please also be sure to sign up for the TWEN page, as additional course materials will be posted to the TWEN page throughout the semester.

COURSE DESCRIPTION & OBJECTIVES

DESCRIPTION:

The primary goal of this course is to prepare you for the Texas bar exam and an initial probate practice. Please note the essay portion of the Texas bar exam contains two (2) questions on wills and estate administration and one (1) question on either trusts or guardianship during each examination cycle. (Guardianship is not covered in this course.) So, this class covers nearly one quarter of the essay portion of the Texas bar exam. For this reason, this class is one of the most important classes you will take in preparation for the Texas bar exam.

OBJECTIVES:

Upon completion of this course, students will be able to:

- (1) Apply the laws of intestacy.
- (2) Identify the requirements for a formal will, including the Texas distinctions.
- (3) Engage in critical analysis of the Texas Estates Code and its distribution mechanisms.
- (4) Recognize the issues that may arise with a will when there are changes to the family dynamics or other named beneficiaries.
- (5) Appreciate the effect of changes to property after a will has been created.
- (6) Distinguish between the types of property transfers that may be distributed by a will and the types that may not.
- (7) Explain the circumstances that may give rise to a will contest and its validity.
- (8) Distinguish various types of estate administration.
- (9) Identify the characteristics of a valid trust and the different types of trusts.
- (10) Discuss the issues surrounding the creation and termination of a valid trust.
- (11) Explain the various duties of a trustee.
- (12) Understand and explain probate and trust terminology.

GRADING

Your final grade will be based on the following:

• Quizzes, Case Briefs & Practice Assignments	28%
• PPA	5%
• Midterm	12%
• Probate Court Observation	5%
• Final Examination	50%
<hr/>	
	100%

Examinations: The format for your examinations will be largely essay format. The fact patterns for the essay questions will be designed to prepare you for the bar exam and, as such, will follow a similar format. You should prepare for these exams by reviewing the material we cover in class. There also may be a few short answer questions or multiple-choice and true/false questions on your examinations as well to ensure your grasp of the law and Texas distinctions.

Quizzes: From time to time, I will give a pop quiz in class and via TWEN over the assigned reading material or any concepts that we have covered. These quizzes are designed to ensure you are reading for understanding and regularly reviewing the material. They are formative assessments. You should attend all classes. **If you miss a pop quiz, you will not receive any credit for that quiz (nor will you be able to take a make-up quiz) unless you have an excused absence from Dean Mouton.**

Case Briefs: As you will notice from your review of this Course Syllabus, you are required to submit an assigned case brief for credit from time to time. As with the pop quizzes, these case briefs are designed to ensure you are reading and preparing for class. As such, these case brief assignments must be handwritten, not typed, to ensure you read the case thoroughly and completed your own work product. In addition, please include your name, not an exam number, of your case brief submission. In these case briefs, you may adopt any brief template that works for you. Provide a brief overview of relevant facts (i.e. keep this section short and simple) and focus the content largely on the court's holding and reasoning, and the applicable rule. Think: What new rule or policy about the legal issue do we learn from this particular case?

PPA: Please see the section below on "Participation, Professionalism, and Attentiveness."

Probate Court Observation: As part of your experiential learning experience, you will observe live courtroom proceedings. By the due date, you must **observe at least one (1) hour of courtroom probate practice in person** to earn 5% or 50 points of your final grade. You must complete the entire hour in

order to receive any credit. You will document the date, time, court, judge, and substance of what you observed in the required format and submit this form to me by the required due date. The Probate Court Observation form will be posted on the TWEN course page. Your observation time may take place at any of the probate courts in Harris County, located at the Harris County Civil Courthouse, 201 Caroline, Houston, Texas 77002 (which includes both civil court and probate court). Please visit the Harris County Probate Court website at <https://www.harriscountytexas.gov/probate/default.aspx> for further information. Observations completed at other courts require prior approval. Unless approved in advance, the Harris County courts are the only courts at which you may complete your court observation time for our course, but feel free to attend any court session to learn more about what lawyers and judges do. Please check the relevant website for the court you plan to attend to find out information on parking, judges, and matters to be heard on a particular day (if the judge posts this information). You should attend court days on which the judge will **hear probate or probate-related matters.** For example, Judge Christine Butts (Probate Court No. 4) holds her “probate of wills” docket on Tuesdays at 9 a.m., 10 a.m., and 1 p.m.

While you are at the courthouse, look around and make note of the clerk and filing offices. Also, think about carpooling and traveling as a small group. Try to dress in business/suit attire (or at least business casual). You never know whom you may meet. Remember, you will have to go through a metal detector and will need to turn off your cell phone while in court. Your observation time begins when you are seated in the courtroom and the session begins. Do not wait until the last minute to complete your required observation time. Start early.

Please refer to the 2017-2018 Student Rules and Regulations for additional information regarding the grade guidelines for Wills & Trusts.

ACCOMMODATIONS

If you require special accommodations, please fill out the necessary forms with the Dean's office. Your application and documentation will remain confidential. Your prompt attention will allow the law school to accommodate you as soon as it has been made aware of your situation.

Also, please contact Dean Virgie Mouton (Student Affairs) if you require any special accommodations regarding any of the assignments, including, but not limited to, extensions, note-takers, etc. You must contact Dean Mouton before the related assignment is due.

Dean Mouton

Assistant Dean for Student Development and Academic Support

Phone: (713) 313-7909

Email: vmouton@tmslaw.tsu.edu

PARTICIPATION, ATTENDANCE & PROFESSIONALISM

PARTICIPATION:

Class participation will be considered in determining your final course grade. You must be prepared for all classes. If you do not actively participate in class discussion and exercises, you may lose “Participation, Professionalism and Attentiveness” points (“PPA points”). You must prepare all assignments to the very best of your ability even if they are not submitted for a grade or feedback. In addition, if you fail to bring all relevant materials with you to class or do not have these materials open and ready for use in class, you will lose PPA points. You will need to have the required texts in class (or access to them) to fully participate in the discussion. Lastly, as you know, you must be on time for class.

ATTENDANCE:

Class attendance is mandatory. Attendance will be taken at the beginning of each class. Per Article III, Section 9 of the Student Rules and Regulations, for this four-hour course, you will be permitted seven (7) absences. Tardiness will not be permitted and will be considered an absence, as will dismissal from class for misconduct or lack of proper preparation. Please see the Student Rules and Regulations for information on grade reduction and further details on absences. The class attendance rule is strictly enforced.

PROFESSIONALISM:

A. Electronic Devices: Laptop computers, tablets, or mobile devices may be used for accessing your e-textbook, Texas codes, the UPC, or Uniform Trust Code and for class-related note taking and reference. During class, however, it is inappropriate to use these devices for any other purpose (e.g., to download music, play games, watch DVDs, access inappropriate web sites, or to instant message others). Use of a laptop, tablet, or mobile device in class is a privilege. In addition to any other sanction, I will rescind use of these devices, individually or collectively, if it is abused. Cell phones, smart watches, and similar devices must have the ringer turned off (or the volume muted).

B. Classroom Conduct: Also, as you well know, at all times, you must respect your fellow colleagues. Please refrain from excessive side conversations or other distracting conduct during class. Also, *please refrain from leaving the classroom during instruction*. Once class begins, you should remain seated and fully engaged in the discussion. If you have a medical condition that requires you to regularly leave after class has begun, please see Dean Mouton for approval. Otherwise, **such disruption of class will result in a loss of PPA points**. Further, any other conduct that displays a lack of professionalism will result in a loss of PPA points.

ACADEMIC CALENDAR



THURGOOD MARSHALL SCHOOL OF LAW

TEXAS SOUTHERN UNIVERSITY
ACADEMIC CALENDAR 2017 – 2018

FALL SEMESTER 2017 (SEVENTY DAYS OF CLASSES)

Orientation	Monday-Friday	August 14-18, 2017
First Day of Class	Monday	August 21, 2017
Last Day to ADD/DROP	Friday	August 25, 2017
Labor Day (NO CLASSES)	Monday	September 4, 2017
<i>Purge of all unpaid course selections</i>	Thursday	September 20, 2017
Mid Term Examinations	Mon – Fri	October 16-20, 2017
VETERANS DAY (NO CLASSES)	Friday	November 10, 2017 (tentative)
Thanksgiving Holiday	Thurs – Fri	November 23-24, 2017
Last Day of Classes	Thursday	November 30, 2017
Last Day to Drop a Class	Thursday	November 30, 2017
First Year Professors' Grades due	Thursday	November 30, 2017
Reading Period (NO CLASS)	Friday - Sunday	December 1-3, 2017
Final Examinations	Mon – Fri	December 4 -Dec. 15, 2017
Commencement	Saturday	December 16, 2017

SPRING SEMESTER 2018 (SEVENTY DAYS OF CLASSES)

School Opens	Tuesday	January 2, 2018
First Day of Class	Monday	January 8, 2018
Last Day to ADD/DROP	Friday	January 12, 2018
M L K Holiday (No Classes)	Monday	January 15, 2018
<i>Purge of all unpaid course selections</i>	Wednesday	February 7, 2018
President's Day Holiday (No Classes)	Monday	February 19, 2018
Mid Term Examinations	Mon – Fri	March 5– 9, 2018
Spring Break	Mon – Fri	March 12 – 16, 2018
Good Friday (No Classes)	Friday	March 30, 2018
Last Day of Classes	Wednesday	April 25, 2018
Last Day to Drop a Class	Wednesday	April 25, 2018
First Year Professors' Grades due	Wednesday	April 25, 2018
Reading Period (No Classes)	Thur. – Sun	April 26 - 29, 2018
Final Examinations	Mon- Fri	April 30 – May 11, 2018
Hooding Ceremony	Friday	May 11, 2018
Commencement	Saturday	May 12, 2018

Please note that the calendar events and /or dates are subject to change.

TMSLAW REGISTRAR
Approved 5/31/2017

PROCEDURES & POLICIES

ASSIGNMENTS IN GENERAL:

If you have any questions regarding these guidelines or the guidelines on any individual assignments, please ask me. **All pages of each assignment *must be stapled together*** (in the upper left-hand corner). Any format guidelines provided for formal writing assignments are designed to further prepare you for the level of professionalism required in law practice. (Note: Case brief assignments must be handwritten, not typed.)

When directed to do so, you must use an EXAM NUMBER when submitting your assignments. If you are instructed to use an exam number, **DO NOT** put your name on the assignment, as preservation of your anonymity during grading is mandatory. **If you put your name on your assignment, your work will not be graded, and you will receive a zero for the assignment.** If you use the wrong exam number, you will lose PPA points. Furthermore, you must submit these assignments on time. Lastly, if you submit your assignment on TWEN more than once, I will review and grade only the most recent submission (the last submission). **Please note that you may be required to submit a hard copy of your assignment (in class) in addition to your TWEN submission.**

A. Syllabus and Reading Assignments

This is a syllabus, not a contract. Set forth on the following pages is a tentative schedule for our class meetings, but additional required reading materials may be posted on TWEN and reading assignments may change as we make our way through the course. The class will generally follow the order of the textbook (with the exception of our coverage of probate administration and trusts). If you are absent from class, please see a classmate about any missed material and required preparation for the next class. Also, please note that when the [Uniform Probate Code](#) or [Uniform Trust Code](#) is referenced in the textbook, **you are responsible for reading the entire corresponding Texas rule. Most of the relevant Texas code sections have been provided in the syllabus. Read these assigned sections.** There may be other relevant Texas code sections that you add as you study and we discuss the material in class. In addition, as you begin to prepare for the course exams, I believe you will find that the reading assignments listed below and the class Power Point slides serve as helpful guides for outlining.

The reading assignments and discussion exercises are listed in the course syllabus under the day of the class for which they should be prepared. As mentioned earlier, the required textbook for this course includes various questions and examples. You *need not* prepare the problems or exercises for class unless instructed otherwise. We will generally cover questions relevant to Texas law and other concepts in class as we discuss the related material. You will need to have the required textbook and access to the Texas codes in class to fully participate. Additionally, any written assignments are listed under the day they are assigned and a separate due date will be listed, sometimes repeatedly as a reminder. ***It is your responsibility to follow the syllabus and be prepared for class. Review the syllabus periodically and be sure to note relevant due dates and times. You must submit all assignments on time.*** Modifications, including additions or deletions to the syllabus, will be announced in class, via e-mail, and/or posted on the course page on Westlaw's TWEN.

B. Consequences for Late Assignments

i. Late Submission of Assignments: You will be generally required to submit your assignments online using Westlaw's TWEN. If an assignment is to be submitted online using Westlaw's TWEN, then

that assignment is due on the date and at the time indicated on the assignment, in the syllabus and/or by me. Be sure to review the assignment and the course syllabus carefully. If you submit an assignment after the relevant due date and time, but within one hour after the stated deadline, you will receive a 25% reduction in your grade. If you turn in your assignment more than one hour late, your grade on that assignment will be reduced by an additional 15% for each “day” that the assignment is late, up to two days. **You will not receive any credit for a writing assignment that is submitted more than two days after the relevant due date. Your TWEN submission provides the time-stamp for grading purposes, not your hard copy submission. Moreover, if you upload your assignment on TWEN multiple times, I will review only the most recent submission for time and grading purposes.**

For purposes of this section, a “day” ends at 5:00 p.m. For example, if an assignment is due using TWEN at 8:00 a.m. on a particular day and you submit the assignment at 8:59 a.m. on that day, you will lose 25% of the total available points. If you turn in the assignment at 11:00 a.m. on that day, you will lose 40% of the total available points for that assignment. If you turn in the assignment any time after 5:00 p.m. that day or any time before 5:00 p.m. the next day, you will lose 55% of the total available points for that assignment. If you turn in the assignment any time after 5:00 p.m. the second day after the due date, you will not receive any credit for the assignment. For purposes of this section, a “day” is further defined as a calendar day (including weekends and holidays), not a Texas Southern University or Thurgood Marshall School of Law business day. All calendar days, including weekends and holidays, will be counted in determining any grade reductions.

Also, please note that you will be required to turn in a hard copy of your assignment in class. **If you fail to bring a copy of your assignment to class, you will lose points on your grade for that assignment. You will also lose points on your assignment if you turn in the hard copy late.** It is very important that you adhere to all instructions and the rules for this course.

ii. Assignments Submitted in Class or by Email (and not on TWEN): If an assignment is to be submitted in class or by email (and not on TWEN) then that assignment is due at the beginning of class or on the relevant due date and time, respectively. If you submit the assignment after the beginning of class, but before the end of class, you will receive a 25% reduction in your grade. Assignments that are due in class may not be submitted after the class period concludes in which the assignment was due. **If you do not turn in your assignment before the end of class in which the assignment was due, you will not receive any credit for the assignment.** Also, be sure to bring an extra copy of your assignment for your use during class or for review or exam preparation. If you are absent or will miss class, you must make arrangements to have your assignment submitted in a timely manner; otherwise, you may not receive credit for the assignment. If you submit an assignment by email late, you will receive a 25% reduction in your grade. **If you turn in your assignment by email more than two hours late, you will not receive any credit for the assignment.**

C. Laptop Misuse

As mentioned, laptop computers may be used to access your e-textbook and code sections and for class-related note taking and reference. During class, however, it is inappropriate to use laptops for any other purpose (e.g., to download music, play games, watch DVDs, access inappropriate web sites, or to instant message others). Laptop use in class is a privilege. In addition to any other sanction (such as a deduction of PPA points), I will rescind laptop use, individually or collectively, if it is abused. Cell phones, blackberries, and similar devices must be turned off.

D. Plagiarism

Plagiarism in *any* form is strictly prohibited. You may not plagiarize any other written work, including, but not limited to, any sample answer, article or news report. Should an instance of plagiarism exist, the matter will be forwarded to the Dean for appropriate action.

E. Questions Sent by Email

I welcome your questions by email, provided you adhere to the following requirements. If you send me a question by email, you must (1) identify the steps you have taken to solve the problem or answer your specific question or issue and (2) include what you believe the solution or answer to be. In particular, you should identify the materials you have read or sources you have researched. Many times, the answer to a question (especially technical requirements for assignments) may be found in the Course Guidelines and Syllabus. Be sure to check this document first.

F. Campus Carry

As you know, the State of Texas has recently passed legislation permitting you to carry a *concealed* firearm on campus if you have a concealed license permit recognized by the State of Texas, subject to the rules and regulations of Texas Southern University's ("TSU's) Campus Carry Policy. Under TSU's Campus Carry Policy, I have designated my office as a gun-free zone. Pursuant to Section 30.06, Penal Code (trespass by license holder with a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a concealed handgun. (Conforme a la seccìon 30.06 Del Còdigo Penal (traspasar portando armas de fuego con licencia), personas con licencia bajo del sub-capitulo 411, Còdigo Del Gobierno (ley de portar armas), no deben entrar a esta propiedad portando un arma de fuego ocultada.). For a complete list of the gun-free zones on this campus and the rules governing campus carry at our institution, please visit Texas Southern University's website at <http://www.tsu.edu/>. Please note that entering a gun-free zone on campus with a firearm, including inside my office, could not only lead to criminal prosecution but suspension or expulsion from school.

SYLLABUS

** The required Wills & Trusts textbook for this course includes various questions and examples. You generally need not prepare the problems or exercises for class unless instructed otherwise. We will generally cover questions relevant to Texas law and other concepts in class as we discuss the related material. You will need to have the required textbook and access to the Texas codes in class to fully participate. In addition to the readings from the textbook, you are **assigned the various Texas code sections listed for each class**. Please note these are *most of the relevant sections*. You may add more code sections as you prepare for class and we cover the concepts in class. Remember, Texas law is our priority.

**The terminology included in the syllabus is an overview of certain terms. However, if you encounter an unfamiliar term, please refer to this overview in addition to *Black's Law Dictionary*. Also, please note that the Texas codes have specific (and often similar) definitions for the listed terms. You should review these as well.

WEEK 1

Basic Terminology

Administration. The process of collecting and managing all of a decedent's property so that the decedent's creditors are paid to the fullest extent allowed by law and the remaining property, if any, is turned over to the heirs or beneficiaries.

Administrator. The person in charge of administering the estate of an intestate decedent.

Affinity Relationship. A relationship by marriage (i.e., relatives people usually refer to as their "in-laws").

Ancestor. A person related to the decedent in an ascending lineal line (e.g., parents and grandparents).

Beneficiary. Generic term for a person who receives property under a will, regardless of whether it is real or personal property.

Bequest. A gift of personal property in a will.

Codicil. A type of will that merely amends an already existing will.

Collateral Relative. A person related to the decedent but not in a lineal line (e.g., siblings, nieces and nephews, aunts and uncles, and cousins). If the collateral relative is a descendant of the decedent's parents, the relative is a *first line collateral*, (e.g., siblings, nieces and nephews). If the collateral relative is a descendant of the decedent's grandparents, other than the decedent's parents and their descendants, the relative is a *second line collateral* (e.g., aunts, uncles, and cousins).

- Consanguineous Relationship.** A biological or blood relationship.
- Descendant.** A person related to the decedent in a descending lineal line (e.g., children and grandchildren). (Although this term may be spelled “d-e-s-c-e-n-d-e-n-t,” this is not its usual spelling in a probate context.)
- Devise.** Includes a testamentary disposition of real property, personal property, or both.
- Executor.** The person in charge of administering the estate of a testate decedent.
- Heir.** A person entitled to take under intestate succession law. Remember, you have no heirs because you are alive. You may be an heir (i.e., inherit from a person who dies intestate), but you cannot have heirs. The persons who would be your heirs if you were to die intestate are often called your *presumptive heirs* or your *heirs apparent*. At old common law, heirs referred to people who took land while the term *next of kin* referred to people who took personal property. (Please do not refer to persons who take under a will as heirs.)
- Intestate.** Dying without a will. The phrase *the intestate* refers to the person who dies without a will.
- Intestate Succession; Intestacy; Descent and Distribution.** Passage of property when the decedent dies without a valid will. (In many jurisdictions, “descent” refers to succession to real property whereas “distribution” refers to succession to personal property.)
- Legacy.** Includes a gift or devise of real or personal property made by a will.
- Non-probate Asset.** An asset of a decedent that passes via a manner other than under intestate succession or through a will. Typical non-probate arrangements include joint tenancies with rights of survivorship and contracts that provide for the payment of benefits upon death to designated persons such as life insurance policies, retirement plans, and accounts with financial institutions (e.g., joint accounts with survivorship rights and pay on death accounts).
- Personal Representative.** Generic term for the person in charge of administering the estate of a decedent.
- Probate.** In a broad sense, probate refers to the entire process of administering a decedent’s estate. In a narrow sense, probate means to prove a document or oral declaration to be the decedent’s valid will.
- Testate Succession.** The passage of property under the decedent’s will.

Testator; Testatrix. A person who dies with a valid will. Traditionally, the term *testator* refers to a male and the term *testatrix* refers to a female. In modern usage, *testator* refers to any person who dies with a valid will, regardless of gender.

Will. A written document or oral declaration directing who will own the decedent's property upon the decedent's death. At common law, a *will* disposed of real property and a *testament* disposed of personal property. This distinction is rarely made today.

MONDAY, AUGUST 21, 2017 (Class 1)

Chapter 1. Introduction to Estate Planning and the Lawyer's Roles

A. General Introduction

B. The Legal System Governing Trusts and Estates

C. Testamentary Freedom and Limitations on "Control from the Grave"

Read: (1) This Course Guidelines and Syllabus, (2) pp. 1-18 in the textbook, (3) Appendix A & B (pp. 40-47, focusing on those terms *not* solely related to trusts), (4) Article: "Estate Planning Ramifications of Obergefell v. Hodge" (posted on TWEN under "Reading Supplements—Part I"), and (5) *San Ant. Area Found. v. Lang* (section on rules of construction and extrinsic evidence) and *Ellis v. Birkhead* (extrinsic evidence) (both posted on TWEN)

Relevant Code Sections		
Tex. Est.	§22.018	Interested Person; Person Interested
Tex. Est.	§22.031	Representative; Personal Representative
Tex. Est.	§22.034	Will
Tex. Est.	§101.001	Passage of Estate on Decedent's Death
Tex. Est.	§101.003	Possession of Estate by Personal Representative
Tex. Est.	§101.051	Liability of Estate for Debts in General
Tex. Est.	§202.002	Circumstances Under Which Proceeding to Declare Heirship is Authorized
Tex. Est.	§101.001205	Entitlement to Estate Without Appointment of Personal Representative
Tex. Est.	§252.201	Will Delivery
Tex. Est.	§256.001	Will Not Effective Until Probated
Tex. Est.	§256.201	Admission of Will to Probate
Tex. Est.	§22.001	Applicability of Definitions

Tex. Est.	§22.002	Authorized Corporate Surety
Tex. Est.	§22.003	Charitable Organization
Tex. Est.	§22.004	Child
Tex. Est.	§22.005	Claims
Tex. Est.	§22.006	Corporate Fiduciary
Tex. Est.	§22.007	Court; County Court, Probate Court, and Statutory Probate Court
Tex. Est.	§22.008	Devise
Tex. Est.	§22.009	Devisee
Tex. Est.	§22.010	Distributee
Tex. Est.	§22.011	Docket
Tex. Est.	§22.012	Estate
Tex. Est.	§22.013	Exempt Property
Tex. Est.	§22.014	Governmental Agency of the State
Tex. Est.	§22.015	Heir
Tex. Est.	§22.016	Incapacitated Person
Tex. Est.	§22.017	Independent Executor
Tex. Est.	§22.018	Interested Person; Person Interested
Tex. Est.	§22.019	Judge
Tex. Est.	§22.020	Legacy
Tex. Est.	§22.021	Legatee
Tex. Est.	§22.022	Minor
Tex. Est.	§22.024	Mortgage; Lien
Tex. Est.	§22.025	Net Estate
Tex. Est.	§22.026	Next of Kin
Tex. Est.	§22.027	Person
Tex. Est.	§22.028	Personal Property
Tex. Est.	§22.029	Probate Matter; Probate Proceedings; Proceeding in Probate; Proceedings for Probate
Tex. Est.	§22.030	Real Property
Tex. Est.	§22.031	Representative; Personal Representative

Tex. Est.	§22.032	Surety
Tex. Est.	§22.034	Will
Tex. Est.	§454.001	Applicability; Determination of Death
Tex. Est.	§454.002	Grant of Letters on Proof of Death
Tex. Civ. Prac. & Rem.	§133.001	Seven-Year Absence

TUESDAY, AUGUST 22, 2017 (Class 2)

Chapter 1. Introduction to Estate Planning and the Lawyer's Roles

D. The Professional Standards Associated with Estate Planning

Read: (1) pp. 19-38, (2) *Jones v. Krown* (ethics and will bequests) (on TWEN), (3) Tex. Opinion 71 (on TWEN), (4) *Barcelo v. Elliott* and *Belt v. Oppenheimer* (focusing on privity requirement), (5) *Estate of C.M.* (action against personal representative) (all on TWEN)

Skim: Supplemental Checklist for Representation of Spouses (Posted on TWEN)

DUE at start of class: Case Brief for *Barcelo v. Elliott* (focus on the majority opinion and only handwritten briefs will be accepted for credit)

Relevant Code Sections		
Tex. Est.	§254.003	Devises to Certain Attorneys and Other Persons
Tex. Gov't.	§573.021-.025	Relationships by Consanguinity or by Affinity

WEDNESDAY, AUGUST 23, 2017 (Class 3)

**Legal Concepts Revisited

THURSDAY, JANUARY 12, 2017 (Class 4)

Chapter 2. Inheritance and Relationship

A. Introduction

B. Who is a Child?

Read: pp. 49-62

Relevant Code Sections		
Tex. Est.	§22.001	Applicability of Definitions
Tex. Est.	§22.004	Child
Tex. Est.	§201.051	Maternal Inheritance
Tex. Est.	§201.052	Parental Inheritance
Tex. Fam.	§160.102(3)	Child
Tex. Fam.	§160.201	Establishment of Parent-Child Relationship

Tex. Fam.	§160.202	No Discrimination Based on Marital Status
Tex. Fam.	§160.203	Consequences of Establishment of Parentage
Tex. Fam.	§160.204	Presumption of Paternity
Tex. Fam.	§160.301	Acknowledgement of Paternity
Tex. Fam.	§160.302	Execution of Acknowledgement of Paternity
Tex. Fam.	§160.303	Denial of Paternity
Tex. Fam.	§160.304	Rules for Acknowledgement and Denial of Paternity
Tex. Fam.	§160.305	Effect of Acknowledgement or Denial of Paternity
Tex. Fam.	§160.602	Standing to Maintain Proceeding
Tex. Fam.	§160.603	Necessary Parties to Proceeding
Tex. Fam.	§160.604	Personal Jurisdiction
Tex. Fam.	§160.605	Venue
Tex. Fam.	§160.606	No Time Limitation: Child Having No Presumed, Acknowledged, Or Adjudicated Father
Tex. Fam.	§160.607	Time Limitation; Child Having Presumed Father
Tex. Fam.	§160.608	Authority to Deny Motion for Genetic Testing
Tex. Fam.	§160.609	Time Limitation: Child Having Acknowledged or Adjudicated Father
Tex. Fam.	§160.701	Scope of Subchapter
Tex. Fam.	§160.702	Parental Status of Donor
Tex. Fam.	§160.703	Husband's Paternity of Child of Assisted Reproduction
Tex. Fam.	§160.704	Consent to Assisted Reproduction
Tex. Fam.	§160.705	Limitation on Husband's Dispute of Paternity
Tex. Fam.	§160.706	Effect of Dissolution of Marriage
Tex. Fam.	§160.707	Parental Status of Deceased Spouse
Tex. Fam.	§160.751	Definition
Tex. Fam.	§160.752	Scope of Subchapter; Choice of Law
Tex. Fam.	§160.753	Establishment of Parent-Child Relationship
Tex. Fam.	§160.754	Gestational Agreement Authorized

WEEK 2

MONDAY, AUGUST 28, 2017 (Class 5)

Chapter 2. Inheritance and Relationship

B. Who is a Child?

Read: pp. 63-87, *Dampier v. Williams* (adoption by estoppel) and *In re Estate of Womack* (class gift) (on TWEN)

Relevant Code Sections		
Tex. Est.	§22.004	Child
Tex. Est.	§22.026	Next of Kin
Tex. Est.	§201.054	Adopted Child
Tex. Est.	§201.056	Person Not in Being (Posthumous)
Tex. Est.	§201.057	Collateral Kindred of Whole and Half Bloods
Tex. Est.	§255.153	Disposition of Property to Certain Devisees Who Predecease Testator (Anti-Lapse Rules)
Tex. Fam.	§162.001	Who May Adopt and Be Adopted
Tex. Fam.	§162.001(b)	Stepparent Adoption
Tex. Fam.	§162.002	Prerequisites to Petition
Tex. Fam.	§162.017	Effect of Adoption
Tex. Fam.	§162.501	Adoption of Adult
Tex. Fam.	§162.507	Effect of Adoption
Tex. Est.	§255.154	Devisee Under Class Gift
Tex. Est.	§255.401	Posthumous Class Gift Membership

TUESDAY, AUGUST 29, 2017 (Class 6)

Chapter 2. Inheritance and Relationship

C. Who is a Parent?

D. Who is a Spouse?

Read: pp. 87-95

Relevant Code Sections		
Tex. Est.	§123.101	Proceeding to Void Marriage Based on Mental Capacity Pending at Time of Death
Tex. Est.	§123.102	Application to Void Marriage After Death
Tex. Est.	§123.103	Action on Application to Void Marriage After Death

Tex. Est.	§123.104	Effect of Voided Marriage
Tex. Est.	§201.052	Parental Inheritance
Tex. Est.	§201.058	Convicted Persons
Tex. Est.	§201.061	Estate of Person Who Dies by Suicide
Tex. Est.	§201.062	Treatment of Certain Parent-Child Relationships
Tex. Fam.	§2.401	Proof of Informal Marriage (ex. Common Law)
Tex. Fam.	§6.204	Recognition of Same-Sex Marriage or Civil Union (invalidated as unconstitutional under <i>Obergefell</i>)
Tex. Fam.	§160.203	Consequences of Establishment of Parentage
Tex. Fam.	§161.206	Order Terminating Parental Rights
Tex. Ins.	§1103.151	Forfeiture
Tex. Const.	Article I, §21	Corruption of Blood; Forfeiture of Estate; Descent in Case of Suicide

WEDNESDAY, AUGUST 30, 2017 (Class 7)

****Vocabulary Quiz (see Appendix B, Glossary above, and Tex. Est. Code §§22.001-22.034)**

****Legal Concepts Revisited**

THURSDAY, AUGUST 31, 2017 (Class 8)

Chapter 3. Intestacy—What Happens to a Decedent’s Property if There is No Will?

- A. Introduction
- B. Share for Surviving Spouse
- C. Share to Lineal Descendants
- D. Share to Ancestors and Collateral Heirs and Escheat to the State

Read: pp. 97-106

Skim: pp. 107-117

Relevant Code Sections		
Tex. Est.	§22.051	Heir
Tex. Est.	§112.051	Agreement for Right of Survivorship in Community Property
Tex. Est.	§112.052	Form of Agreement
Tex. Est.	§121.051	Applicability of Subchapter
Tex. Est.	§121.052	Required Period for Survival for Intestate Succession and Certain Other Purposes

Tex. Est.	§121.053	Intestate Succession: Failure to Survive Presumed Under Certain Circumstances
Tex. Est.	§121.101	Required Period of Survival for Devisee
Tex. Est.	§121.102	Required Period of Survival for Contingent Beneficiary
Tex. Est.	§121.151	Distribution of Community Property (Distribution of Certain Property on Person's Failure to Survive for Required Period)
Tex. Est.	§121.152	Distribution of Property Owned by Joint Owners
Tex. Est.	§121.153	Distribution of Certain Insurance Proceeds
Tex. Est.	§201.001	Estate of an Intestate Not Leaving a Spouse
Tex. Est.	§201.002	Separate Estate of an Intestate
Tex. Est.	§201.003	Community Estate of an Intestate
Tex. Est.	§201.051	Maternal Inheritance
Tex. Est.	§201.052	Paternal Inheritance
Tex. Est.	§201.054	Adopted Child
Tex. Est.	§201.056	Persons Not in Being
Tex. Est.	§201.057	Collateral Kindred of Whole and Half Blood
Tex. Fam.	§3.001	Separate Property
Tex. Fam.	§3.002	Community Property
Tex. Fam.	§3.003	Presumption of Community Property
Tex. Fam.	§4.102	Partition or Exchange of Community Property
Tex. Fam.	§4.202	Agreement to Convert to Community Property
Tex. Fam.	§4.203	Formalities of Agreement
Tex. Prop.	§71.001	Escheat
Tex. Prop.	§71.003	Presumption of Intestacy

WEEK 3

MONDAY, SEPTEMBER 4, 2017

****LABOR DAY** CLASS CANCELLED**

TUESDAY, SEPTEMBER 5, 2017 (Class 9)

Chapter 3. Intestacy—What Happens to a Decedent’s Property if There is No Will?

E. The Representation Models

Read: pp. 117-119, 122-126 (Per Capita with Representation)

Skim: pp. 119-122 (Strict Per Stirpes) & 128-136 (Per Capita at Each Generation and exercises)

Relevant Code Sections		
Tex. Est.	§201.101	Determination of Per Capita with Representation
Tex. Est.	§201.103	Treatment of Intestate’s Estate

WEDNESDAY, SEPTEMBER 6, 2017 (Class 10)

Chapter 3. Intestacy—What Happens to a Decedent’s Property if There is No Will?

F. Reducing the Intestate Share for Advancements

Read: pp. 136-140

Relevant Code Sections		
Tex. Est.	§201.151	Determination of Advancement; Date of Valuation
Tex. Est.	§201.152	Survival of Recipient Required

THURSDAY, SEPTEMBER 7, 2017 (Class 11)

Disclaimers, Succession to Property Right in Use of Decedent’s Name, Voice, or Likeness, & Choice of Law

Read: *Badouh v. Hale* (disclaimers), Article: “Digital Resurrection Has Stars Trying to Control Their Posthumous Portrayal” & Article: “Chinese Don’t Have Wills—And Now It’s a Big Problem” (all posted on TWEN)

DUE at start of class: Case Brief for *Badouh v. Hale* (only handwritten briefs will be accepted for credit)

Relevant Code Sections		
Tex. Prop.	§26.003	Applicability
Tex. Prop.	§26.005	Ownership after Death of Individual
Tex. Prop.	§26.011	Unauthorized Uses
Tex. Prop.	§26.012	Permitted Uses
Tex. Prop.	§240.002	Definitions
Tex. Prop.	§240.009	Power to Disclaim; General Requirements; When

		Irrevocable
Tex. Prop.	§240.051	Disclaimer of Interest in Person
Tex. Pty.	§240.102	Disclaimer of Interest Created Under Intestate Succession or Will
Tex. Prop.	§240.151	Disclaimer Barred or Limited

WEEK 4

Wills Terminology Review

Beneficiary. Generic term for a person who receives property under a will, regardless of whether it is real or personal property.

Bequest. A gift of personal property in a will.

Codicil. A type of will that merely amends an already existing will.

Devise. Includes a testamentary disposition of real property, personal property, or both.

Legacy. Includes a gift or devise of real or personal property made by a will.

Testate Succession. The passage of property under the decedent's will.

Testator; Testatrix. A person who dies with a valid will. Traditionally, the term *testator* refers to a male and the term *testatrix* refers to a female. In modern usage, *testator* refers to any person who dies with a valid will, regardless of gender.

Will. A written document or oral declaration directing who will own the decedent's property upon the decedent's death. At common law, a *will* disposed of real property and a *testament* disposed of personal property. This distinction is rarely made today.

MONDAY, SEPTEMBER 11, 2017 (Class 12)

Chapter 4. Non-Probate Transfers—Passing Property by Will Substitutes and Gifts

A. Introduction

B. The Different Laws of Wills and Will Substitutes

Read: pp. 143 and 152-157 and *Westerfeld v. Huckaby* (living trusts) (on TWEN)

Skim: pp. 144-151

Relevant Code Sections		
Tex. Est.	§101.002	Effect of Joint Ownership of Property
Tex. Est.	§111.001	Right of Survivorship Agreements Authorized
Tex. Est.	§111.051	Definitions

Tex. Est.	§111.052	Validity of Certain Nontestamentary Instruments and Provisions
Tex. Est.	§111.054	Application of State Law to Certain Nontestamentary Transfers
Tex. Est.	§112.051	Agreement of Right of Survivorship in Community Property
Tex. Est.	§112.052	Form of Agreement
Tex. Est.	§112.054	Revocation of Agreement
Tex. Est.	§112.151	Ownership of Property During Marriage; Management Rights
Tex. Est.	§112.152	Nontestamentary Nature of Transfers Under Agreement
Tex. Est.	§254.001	Devises to Trustees
Tex. Pty.	§112.008	Capacity of Trustee
Tex. Pty.	§112.033	Reservation of Interests and Powers by Settlor
Tex. Pty.	§112.034	Merger

TUESDAY, SEPTEMBER 12, 2017 (Class 13)

Chapter 4. Non-Probate Transfers—Passing Property by Will Substitutes and Gifts

E. Gifting—Not Exactly a Will Substitute

F. Developing a Comprehensive Estate Plan Incorporating Wills Substitutes

G. Wills Substitutes That Do Not Bypass Probate

H. Can a Will or Other Document or Provision of Law Override a Will Substitute’s Designation of a Beneficiary?

Read: pp. 157-184

Skim: Life Insurance Policy Locator Services (Posted on TWEN)

Relevant Code Sections		
Tex. Est.	§111.052	Validity of Certain Nontestamentary Instruments and Provisions
Tex. Est.	§112.002	Applicability of Other Law to Community Property Held in Multiple-Party Accounts
Tex. Est.	§112.051	Agreement for Right of Survivorship in Community Property
Tex. Est.	§112.052	Form of Agreement
Tex. Est.	§113.004	Types of Accounts
Tex. Est.	§113.052	Form
Tex. Est.	§113.105	Ownership of Convenience Account; Additions and

		Accruals
Tex. Est.	§113.106	Ownership and Operation of Other Account with Convenience Signer
Tex. Est.	§113.151	Establishment of Right of Survivorship in Joint Account; Ownership
Tex. Est.	§113.152	Ownership of P.O.D. Account on Death of Party
Tex. Est.	§113.153	Ownership of Trust Account on Death of Trustee
Tex. Est.	§113.154	Ownership of Convenience Account on Death of Party
Tex. Est.	§113.155	Effect of Death of Party on Certain Accounts without Rights of Survivorship
Tex. Est.	§113.252	Rights of Creditors
Tex. Est.	§114.001	Short Title
Tex. Est.	§114.002	Definitions
Tex. Est.	§114.003	Applicability
Tex. Est.	§114.004	Nonexclusivity
Tex. Est.	§114.005	Uniform Application and Construction
Tex. Est.	§114.051	Transfer on Death Deed Authorized
Tex. Est.	§114.052	Transfer on Death Deed Revocable
Tex. Est.	§114.053	Transfer on Death Deed Nontestamentary
Tex. Est.	§114.054	Capacity of Transferor; Use of Power of Attorney
Tex. Est.	§114.055	Requirements
Tex. Est.	§114.056	Notice, Delivery, Acceptance, or Consideration Not Required
Tex. Est.	§114.057	Revocation by Certain Instruments; Effect of Will or Marriage Dissolution
Tex. Est.	§114.151	Optional Form for Transfer on Death Deed
Tex. Est.	§123.151	Designation of Former Spouse or Relative of Former Spouse on Certain Multiple-Party Accounts
Tex. Fam.	§9.301	Pre-Decree Designation of Ex-Spouse as Beneficiary of Life Insurance
Tex. Fam.	§9.302	Pre-Decree Designation of Ex-Spouse as Beneficiary in Retirement Benefits and Other Financial Plans

WEDNESDAY, SEPTEMBER 13, 2017 (Class 14)

Inter Vivos Transfers (Gifts) and Gifts Causa Mortis

Read: *Dorman v. Arnold* (inter vivos gifts and causa mortis) (posted on TWEN)

THURSDAY, SEPTEMBER 14, 2017 (Class 15)

Chapter 9. Will Validity

- A. Introduction
- B. Legal Requirements for the Testator
- C. Formalities Required in the Will (writing requirement)

Conditional and Contractual Wills

Read: pp. 405-411, pp. 599-601 (contracts concerning wills), and *Stephen v. Colman* (testamentary capacity), *Price v. Huntsman* (testamentary intent) and *Estate of Gilbert* (contractual wills) (on TWEN)

DUE at start of class: Case Brief for *Stephen v. Colman* (focus on testamentary capacity) (only handwritten briefs will be accepted for credit)

Relevant Code Sections		
Tex. Est.	§22.034	Will
Tex. Est.	§151.003	Examination of Document or Safe Deposit Box
Tex. Est.	§251.001	Who May Execute Will
Tex. Est.	§251.002	Interests that May Pass by Will; Disinheritance
Tex. Est.	§251.053	Exception for Foreign and Certain Other Wills
Tex. Est.	§254.004	Contracts Concerning Wills or Devises; Joint or Reciprocal Wills
Tex. Est.	§256.151	General Proof Requirements
Tex. Est.	§256.152	Additional Proof Required for Probate of Will

WEEK 5

MONDAY, SEPTEMBER 18, 2017 (Class 16)

Chapter 9. Will Validity

- C. Formalities Required in the Will

Read: pp. 412-424, pp. 428-430 (putting formalities into practice) and *Orozco v. Orozco* (signature), *Muhlbauer v. Muhlbauer* (proxy) and *Nichols v. Rowan* (conscious presence) (all on TWEN)

Relevant Code Sections		
Tex. Est.	§251.051	Written, Signed, and Attested
Tex. Est.	§251.053	Exception for Foreign and Certain Other Wills

Tex. Est.	§254.002	Bequests to Certain Subscribing Witness
Tex. Est.	§256.153	Proof of Execution of Attested Will
Tex. Gov't.	§311.005(6)	General Definitions; Signed
Tex. Gov't.	§406.0165	Signing Document for Individual with Disability

TUESDAY, SEPTEMBER 19, 2017 (Class 17)

Chapter 9. Will Validity

- C. Formalities Required in the Will
- D. Holographic Wills
- E. Dispensing with Formalities
- F. Choice of Law
- G. Ethical Issues in Wills Drafting

Read: pp. 424-428 (interested witnesses, self-proved & notarized will), pp. 430-445, p. 451, pp. 457-465 and *Maul v. Williams* (surplusage rule), *Franks v. Chapman* (notary as witness), *Fadia v. Unauthorized Practice of Law* (do-it-yourself manual), and the article titled "The Will Execution Ceremony: History, Significance and Strategies" (all on TWEN)

Relevant Code Sections		
Tex. Est.	§251.052	Exception for Holographic Wills
Tex. Est.	§251.101	Self-Proved Will
Tex. Est.	§251.102	Probate and Treatment of Self-Proved Will
Tex. Est.	§251.103	Period for Making attested Wills Self-Proved
Tex. Est.	§251.104	Requirements for Self-Proving Affidavit
Tex. Est.	§251.1045	Simultaneous Execution, Attestation, and Self-Proving
Tex. Est.	§251.105	Effect of Signature on Self-Proving Affidavit
Tex. Est.	§251.106	Contest, Revocation, or Amendment of Self-Proving Witness
Tex. Est.	§251.107	Self-Proved Holographic Will
Tex. Est.	§254.003	Devises to Certain Attorneys and Other Persons
Tex. Est.	§256.153	Proof of Execution of Attested Will
Tex. Est.	§256.154	Proof of Execution of Holographic Will

WEDNESDAY, SEPTEMBER 20, 2017 (Class 18)

**Legal Concepts Revisited

THURSDAY, SEPTEMBER 21, 2017 (Class 19)

Chapter 10. Interpreting the Will

- A. Introduction
- B. What Constitutes the Will?

Facts of Independent Significance & Content Rules

Read: pp. 469-479

Relevant Code Sections		
Tex. Est.	§255.001	Definitions
Tex. Est.	§255.002	Certain Personal Property Excluded From Devise of Real Property
Tex. Est.	§255.003	Contents Excluded from Legacy of Personal Property

WEEK 6

MONDAY, SEPTEMBER 25, 2017 (Class 20)

Chapter 10. Interpreting the Will

- B. What Constitutes the Will?
- C. Interpreting the Meaning of a Will
- D. Interpreting the Meaning of a Will Using the Rules of Construction

Read: pp. 479-493 and *Brinker v. Wobaco Trust Ltd.* (pour-over will provisions), *Estate of Rhoades* (will construction and clarity in drafting), *Carpenter v. Tinney* (mistake in inducement), *Hurt v. Smith* (types of bequests), *Rodgers v. Carter* (will construction), and *Lacis v. Lacis* (lapse & anti-lapse)

DUE at start of class: Case Brief for *Hurt v. Smith* (types of bequests) (only handwritten briefs will be accepted for credit)

Relevant Code Sections		
Tex. Est.	§121.052	Required Period of Survival for Intestate Succession and Certain Other Purposes
Tex. Est.	§121.101	Required Proof of Survival for Devisee
Tex. Est.	§254.001	Devises to Trustees
Tex. Est.	§255.151	Applicability of Subchapter
Tex. Est.	§255.152	Failure of Devise; Effect on Residuary Estate
Tex. Est.	§255.153	Disposition of Property to Certain Devisees who Predecease Testator
Tex. Est.	§255.154	Devisee under Class Gift
Tex. Est.	§255.401	Posthumous Class Gift Membership
Tex. Est.	§255.451	Circumstances Under Which Will May be Modified or

		Reformed
Tex. Est.	§255.452	Judicial Discretion
Tex. Est.	§255.453	Retroactive Effect
Tex. Est.	§255.454	Powers Cumulative
Tex. Est.	§255.455	Duties and Liability of Personal Representative under Subchapter

TUESDAY, SEPTEMBER 26, 2017 (Class 21)

Chapter 10. Interpreting the Will

D. Interpreting the Meaning of a Will Using the Rules of Construction

Read: pp. 498-517 and *Rodgers v. Carter* (re-read for ademption), *Shriner's Hosp. v. Stahl* (ademption), *Hunsucker's Heirs v. Hunsucker* (satisfaction), *Estate of Heider* (exoneration)

Relevant Code Sections		
Tex. Est.	§255.101	Certain Lifetime Gifts Considered Satisfaction of Devisee
Tex. Est.	§255.102	Valuation of Property
Tex. Est.	§255.152(a)	Failure of Devise; Effect on Residuary Estate
Tex. Est.	§255.154	Devisee under Class Gift
Tex. Est.	§255.102	Valuation of Property
Tex. Est.	§255.251	Definitions
Tex. Est.	§255.252	Increase in Securities; Accessions
Tex. Est.	§255.253	Cash Distribution Not Included in Devise
Tex. Est.	§255.301	No Right to Exoneration of Debts
Tex. Est.	§255.302	Exception
Tex. Est.	§255.401	Posthumous Class Gift Membership
Tex. Est.	§255.452	Judicial Discretion
Tex. Est.	§255.453	Retroactive Effect
Tex. Est.	§255.454	Powers Cumulative
Tex. Est.	§255.455	Duties and Liability of Personal Representative under Subchapter
Tex. Est.	§310.003	Allocation of Expenses
Tex. Est.	§355.151	Option to Treat Claim as Matured Claim or Preferred Debt and Lien

Tex. Est.	§355.152	Period for Specifying Treatment of Secured Claim
Tex. Est.	§355.154	Preferred Debt and Lien
Tex. Est.	§355.109	Abatement of Bequests

WEDNESDAY, SEPTEMBER 27, 2017 (Class 22)

Chapter 10. Interpreting the Will

- D. Interpreting the Meaning of a Will Using the Rules of Construction
- E. Disclaimers and “Deemed Death”
- F. Exercises

Read: pp. 518-525

In-Class Exercise: Abatement Order and Exoneration Worksheet

Relevant Code Sections		
Tex. Est.	§114.105	Disclaimer
Tex. Est.	§121.052	Required Period of Survival for Intestate Succession and Certain Other Purposes
Tex. Est.	§121.053	Intestate Succession: Failure to Survive Presumed under Certain Circumstances
Tex. Est.	§121.101	Required Proof of Survival for Devisee
Tex. Est.	§121.102	Required Period of Survival for Contingent Beneficiary
Tex. Est.	§121.151	Distribution of Community Property
Tex. Est.	§121.153	Distribution of Certain Insurance Proceeds
Tex. Est.	§122.002	Disclaimer
Tex. Est.	§454.001	Applicability; Determination of Death
Tex. Est.	§454.002	Grant of Letters on Proof of Death
Tex. Est.	§454.003	Citation and Search
Tex. Est.	§454.004	Distribution of Estate
Tex. Pty.	§71.002	Presumption of Death
Tex. Pty.	§240.009	Power to Disclaim; General Requirements; When Irrevocable
Tex. Pty.	§240.051	Disclaimer of Interest Created Under Intestate Succession or Will
Tex. Pty.	§240.102	Disclaimer of Interest Created Under Intestate Succession or Will
Tex. Pty.	§240.151	When Disclaimer Barred or Limited

THURSDAY, SEPTEMBER 28, 2017 (Class 23)

Chapter 11. Revoking the Will and Will Contests

A. Introduction

B. Revocation by Subsequent Instrument or by Physical Act

Read: pp. 541-559 and *Dean v. Garcia* (revocation), *Hancock v. Krause* (holographic will & revocation), *Ashley v. Usher* (burden of proof for revocation), *Estate of Glover* (burden), *Woods v. Kenner* (lost wills & revocation), and *Mingo v. Mingo*, *Bailey v. Bailey*, *Davis v. Roach*, and *Hoppe v. Hoppe* (all presumption of revocation)

DUE at start of class: Completed Abatement Order and Exoneration Worksheet

Relevant Code Sections		
Tex. Est.	§253.001	Court May not Prohibit Changing or Revoking Will
Tex. Est.	§253.002	Revocation of Will
Tex. Est.	§256.051	Eligible Applicants for Probate of Will
Tex. Est.	§256.151	General Proof Requirements
Tex. Est.	§256.152(a)(1)	Additional Proof Required for Probate of Will
Tex. Est.	§256.156	Proof of Will Not Produced in Court

WEEK 7

MONDAY, OCTOBER 2, 2017 (Class 24)

Chapter 11. Revoking the Will and Will Contests

C. Revocation by Changed Circumstances

D. The Impact of Revocation

Read: pp. 551-575 and *Pope v. Garrett* (constructive trust), *Brackenridge v. Roberts* (revival), *Aven v. Green* (republication), and *Chambers v. Chambers* and *Burton v. Bell* (both dependent relative revocation)

Relevant Code Sections		
Tex. Fam.	§9.301	Pre-Decree Designation of Ex-Spouse as Beneficiary of Life Insurance
Tex. Fam.	§9.302	Pre-Decree Designation of Ex-Spouse as Beneficiary in Retirement Benefits and Other Financial Plans
Tex. Est.	§123.053	Effect of Revocation
Tex. Est.	§123.001	Will Provisions Made Before Dissolution of Marriage
Tex. Est.	§123.002	Treatment of Decedent's Former Spouse
Tex. Est.	§123.052	Revocation of Certain Nontestamentary Transfers; Treatment of Former Spouse as Beneficiary Under Certain Policies or Plans

Tex. Est.	§123.151	Designation of Former Spouse or Relative of Former Spouse on Certain Multiple-Party Accounts
Tex. Est.	§201.058(b)	Convicted Persons
Tex. Ins.	§1103.151	Forfeiture

TUESDAY, OCTOBER 3, 2017 (Class 25)

Chapter 11. Revoking the Will and Will Contests

E. Will Contests

F. Preventing Challenges—*In Terrorem* or “No Contest” Clauses

G. Mediation and Arbitration

H. Contracts Concerning Wills (covered earlier)

Read: pp. 575-599 (note *Estate v. Graham* in text) and *Logan v. Thomason* (standing), *Lindley v. Lindley* (insane delusion & witness testimony), *Rothermel v. Duncan*, *In re Estate of Sidransky* and *In re Estate of Clifton* (all undue influence), *Estate of Koontz* and article titled “Estate of Koontz: Another summary judgment overturned” (all on TWEN)

Relevant Code Sections		
Tex. Est.	§22.018	Interested Person; Person Interested
Tex. Est.	§54.001	Effect of Filing or Contesting Pleading
Tex. Est.	§55.001	Opposition in Probate Proceeding
Tex. Est.	§254.003	Devises to Certain Attorneys and Other Persons
Tex. Est.	§254.005	Forfeiture Clause
Tex. Est.	§255.001	Definitions
Tex. Est.	§255.002	Certain Personal Property Excluded from Devise of Real Property
Tex. Est.	§255.003	Contents Excluded from Legacy of Personal Property
Tex. Est.	§256.156	Proof of Will Not Produced in Court
Tex. Est.	§256.203	Establishing Content of Will not in Court's Custody
Tex. Est.	§256.204	Period for Contest
Tex. Est.	§352.052	Allowance for Defense of Will

WEDNESDAY, OCTOBER 4, 2017 (Class 26)

**Legal Concepts Revisited

**Distribute Issue Spotting Exercise

THURSDAY, OCTOBER 5, 2017 (Class 27)

Chapter 12. Protecting the Family

- A. Introduction
- B. History of Adult Partner Protections
- C. Differing Protections under Community Property and Common Law Property Systems
- E. Prenuptials and Other Marital Agreements
- F. The Special Case of Omitted Spouse and Children

Read: pp. 605-611, pp. 643-657 and *Avery v. Johnson* and *Lawrence v. Coffield* (both widow's election), *******Bailey v. Warren* (pretermitted child—read carefully), And *Ozuna v. Wells Fargo* (pretermitted child)

Skip: pp. 612-642 (widow's elective share)

(Note: Texas is a community property state. There is no traditional right to an elective or statutory share against the estate for the surviving spouse in Texas. Rather, there's the Texas widow's election to the 1/2 community property estate or what's provided in the will, one or the other. A surviving spouse owns one-half of the community interest without restrictions. See Tex. Fam. Code Section 3.002. In the event the decedent attempted to dispose of more than his or her share of the community property by a will, the surviving spouse must then decide whether to take under the will as provided, or take his or her own property and forego the bequest. The Texas Constitution provides for a spousal homestead right and allowance and certain exempt property rights.)

Relevant Code Sections		
Tex. Est.	§3.001	Separate Property
Tex. Est.	§3.002	Community Property
Tex. Est.	§3.003	Presumption of Community Property
Tex. Est.	§4.102	Partition or Exchange of Community Property
Tex. Est.	§4.202	Agreement to Convert to Community Property
Tex. Est.	§4.203	Formalities of Agreement
Tex. Pty.	§42.001	Personal Property Exemption
Tex. Pty.	§42.002	Personal Property
Tex. Est.	§102.002	Homestead Rights Not Affected by Character of the Homestead
Tex. Est.	§102.003	Passage of Homestead
Tex. Est.	§102.004	Liability of Homestead for Debts
Tex. Est.	§102.005	Prohibitions on Partition
Tex. Est.	§102.006	Circumstances Under Which Partition of Homestead

Tex. Est.	§123.001	Will Provisions Made Before Dissolution of Marriage
Tex. Est.	§123.002	Treatment of Decedent's Former Spouse
Tex. Est.	§201.002	Separate Estate of an Intestate
Tex. Est.	§201.003	Community Estate of an Intestate
Tex. Est.	§201.103	Treatment of Intestate's Estate
Tex. Est.	§255.051	Definition
Tex. Est.	§255.052	Applicability and Construction
Tex. Est.	§255.053	Succession by Pretermitted Child if Testator Has Living Child at Will's Execution
Tex. Est.	§255.054	Succession by Pretermitted Child if Testator Has No Living Child at Will's Execution
Tex. Est.	§255.055	Ratable Recovery by Pretermitted Child from Portions Passing to Other Beneficiaries
Tex. Est.	§255.056	Limitation on Reduction of Estate Passing to Surviving Spouse

WEEK 8

MONDAY, OCTOBER 9, 2017 (Class 28)

Chapter 12. Protecting the Family

F. The Special Case of Omitted Spouse and Children

In-Class Exercise: Issue Spotting Worksheet

Relevant Code Sections		
Tex. Est.	§255.051	Definition
Tex. Est.	§255.052	Applicability and Construction
Tex. Est.	§255.053	Succession by Pretermitted Child if Testator Has Living Child at Will's Execution
Tex. Est.	§255.054	Succession by Pretermitted Child if Testator Has No Living Child at Will's Execution
Tex. Est.	§255.055	Ratable Recovery by Pretermitted Child from Portions Passing to Other Beneficiaries
Tex. Est.	§255.056	Limitation on Reduction of Estate Passing to Surviving Spouse

TUESDAY, OCTOBER 10, 2017 (Class 29)

****Midterm Topics Revisited**

Submit: Top 3 Legal Topics to Review for Midterm Preparation

WEDNESDAY, OCTOBER 11, 2017 (Class 30)

****Midterm Topics Revisited**

THURSDAY, OCTOBER 12, 2017 (Class 31)

****Midterm Topics Revisited**

WEEK 9

****MIDTERM EXAMINATION WEEK****

MONDAY, OCTOBER 16, 2017 (Class 32)

****Midterm Topics Revisited**

TUESDAY, OCTOBER 17, 2017 (Class 33)

****MIDTERM****

WEDNESDAY, OCTOBER 18, 2017 (Class 34)

NO CLASS: Prepare for new topic of probate administration.

THURSDAY, OCTOBER 19, 2017 (Class 35)

Chapter 15. Administration of the Probate Estate

A. Introduction

B. Matters That Need Immediate Attention

Read: pp. 753-764, re-read pp. 150-151 (advantages of probate) and *Estate of Rosborough* (temporary administration—last section of case, headnote 12)

Relevant Code Sections		
Tex. Est.	§22.017	Independent Executor
Tex. Est.	§22.018	Interested Person; Person Interested
Tex. Est.	§22.031	Representative; Personal Representative
Tex. Est.	§152.001	Application Authorized (Emergency Intervention)
Tex. Est.	§252.201	Will Delivery
Tex. Est.	§304.001	Order of Persons Qualified to Serve as Personal Representative
Tex. Est.	§452.001	Duty to Appoint Temporary Administrator
Tex. Est.	§452.002	Application for Appointment
Tex. Est.	§452.051	Appointment of Temporary Administrator

WEEK 10

MONDAY, OCTOBER 23, 2017 (Class 36)

Chapter 15. Administration of the Probate Estate

C. Where to Probate the Estate—Jurisdiction and Venue

Read: pp. 764-765

Relevant Code Sections		
Tex. Est.	§31.001	Scope of “Probate Proceeding” for Purposes of Code
Tex. Est.	§31.002	Matters Related to Probate Proceeding
Tex. Est.	§32.001	General Probate Court Jurisdiction; Appeals
Tex. Est.	§32.002	Original Jurisdiction for Probate Proceedings
Tex. Est.	§32.003	Jurisdiction of Contested Probate Proceeding in County With No Statutory Probate Court or Statutory County Court
Tex. Est.	§32.004	Jurisdiction of Contested Probate Proceeding in County With No Statutory Probate Court
Tex. Est.	§32.005	Exclusive Jurisdiction of Probate Proceeding in County With Statutory Probate Court
Tex. Est.	§32.007	Concurrent Jurisdiction with District Court
Tex. Est.	§33.001	Probate of Wills and Granting of Letters Testamentary and of Administration
Tex. Est.	§33.004(a)	Heirship Proceedings
Tex. Est.	§33.052	Concurrent Venue
Tex. Est.	§33.053	Probate Proceedings in More Than One Country
Tex. Est.	§33.054	Jurisdiction to Determine Venue
Tex. Est.	§33.101	Transfer to Other County in Which Venue is Proper
Tex. Est.	§33.102	Transfer for Want of Venue
Tex. Est.	§33.103	Transfer for Convenience
Tex. Est.	§251.053	Exception for Foreign and Certain Other Wills
Tex. Est.	§501.001	Authority for Ancillary Probate of Foreign Will
Tex. Est.	§501.002	Application for Ancillary Probate of Foreign Will
Tex. Est.	§501.003	Citation and Notice
Tex. Est.	§501.005	Effect of Filing and Recording Foreign Will

Tex. Est.	§501.006	Ancillary Letters Testamentary
Tex. Est.	§501.007	Effect on Property
Tex. Est.	§503.001	Authorization to Record Certain Foreign Testamentary Instruments in Deed Records
Tex. Est.	§503.051	Recorded Foreign Testamentary Instrument as Conveyance
Tex. Est.	§503.052	Recorded Foreign Testamentary Instrument as Notice of Title

TUESDAY, OCTOBER 24, 2017 (Class 37)

Chapter 15. Administration of the Probate Estate

Getting Started with Probate in Texas & Harris County Probate Court

Read: *In re Estate of Perez* (late probate), *Estate of Jones*, *Garton v. Rockett*, and *Matter of Estate Standefer* (all—will not produced in court & copy of will), and *Byerley v. McCulley* (notice to heirs with late probate) (all on TWEN); Read the assigned code sections carefully

In-Class Exercise: Application for Probate & Admitting Will Worksheet (bring your Code books/access)

Relevant Code Sections		
Tex. Est.	§51.053	Service by Posting
Tex. Est.	§256.001	Will Not Effective Until Probated
Tex. Est.	§256.002	Probate Before Death
Tex. Est.	§256.003	Period for Admitting Will to Probate; Protection for Certain Purchasers
Tex. Est.	§256.051	Eligible Applicants for Probate of Will
Tex. Est.	§256.052	Contents of Application for Probate of Will
Tex. Est.	§256.053	Filing of Will with Application for Probate Generally Required
Tex. Est.	§256.054	Additional Application Requirements When No Will is Produced
Tex. Est.	§256.151	General Proof Requirements
Tex. Est.	§256.152	Additional Proof Required for Probate of Will
Tex. Est.	§256.153	Proof of Execution of Attested Will
Tex. Est.	§256.154	Proof of Execution of Holographic Will
Tex. Est.	§256.156	Proof of Will Not Produced in Court
Tex. Est.	§257.001	Probate of Will as Muniment of Title Authorized

Tex. Est.	§257.101	Declaratory Judgment Construing Will
Tex. Est.	§257.102	Authority of Certain Persons Acting in Accordance with Order
Tex. Est.	§258.001	Citation on Application for Probate of Will Produced in Court
Tex. Est.	§258.002	Citation on Application for Probate of Will Not Produced in Court
Tex. Est.	§258.051	Notice to Heirs
Tex. Est.	§301.002	Period for Filing Application for Letters Testamentary or of Administration
Tex. Est.	§301.151	General Proof Requirements

WEDNESDAY, OCTOBER 25, 2017 (Class 38)

****Midterm Exam Debrief**

THURSDAY, OCTOBER 26, 2017 (Class 39)

****Midterm Exam Debrief**

WEEK 11

MONDAY, OCTOBER 30, 2017 (Class 40)

Chapter 15. Administration of the Probate Estate

Read: Re-read Code Sections Listed Above for Class 37 (& Preview Sections Listed Below)

In-Class Exercise: Application for Probate & Admitting Will Worksheet (bring your Code books/access) cont'd

Assign: Extra Credit Essay Assignment (due via TWEN on Wednesday, October 8, by 5 pm)

What's Due: Midterm Rewrite (submit via TWEN by 5 pm)

TUESDAY, OCTOBER 31, 2017 (Class 41)

Chapter 15. Administration of the Probate Estate

D. Procedure to Administer Small Estates

E. Formal and Informal Procedures to Probate Estates—In General

F. Opening the Estate—Getting the Will Accepted for Probate and the Personal Representative Appointed

Texas Independent and Dependent Administration & Simplified Administration

Read: pp. 765-773 and *McMahan v. McMahan* (designating independent administration) and *Boyles v. Gresham* (disqualifying executor)

Relevant Code Sections		
Tex. Est.	§101.001	Passage of Estate on Decedent's Death
Tex. Est.	§101.003	Possession of Estate by Personal Representative
Tex. Est.	§205.001	Entitlement to Estate Without Appointment of Personal Representative (Small Estates Affidavit)
Tex. Est.	§205.002	Affidavit Requirements (Small Estates)
Tex. Est.	§205.006	Title to Homestead Transferred Under Affidavit (Small Estates)
Tex. Est.	§257.001	Probate of Will as Muniment of Title Authorized
Tex. Est.	§257.051	Contents of Application Generally
Tex. Est.	§257.052	Filing of Will With Application Generally Required
Tex. Est.	§257.053	Additional Application Requirements when No Will is Produced
Tex. Est.	§257.054	Proof Required
Tex. Est.	§257.101	Declaratory Judgment Construing Will
Tex. Est.	§257.102	Authority of Certain Persons Acting in Accordance with Order
Tex. Est.	§306.001	Granting Letters Testamentary
Tex. Est.	§306.002	Granting Letters of Administration
Tex. Est.	§351.051	Exercise of Authority Under Court (Dependent Administration)
Tex. Est.	§351.052	Exercise of Authority Without Court Order
Tex. Est.	§356.251	Application for Order of Sale
Tex. Est.	§356.252	Contents of Application
Tex. Est.	§356.253	Citation
Tex. Est.	§356.254	Opposition to Sale
Tex. Est.	§356.255	Hearing on Application and Any Opposition
Tex. Est.	§356.256	Order
Tex. Est.	§356.257	Sale for Payment of Debts
Tex. Est.	§401.001	Expression of Testator's Intent in Will
Tex. Est.	§401.002	Creation in Testate Estate by Agreement
Tex. Est.	§401.003	Creation of Intestate Estate by Agreement

Tex. Est.	§401.005	Bond; Waiver of Bond
Tex. Est.	§402.001	General Scope and Exercise of Powers
Tex. Est.	§402.002	Independent Executors May Act Without Court Approval
Tex. Est.	§404.003	Removal of Independent Executor Without Notice
Tex. Est.	§404.0035	Removal of Independent Executor With Notice
Tex. Est.	§404.0037	Costs and Expenses Related to Removal of Independent Executor
Tex. Est.	§451.001	Application for Family Allowance and Order of No Administration
Tex. Est.	§451.003	Effect of Order
Tex. Est.	§453.002	Administration of Community Property Not Necessary
Tex. Est.	§453.003	General Powers of Surviving Spouse if No Administration is Pending
Tex. Est.	§453.004	Collection of Unpaid Wages if No Administration Is Pending

WEDNESDAY, NOVEMBER 1, 2017 (Class 42)

Chapter 15. Administration of the Probate Estate

G. General Duties, Powers, and Liability of the Personal Representative

H. Duty to Gather, Inventory, and Value the Estate

I. Duty to Manage the Property of the Estate

Texas Simplified Administration Cont'd with Statutory Heirship, Personal Representative, & Notices

Read: pp. 773-778 and *McMahan v. Naylor* (heirship proceeding)

Relevant Code Sections		
Tex. Est.	§202.001	General Authorization for and Nature of Proceeding to Declare Heirship
Tex. Est.	§202.002	Circumstances under Which Proceeding to Declare Heirship Is Authorized
Tex. Est.	§202.0025	Action Brought After Decedent's Death
Tex. Est.	§202.004	Persons Who May Commence Proceeding to Determine Heirship
Tex. Est.	§202.005	Application for Proceeding to Declare Heirship
Tex. Est.	§202.006	Request for Determination of Necessity for Administration
Tex. Est.	§202.007	Affidavit Supporting Application Required

Tex. Est.	§202.008	Required Parties to Proceeding to Declare Heirship
Tex. Est.	§202.009	Attorney Ad Litem
Tex. Est.	§202.051	Service of Citation by Mail When Recipient's Name and Address Are Known or Ascertainable
Tex. Est.	§202.052	Service of Citation by Publication When Recipient's Name or Address Is Not Ascertainable
Tex. Est.	§202.202	Finality and Appeal of Judgment
Tex. Est.	§202.203	Correction of Judgment at Request of Heir Not Properly Served
Tex. Est.	§202.204	Limitation of Liability of Certain Persons Acting in Accordance with Judgment
Tex. Est.	§304.001	Order of Persons Qualified to Serve as Personal Representative
Tex. Est.	§304.002	Renouncing Right to Serve as Personal Representative
Tex. Est.	§304.003	Persons Disqualified to Serve as Executor or Administrator
Tex. Est.	§305.002	Manner of Qualification of Personal Representative
Tex. Est.	§305.101	Bond Generally Required; Exceptions
Tex. Est.	§305.102	Bond Required from Executor Otherwise Exempt
Tex. Est.	§305.151	General Standard Regarding Amount of Bond
Tex. Est.	§306.002	Granting Letters of Administration
Tex. Est.	§306.004	Issuance of Original Letters
Tex. Est.	§308.001	Definition
Tex. Est.	§308.002	Required Notices to Certain Beneficiaries After Probate of Will
Tex. Est.	§308.003	Contents of Notice
Tex. Est.	§308.004	Affidavit or Certificate
Tex. Est.	§308.051	Required Notice Regarding Presentment of Claims in General
Tex. Est.	§308.052	Proof of Publication
Tex. Est.	§308.053	Required Notice to Secured Creditors
Tex. Est.	§308.054	Permissive Notice to Unsecured Creditor
Tex. Est.	§308.056	Liability for Failure to Give Required Notice

Tex. Est.	§351.101	Duty of Care
Tex. Est.	§351.102	Possession of Personal Property and Records
Tex. Est.	§351.103	Possession of Property Held in Common Ownership
Tex. Est.	§351.104	Administration of Partnership Interest
Tex. Est.	§351.105	Holding of Stocks, Bonds, and Other Personal Property in Nominee's Name
Tex. Est.	§351.151	Ordinary Diligence Required
Tex. Est.	§352.002	Standard Compensation
Tex. Est.	§352.003	Denial of Compensation
Tex. Est.	§352.051	Expenses; Attorney's Fees
Tex. Est.	§352.052	Allowance for Defense of Will
Tex. Est.	§360.001	Resignation Application
Tex. Est.	§361.005	Requirements for Discharge
Tex. Est.	§361.051	Removal Without Notice
Tex. Est.	§352.002	Removal With Notice

THURSDAY, NOVEMBER 2, 2017 (Class 43)

Chapter 15. Administration of the Probate Estate

H. Duty to Gather, Inventory, and Value the Estate

I. Duty to Manage the Property of the Estate

J. Duties Associated with Creditors

Inventory, Appraisement & List of Claims and Setting Aside the Homestead and Exempt Property in Texas

Read: pp. 789-792 and *In re Estate of Rhea* (exempt property) and *Estate of Wolfe* (family allowance) (on TWEN)

DUE at start of class: Case Brief for *In re Estate of Rhea* (exempt property) (only handwritten briefs will be accepted for credit)

Relevant Code Sections		
Tex. Est.	§309.051	Inventory and Appraisement
Tex. Est.	§309.052	List of Claims
Tex. Est.	§309.053	Affidavit of Personal Representative
Tex. Est.	§309.054	Approval or Disapproval by the Court
Tex. Est.	§309.055	Failure of Joint representatives to File Inventory, Appraisements and List of Claims or Affidavit in Lieu of Inventory, Appraisement, and List of Claims

Tex. Est.	§309.056	Affidavit in Lieu of Inventory, Appraisalment, and List of Claims
Tex. Est.	§309.057	Penalty for Failure to Timely File Inventory, Appraisalment, and List of Claims or Affidavit in Lieu of
Tex. Est.	§309.151	Use of Inventory, Appraisalment, and List of Claims as Evidence
Tex. Const.	Article XVI, §50	Homestead; protection from forced sale; mortgages, trust deeds and liens
Tex. Pty.	§42.001	Personal Property Exemption
Tex. Pty.	§42.002	Personal Property
Tex. Est.	§353.051	Exempt Property to be Set Aside
Tex. Est.	§353.052	Delivery of Exempt Property
Tex. Est.	§353.053	Allowance in Lieu of Exempt Property
Tex. Est.	§353.054	Payment of Allowance in Lieu of Exempt Property
Tex. Est.	§353.056	Sale of Property to Raise Funds for Allowance in Lieu of Exempt Property
Tex. Est.	§353.101	Family Allowance
Tex. Est.	§353.102	Amount and Method of Payment of Family Allowance
Tex. Est.	§353.104	Preference of Family Allowance
Tex. Est.	§353.105	Payment of Family Allowance
Tex. Est.	§353.106	Surviving Spouse or Minor Children May Take Personal Property for Family Allowance
Tex. Est.	§353.107	Sale of Estate Property to Raise Funds for Family Allowance
Tex. Est.	§353.152	Distribution of Exempt Property of Insolvent Estate
Tex. Est.	§353.153	Title to Property of Insolvent Estate
Tex. Est.	§353.154	Certain Property Not Considered in Determining Solvency
Tex. Est.	§353.155	Exempt Property Liable for Certain Debts
Tex. Est.	§403.001	Setting Aside Exempt Property and Allowances (Independent Administration)

WEEK 12

MONDAY, NOVEMBER 6, 2017 (Class 44)

Chapter 15. Administration of the Probate Estate

J. Duties Associated with Creditors

K. Important Matters to be Addressed before Finalizing the Estate

L. Closing the Estate—The Final Accounting and The Final Distribution

M. Ethical Issues in Estate Administration

Creditor Claims, Sales/Leases, Accountings, & Closing the Estate in Texas

Read: pp. 778-780, 787-790, and 792-808

Relevant Code Sections		
Tex. Est.	§308.051	Required Notice Regarding Presentment of Claims in General
Tex. Est.	§308.052	Proof of Publication
Tex. Est.	§308.053	Required Notice to Secured Creditor
Tex. Est.	§308.054	Required Notice to Unsecured Creditor
Tex. Est.	§353.104	Preference of Family Allowance
Tex. Est.	§353.155	Exempt Property Liable for Certain Debts
Tex. Est.	§355.001	Presentment of Claim to Personal Representative
Tex. Est.	§355.060	Unsecured Claims Barred Under Certain Circumstances
Tex. Est.	§355.061	Allowing Barred Claims Prohibited: Court Disapproval
Tex. Est.	§355.101	Approval or Establishment of Claim Required for Payment
Tex. Est.	§355.102	Claims Classification; Priority of Payment
Tex. Est.	§355.103	Priority of Certain Payments
Tex. Est.	§355.151	Option to Treat Claim as Matured Secured Claim or Preferred Debt and Lien
Tex. Est.	§403.051	Duty of Independent Executor
Tex. Est.	§403.053	Matured Secured Claims (Independent Administration)
Tex. Est.	§403.054	Preferred Debt and Lien Claims (Independent Administration)
Tex. Est.	§401.001	Accounting (Independent Administration)

TUESDAY, NOVEMBER 7, 2017 (Class 45)

**Probate Administration Exercise

WEDNESDAY, NOVEMBER 8, 2017 (Class 46)

**Probate Administration Exercise

**Due: Extra Credit Essay Assignment (due via TWEN today by 5 pm)

****Begin Trusts****

THURSDAY, NOVEMBER 9, 2017 (Class 47)

Jurisdiction & Venue

Chapter 5. Creation of Trusts

A. Introduction

B. Creation—Elements of a Trust

Read: pp. 187-220 and Code sections listed below

****IN CLASS: Trusts Vocabulary Quiz** (see terminology below and Tex. Ppty. Code §111.004)

**Listen to: <http://www.quickanddirtytips.com/money-finance/retirement/what-is-a-trust-and-who-needs-one-expert-attorney-gives-advice>

Trusts Terminology

Beneficiary. The person who receives the equitable title to trust property and hence the right to benefit from that property according to the settlor's instructions. Also referred to as the person for whose benefit property is held in trust, regardless of the nature of the interest. The beneficiary may also be called the *cestui que trust*, the *donee*, or the *grantee*.

Income. The profits or other earnings made by property after it is conveyed in trust form (e.g., the interest on a certificate of deposit or the rent collected from real property).

Inter Vivos Trust. A trust created during the grantor's lifetime (as opposed to a "testamentary trust" created at the time of death, under the terms of a will). Also known as a "living trust."

Power of Appointment. A provision in a will or similar document that grants an individual (known as the "donee") the power to direct trust assets at termination of the trust to himself, his estate, or another individual or group named in the will or similar document.

Principal. The property held in trust form. The principal is also referred to as the trust *corpus*, *estate*, or *res*.

Remainderman. An individual who is named in a trust to receive the principal or corpus when the trust comes to an end or "terminates." This is contrasted with an "income beneficiary" who is named to receive benefits from the trust during its ongoing existence.

Settlor. The person who creates a trust by making the property transfer which divides title and imposes duties. The settlor may also be called the *trustor*, the *grantor*, or the *donor*.

Testamentary Trust. A trust created by the terms of a will. Such a trust comes into existence when the testator dies, as contrasted with an inter vivos trust, which comes into existence during the grantor's life.

Trust. A property conveyance whereby the owner divides title to the property into legal and equitable interests and imposes fiduciary duties on the holder of the legal title to deal with the property for the benefit of the holder of the equitable title.

Trustee. The person who holds the legal title to trust property and has the fiduciary duty to manage that property according to the settlor's instructions and applicable trust law.

Relevant Code Sections		
Tex. Pty.	§111.001	Short Title
Tex. Pty.	§111.0035	Default and Mandatory Rules; Conflict Between Terms and Statute
Tex. Pty.	§111.004	Definitions
Tex. Pty.	§111.006	Application
Tex. Pty.	§111.003	Trusts Subject to this Subtitle
Tex. Pty.	§115.001	Jurisdiction
Tex. Pty.	§115.002	Venue

WEEK 13

MONDAY, NOVEMBER 13, 2017 (Class 48)

Chapter 5. Creation of Trusts

A. Introduction

B. Creation—Elements of a Trust

Read: pp. 220-240 and *Texas Capital Bank v. Asche* (trust is not a legal entity), *Perfect Union Lodge #10 v. InterFirst Bank* (express trust), *Marshall v. Marshall* (delivery required), and re-read *Brinker v. Wobaco Trust Ltd.* (pour-over will provisions), *Westerfeld v. Huckaby* (living trust and settlor's powers) and *Pope v. Garrett* (constructive trust)

Relevant Code Sections		
Tex. Pty.	§112.001	Methods of Creating Trust

Tex. Ppty.	§112.002	Intention to Create Trust
Tex. Ppty.	§112.003	Consideration
Tex. Ppty.	§112.004	Statute of Frauds
Tex. Ppty.	§112.005	Trust Property
Tex. Ppty.	§112.006	Additions to Trust Property
Tex. Ppty.	§112.007	Capacity of Settlor
Tex. Ppty.	§112.008	Capacity of Trustee
Tex. Ppty.	§112.009	Acceptance by Trustee
Tex. Ppty.	§112.010	Presumed Acceptance by Beneficiary; Disclaimer
Tex. Ppty.	§112.031	Trust Purposes
Tex. Ppty.	§112.032	Active and Passive Trusts; Statute of Uses
Tex. Ppty.	§112.033	Reservation of Interests and Powers by Settlor
Tex. Ppty.	§112.034	Merger
Tex. Ppty.	§112.035	Spendthrift Trusts
Tex. Ppty.	§112.036	Rule Against Perpetuities
Tex. Ppty.	§112.034	Merger
Tex. Ppty.	§112.037	Trust for Care of Animal
Tex. Ppty.	§112.087	Compensation of Trustee (Distribution of Trust)
Tex. Ppty.	§113.058	Bond
Tex. Est.	§114.061	Compensation (Rights of Trustee)
Tex. Est.	§113.104	Ownership of Trust Account During Trustee's Lifetime
Tex. Est.	§113.153	Ownership of Trust Account on Death of Trustee
Tex. Est.	§113.085(a)	Exercise of Powers by Multiple Trustees
Tex. Est.	§254.001	Devises to Trustees

TUESDAY, NOVEMBER 14, 2017 (Class 49)

Chapter 5. Creation of Trusts

C. Revocable Trusts

Read: pp. 241-248 and re-read *Westerfeld v. Huckaby* (living trust and settlor's powers)

Chapter 6. Fiduciary Duties

G. Allocation of Principal and Income

H. Removal of Trustee

I. Trust Protectors and Powers to Direct

Read: pp. 291-298

Chapter 7. Rights of Beneficiaries and Creditors in Trust Property; Modification and Termination of Trusts

D. Modification and Termination of Trusts

Read: pp. 344-360 & 393-395 (Power of Appointment)

Skim: pp. 396-397, 400-401 (Rule Against Perpetuities) & 403-404 (Charitable Interests Exception)

Relevant Code Sections		
Tex. Pty.	§5.043	Reformation of Interests Violating Rule Against Perpetuities (Cy Pres)
Tex. Pty.	§112.032	Active and Passive Trusts; Statute of Uses
Tex. Pty.	§112.038	Forfeiture
Tex. Pty.	§112.051	Revocation, Modification, or Amendment by Settlor
Tex. Pty.	§112.052	Termination
Tex. Pty.	§112.053	Disposition of Trust Property on Failure of Trust
Tex. Pty.	§112.054	Judicial Modification or Termination of Trusts
Tex. Pty.	§112.057	Division and Combination of Trusts
Tex. Pty.	§112.059	Termination of Uneconomic Trust
Tex. Pty.	§112.071	Definitions (Decanting Power—Transferring Assets to New Trust)
Tex. Pty.	§112.072	Distribution to Second Trust: Trustee with Full Discretion
Tex. Pty.	§112.075	Written Instrument Required
Tex. Pty.	§112.076	Reference to Trust Terms
Tex. Pty.	§112.077	Settlor of Second Trust
Tex. Pty.	§112.078	Court-Ordered Distribution
Tex. Pty.	§112.079	Divided Discretion
Tex. Pty.	§112.083	Duties Not Covered
Tex. Pty.	§112.084	Certain Distributions Prohibited
Tex. Pty.	§112.085	Exceptions to Power of Distribution
Tex. Pty.	§113.081	Resignation of Trustee
Tex. Pty.	§113.082	Removal of Trustee
Tex. Pty.	§113.083	Appointment of Successor Trustee

Tex. Est.	§113.085	Exercise of Powers by Multiple Trustees
Tex. Pty.	§114.003	Powers to Direct; Charitable Trusts (trust protector)
Tex. Pty.	§116.001	Short Title (Uniform Principal and Income Act)
Tex. Pty.	§116.004	Fiduciary Duties; General Principles
Tex. Pty.	§116.005	Trustee's Power to Adjust
Tex. Pty.	§116.006	Judicial Control of Discretionary Power
Tex. Est.	§123.052	Revocation of Certain Nontestamentary Transfers; Treatment of Former Spouse as Beneficiary Under Certain Policies or Plans

WEDNESDAY, NOVEMBER 15, 2017 (Class 50)

Chapter 6. Fiduciary Duties

- A. Introduction
- B. Duty of Obedience (to the Terms of the Trust)
- C. Duty of Loyalty to Beneficiaries
- D. Duty to Inform and Report—Providing Information to Beneficiaries
- E. Duty of Care for Trust Property—Duty of Prudence
- F. Duty of Impartiality (in Dealing with Beneficiaries)

Read: 249-298 and See Handout on TWEN regarding Trustee Fiduciary Duties

In-Class Exercise: Handout regarding Trustee Fiduciary Duties

Relevant Code Sections (Trustee Powers)		
Tex. Pty.	§101.001	Conveyance by Person Designated as Trustee
Tex. Pty.	§101.002	Liability of Trust Property
Tex. Pty.	§111.0035	Default and Mandatory Rules; Conflicts Between Terms and Statute
Tex. Pty.	§113.001	Limitation of Powers
Tex. Pty.	§113.002	General Powers
Tex. Pty.	§113.003	Options
Tex. Pty.	§113.004	Additions to Trust Assets
Tex. Pty.	§113.005	Acquisition of Undivided Interests
Tex. Pty.	§113.006	General Authority to Manage and Invest Trust Property
Tex. Pty.	§113.007	Temporary Deposits of Funds
Tex. Pty.	§113.008	Business Entities
Tex. Pty.	§113.009	Real Property Management

Tex. Ppty.	§113.010	Sale of Property
Tex. Ppty.	§113.011	Leases
Tex. Ppty.	§113.012	Minerals
Tex. Ppty.	§113.013	Insurance
Tex. Ppty.	§113.014	Payment of Taxes
Tex. Ppty.	§113.015	Authority to Borrow
Tex. Ppty.	§113.016	Management of Securities
Tex. Ppty.	§113.017	Corporate Stock or Other Securities Held in Name of Nominee
Tex. Ppty.	§113.018	Employment of Agents
Tex. Ppty.	§113.019	Claims
Tex. Ppty.	§113.020	Burdensome or Worthless Property
Tex. Ppty.	§113.021	Distribution to Minor or Incapacitated Beneficiary
Tex. Ppty.	§113.022	Power to Provide Residence and Pay Funeral Expenses
Tex. Ppty.	§113.023	Ancillary Trustee
Tex. Ppty.	§113.024	Implied Powers
Tex. Ppty.	§113.025	Powers of Trustee Regarding Environmental Laws
Tex. Ppty.	§113.026	Authority to Designate New Charitable Beneficiary
Tex. Ppty.	§113.027	Distributions Generally
Tex. Ppty.	§113.029	Discretionary Powers; Tax Savings
Tex. Ppty.	§113.051	General Duty
Tex. Ppty.	§113.052	Loan of Trust Funds to Trustee
Tex. Ppty.	§113.053	Purchase or Sale of Trust Property by Trustee
Tex. Ppty.	§113.054	Sale from One Trust to Another
Tex. Ppty.	§113.055	Purchase of Trustee's Securities
Tex. Ppty.	§113.057	Deposits by Corporate Trustee with Itself
Tex. Ppty.	§113.151	Demand for Accounting
Tex. Ppty.	§113.152	Contents of Accounting
Tex. Ppty.	§114.001	Liability of Trustee to Beneficiary
Tex. Ppty.	§114.002	Liability of Successor Trustee for Breach of Trust by

		Predecessor
Tex. Ppty.	§114.004	Actions Taken Proper to Knowledge or Notice of Facts
Tex. Ppty.	§114.005	Release of Liability by Beneficiary
Tex. Ppty.	§114.006	Liability of Cotrustees for Acts of Other
Tex. Ppty.	§114.007	Exculpation of Trustee
Tex. Ppty.	§114.008	Remedies for Breach of Trust
Tex. Ppty.	§114.032	Liability for Written Agreements
Tex. Ppty.	§114.062	Exoneration or Reimbursement for Tort
Tex. Ppty.	§114.063	General Right to Reimbursement
Tex. Ppty.	§114.083	Rights and Liabilities for Committing Trusts
Tex. Ppty.	§114.084	Contracts of Trustee
Tex. Ppty.	§116.001	Short Title (Uniform Principal and Income Act)
Tex. Ppty.	§116.004	Fiduciary Duties; General Principles
Tex. Ppty.	§116.005	Trustee's Power to Adjust
Tex. Ppty.	§116.006	Judicial Control of Discretionary Power
Tex. Ppty.	§117.001	Short Title (Uniform Prudent Investor Act (UPIA))
Tex. Ppty.	§117.002	Uniformity of Application and Construction
Tex. Ppty.	§117.003	Prudent Investor Rule
Tex. Ppty.	§117.004	Standard of Care; Portfolio Strategy; Risk and Return Objectives
Tex. Ppty.	§117.005	Diversification
Tex. Ppty.	§117.006	Duties at Inception of Trusteeship
Tex. Ppty.	§117.007	Loyalty
Tex. Ppty.	§117.008	Impartiality
Tex. Ppty.	§117.009	Investment Costs
Tex. Ppty.	§117.010	Reviewing Compliance
Tex. Ppty.	§117.011	Delegation of Investment and Management Functions
Tex. Ppty.	§117.012	Language Invoking Standard of Chapter

THURSDAY, NOVEMBER 16, 2017 (Class 51)

****Legal Concepts Revisited—Continue Handout regarding Trustee Fiduciary Duties**

Read: *Corpus Christi National Bank v. Gerdes* (exculpatory clause and ordinary negligence)

****DUE: Court Observation Form (Hard Copy Due at Start of Class)**

WEEK 14

MONDAY, NOVEMBER 20, 2017 (Class 52)

Chapter 7. Rights of Beneficiaries and Creditors in Trust Property; Modification and Termination of Trusts

A. Introduction

B. Distribution Provisions—Rights of Beneficiaries

C. Rights of Creditors and Planning to Protect the Assets in a Trust

Read: pp. 301-324 and 325-343 and *State v. Rubion* (support creditor reaching support trust)

DUE at start of class: Case Brief for *State v. Rubion* (support creditor reaching support trust) (only handwritten briefs will be accepted for credit)

Relevant Code Sections		
Tex. Pty.	§112.035	Spendthrift Trusts
Tex. Pty.	§113.028	Certain Claims and Causes of Action Prohibited
Tex. Pty.	§113.029	Discretionary Powers; Tax Savings
Tex. Pty.	§114.001	Liability of Trustee to Beneficiary
Tex. Pty.	§114.005	Release of Liability by Beneficiary
Tex. Pty.	§114.007	Exculpation of Trustee
Tex. Pty.	§114.008	Remedies for Breach of Trust
Tex. Pty.	§114.031	Liability of Beneficiary to Trust
Tex. Fam.	§154.005	Payments of Support Obligation by Trust

TUESDAY, NOVEMBER 21, 2017 (Class 53)

Chapter 16. Charitable Trusts

- A. Charitable Purpose
- B. Charitable—Not Benevolent
- C. Tax Purposes
- D. Modification of Charitable Trusts

Read: pp. 817-836 and *Boyd v. Frost National Bank* (creation of charitable trusts)

DUE at start of class: Case Brief for *Boyd v. Frost National Bank* (creation of charitable trusts) (only handwritten briefs will be accepted for credit)—focus on majority opinion 196 S.W.2d 497-502 for your brief

Relevant Code Sections		
Tex. Ppty.	§5.043	Reformation of Interests Violating Rule Against Perpetuities
Tex. Ppty.	§112.036	Rule Against Perpetuities
Tex. Ppty.	§112.055	Amendment of Charitable Trusts by Operation of Law
Tex. Ppty.	§112.056	Permissive Amendment by Trustee of Charitable Trust
Tex. Ppty.	§113.026	Authority to Designate New Charitable Beneficiary (Cy Pres)
Tex. Ppty.	§123.001	Definitions

WEDNESDAY, NOVEMBER 22, 2017 (Class 54)

**Legal Concepts Revisited

THURSDAY, NOVEMBER 23, 2017

****THANKSGIVING HOLIDAY** CLASS CANCELLED**

WEEK 15

MONDAY, APRIL 24, 2017 (Class 55)

Chapter 16. Charitable Trusts

- E. Enforcement of Charitable Trusts

Read: pp. 836-850

Relevant Code Sections		
Tex. Ppty.	§114.003	Powers to Direct; Charitable Trusts (trust protector)
Tex. Ppty.	§115.011	Parties
Tex. Ppty.	§123.002	Attorney General's Participation

Tex. Ppty.	§123.003	Notice
Tex. Ppty.	§123.004	Voidable Judgment or Agreement

TUESDAY, NOVEMBER 28, 2017 (Class 56)

**Legal Concepts Revisited

WEDNESDAY, NOVEMBER 29, 2017 (Class 57)

**Legal Concepts Revisited

THURSDAY, NOVEMBER 30, 2017 (Class 58)

**Legal Concepts Revisited

IMPORTANT DATES

VOCABULARY QUIZZES

Intestacy & Wills Vocabulary Quiz

Wednesday, August 30 (in class)

Trust Vocabulary Quiz

Thursday, November 9 (in class)

COURT OBSERVATION

Probate Form Due

Thursday, November 16 (hard copy in class)

MIDTERM EXAM

Tuesday, October 17, 2017

3:00-3:50 p.m.

Room 210

FINAL EXAM

TBA

Words to Remember:



"His will reads as follows: 'Being of sound mind and disposition, I blew it all!'"

"His will reads as follows: 'Being of sound mind and disposition, I blew it all.'" – New Yorker Cartoon by Frank Modell (1972). <http://www.flprobatelitigation.com/2015/03/articles/musings-on-the-practice-of-law/a-trusts-and-estates-lawyers-favorite-quote>