

WILLS & TRUSTS
LAW 650 / SECTION 2
FALL 2019

ASSOCIATE DEAN & PROFESSOR
CASSANDRA L. HILL

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THE PROFESSOR

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LOCATION: Dean's Suite – 223E
OFFICE HOURS: Tuesdays and Thursdays: 4:15-5:15 pm
(All other times by appointment)

Class Meeting Times

This class meets on Monday, Tuesday, and Thursday from 3:00-4:10 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, which is now the Uniform Bar Exam, this course will cover at least two of the essay topics. 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

(1) 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 (3rd ed. Aspen/Wolters Kluwer 2017).

Purchase Link: <https://www.directtextbook.com/isbn/9781454880899>

(2) 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 Uniform Probate Code and the Uniform Trusts Code are our priority since they are the focus of the Uniform Bar Exam:

Uniform Trust and Estate Statutes, 2019-2020 Edition

Thomas P. Gallanis

ISBN: 9781642429176

Many students prefer to buy a copy of the code book and here is a link: <https://www.amazon.com/Uniform-Estate-Statutes-2019-2020-Selected/dp/1642429171>. There are other purchase sites as well.

You also may access the relevant uniform codes at the links and websites below. (If you are having trouble with a hyperlink, copy and paste the URL in your browser.)

- Uniform Probate Code (UPC)
 - <https://www.uniformlaws.org/committees/community-home/librarydocuments?communitykey=a539920d-c477-44b8-84fe-b0d7b1a4cca8&tab=librarydocuments>
- Uniform Parentage Act (UPA)
 - <https://www.uniformlaws.org/committees/community-home/librarydocuments?communitykey=c4f37d2d-4d20-4be0-8256-22dd73af068f&tab=librarydocuments>
- Uniform Trust Code (UTC)
 - <https://www.uniformlaws.org/committees/community-home/librarydocuments?communitykey=193ff839-7955-4846-8f3c-ce74ac23938d&tab=librarydocuments>
- Uniform Trust Decanting Act (UTDA)
 - <https://www.uniformlaws.org/viewdocument/final-act-with-comments-92?CommunityKey=5b248bac-9251-47fb-bad8-57a23f3df540&tab=librarydocuments>
- Uniform Principal and Income Act (UPIA)
 - <https://www.uniformlaws.org/committees/community-home/librarydocuments?communitykey=b20aa74e-cae7-4557-b93b-a4b416c17407&tab=librarydocuments>

- Uniform Prudent Investor Act
 - <https://www.uniformlaws.org/committees/community-home/librarydocuments?communitykey=58f87d0a-3617-4635-a2af-9a4d02d119c9&tab=librarydocuments>

(3) The Texas Supreme Court has not yet indicated what Texas law content will be covered on the third day of the bar exam. A third day of the bar exam will likely cover the Texas distinctions from the Uniform Probate Code and Trust Code so we will cover many of the relevant distinctions. Thus, you also will need to have access to the Texas codes from time to time. Here is a link to access the Texas Constitution and all statutes: <http://www.statutes.legis.state.tx.us/Index.aspx>. But note this *free* website (and any other free website) may not include recent updates to the Estates Code. Many students prefer to buy a copy of the Texas code book and here is a link: <https://legalsolutions.thomsonreuters.com/law-products/Practice-Materials/OConnors-Texas-Estates-Code-Plus-2017-ed/p/105532935>. There are other purchase sites as well. Also note that you may need to access other Texas code provisions in addition to the Estates Code. 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.)

- [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/>

(4) In addition to the codes, you will need access to the Model Rules of Professional Conduct for certain ethics rules. You do not need to purchase this book. Here is a link to the rules: https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents/. You also will need access to the Restatements. Much of the relevant content is included in the required textbook. You also can access the Restatements online via Westlaw or Lexis.

(5) 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=EDS XW35JK06EXXGRJC5K

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 the uniform codes and 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 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, which is now the Uniform Bar Exam, and an initial probate practice. Please note the Multistate Essay Examination (MEE) on the Uniform Bar Exam is worth 30% of the total bar exam score. The six 30-minute MEE essays are chosen from several topics, including trusts and estates. For this reason, this class is one of the most important classes you will take in preparation for the Texas Bar Exam/Uniform 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	2%
• Midterm	12%
• Probate Court Observation	5%
• Current Event Summary	3%
• Final Examination	50%
	<hr style="width: 20%; margin: auto;"/> 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 10 a.m., 1:30 p.m., and 2:30 p.m. (Judge Butts recently added an additional minimal probate of will docket on Tuesdays at 10 am in Judge’s Chambers until further notice. Due to Hurricane Harvey damage, many judges are sharing courtrooms due to the lack of court space and are adjusting their docket times. Please contact the judge’s chambers to confirm any docket times.)

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.

Current Event Summary: There is always an issue dealing with estate planning, intestacy, wills, trusts or probate administration in the news, especially when it comes to a celebrity’s death. Over the past few years, the media has covered the saga of Prince’s estate and the battle over Aretha Franklin’s estate. Just to name a few. Here is a link to one of those recent articles:

<https://www.kiplinger.com/slideshow/retirement/T021-S003-estate-planning-mistakes-celebrities-made/index.html>. For this assignment, you are required to submit a summary of a current event dealing with estate planning (wills, intestacy, or trusts, or any topic that relates to the coverage in this course). Your summary should be at least one typed, double-spaced page in length or 250 words. This summary should (1) summarize the article that you read, (2) identify the relevant law implicated by the event, and (3) include your thoughts on the newsworthy event. This assignment is worth 3% or 30 points of your final grade and must be submitted by the due date. Again, do not wait until the last minute to start collecting current events that may be of interest to you.

Please refer to the 2019-2020 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 five (5) 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, the Uniform Probate Code, Uniform Trust Code, or the Texas codes 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



TEXAS SOUTHERN UNIVERSITY THURGOOD MARSHALL SCHOOL OF LAW ACADEMIC CALENDAR 2019–2020

FALL SEMESTER ACCELERATED (TURBO) COURSE

First Day of Accelerated Summer	Monday	August 5, 2019
Last Day to Add/Drop Classes	Monday	August 5, 2019
Last Day of Classes	Friday	August 16, 2019

FALL SEMESTER 2019 (SEVENTY-ONE DAYS OF CLASSES)

Orientation	Monday–Friday	August 12–16, 2019
First Day of Class	Monday	August 19, 2019
Last Day to ADD/DROP	Wednesday	August 21, 2019
Labor Day (NO CLASSES)	Monday	September 2, 2019
<i>Purge of all unpaid course selections</i>	Wednesday	September 18, 2019
Mid Term Examinations	Monday–Friday	October 14–18, 2019
Last Day to Drop a Class	Friday	November 8, 2019
Last Day of Classes	Tuesday	November 26, 2019
First Year Professors' Grades due	Tuesday	November 26, 2019
Reading Period (NO CLASS)	Wednesday	November 27, 2019
Thanksgiving Holiday	Thursday–Friday	November 28–29, 2019
Reading Period (NO CLASS)	Saturday–Sunday	November 30–December 1, 2019
Final Examinations	Monday–Friday	December 2–December 13, 2019
Commencement Exercises	Saturday	December 14, 2019

SPRING SEMESTER 2020 (SEVENTY DAYS OF CLASSES)

School Opens	Thursday	January 2, 2020
First Day of Class	Monday	January 13, 2020
Last Day to ADD/DROP	Wednesday	January 15, 2020
M L K Holiday (NO CLASSES)	Monday	January 20, 2020
<i>Purge of all unpaid course selections</i>	Friday	February 7, 2020
Mid Term Examinations	Monday–Friday	March 9–13, 2020
Spring Break	Monday–Friday	March 16–20, 2020
Spring Break (University Closed)	Wednesday–Friday	March 18–20, 2020
Last Day to Drop a Class	Thursday	April 9, 2020
Good Friday (NO CLASSES)	Friday	April 10, 2020
Last Day of Classes	Tuesday	April 28, 2020
First Year Professors' Grades due	Tuesday	April 28, 2020
Reading Period (NO CLASSES)	Wednesday–Thursday	April 29–April 30, 2020
Simulated Bar Exam*	Friday	May 1, 2020 (<i>tentative</i>)
Reading Period (NO CLASSES)	Saturday–Sunday	May 2–May 3, 2020
Final Examinations	Monday–Friday	May 4–May 15, 2020
Hooding Ceremony	Friday	May 15, 2020
Commencement Exercises	Saturday	May 16, 2020

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

Updated August 6, 2019

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. **Most of the relevant Uniform Probate Code, Uniform Trust Code and related Texas code sections have been provided in the syllabus. Read these assigned sections.** There may be other relevant 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 the uniform codes and 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 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 the uniform codes and 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 codes in class to fully participate. In addition to the readings from the textbook, you are **assigned the various 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, the Uniform Probate Code, Uniform Trust Code and certain Texas distinctions are 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 uniform 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 19, 2019 (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 and 255-261 in the textbook, (3) Appendix A & B (pp. 38-43, 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"), (5) *San Ant. Area Found. v. Lang* (section on rules of construction and extrinsic evidence—Tex. distinction), (6) *Ellis v. Birkhead* (public policy) and (7) *Shapira v. Union Nat'l Bank* (public policy) (all posted on TWEN)

Relevant Uniform Code Sections		
UPC	§1-201	General Definitions (except for those related to trusts)
UPC	§2-204	Decedent's Net Probate Estate
UPC	§2-502(c)	Extrinsic Evidence
UPC	§2-602	Will May Pass All Property and After-Acquired Property
UPC	§3-102	Necessity of Order of Probate for Will
UPC	§3-709	Duty of Personal Representative; Possession of Estate
UPC	§1-107	Evidence of Death or Status
Restatement (Rest.) (Third) of Property:	§10.1	Donor's Intention

Wills		
Rest. (Third) of Property: Wills	§10.2 & cmt. d, e, f, & g	Permissible Evidence for Determining Donor's Intention
Rest. (Third) of Property: Wills	§11.1 & cmt. b & c	Ambiguity Defined
Rest. (Third) of Property: Wills	§11.2, 11.2(a) & cmt. b & d	Resolving Ambiguities in Accordance with the Donor's Intention
Rest. (Third) of Trusts	§29, Cmt. J	Purposes and Provisions That Are Unlawful or Against Public Policy: Family Relationships
Rest. (Third) of Trusts	§29, Cmt. K	Purposes and Provisions That Are Unlawful or Against Public Policy: Religious Freedom

Relevant Texas Code Sections		
Tex. Est.	§22.034	Will
Tex. Est.	§101.001	Passage of Estate on Decedent's Death
Tex. Est.	§202.002	Circumstances Under Which Proceeding to Declare Heirship is Authorized
Tex. Est.	§256.001	Will Not Effective Until Probated
Tex. Est.	§256.201	Admission of Will to Probate
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 20, 2019 (Class 2)

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

D. The Professional Standards Associated with Estate Planning

Read: (1) pp. 19-37 and Appendix A on p. 133 (consanguinity chart) and 231-237, (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—Tex. distinction/minority rule), (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 Uniform Code Sections		
Model Rule of Professional Conduct (MRPC)	1.2	Scope of Representation and Allocation of Authority between Client and Lawyer
MRPC	1.6	Confidentiality of Information
MRPC	1.7	Conflict of Interest: Current Clients
MRPC	1.8	Current Clients: Specific Rules
MRPC	2.1	Advisor

Relevant Texas 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

THURSDAY, AUGUST 22, 2019 (Class 3)

Chapter 2. Inheritance and Relationship

A. Introduction

B. Who is a Child?

Read: pp. 47-60

Relevant Uniform Code Sections		
UPC	§1-201	General Definitions
UPC	§1-201(5)	Child
UPC	§2-103	Shares of Heirs Other than Surviving Spouse
UPC	§2-115	Definitions
UPC	§2-116	Effect of Parent-Child Relationship
UPC	§2-117	No Distinction Based on Marital Status
UPC	§2-118(a)	Adoptee and Adoptee's Adoptive Parent or Parents
UPC	§2-119	Adoptee and Adoptee's Genetic Parents
UPC	§2-120	Child Conceived by Assisted Reproduction Other than Child Born to Gestational Carrier
UPC	§2-121	Child Born to Gestational Carrier
UPC	§2-122	Equitable Adoption
UPC	§2-705	Class Gifts Construed to Accord with Intestate

		Succession; Exceptions
Unif. Paren. Act	§102(6)	Child
Unif. Paren. Act	§201	Establishment of Parent-Child Relationship
Unif. Paren. Act	§202	No Discrimination Based on Marital Status
Unif. Paren. Act	§203	Consequences of Establishment of Parentage
Unif. Paren. Act	§204	Presumption of Parentage
Unif. Paren. Act	§503	Scope; Limitation on Use of Genetic Testing
Unif. Paren. Act	§503	Authority to Order or Deny Motion for Genetic Testing
Unif. Paren. Act	§602	Standing to Maintain Proceeding
Rest. (Third) of Property: Wills	§2.5, cmt. b	Parent & Child Relationship
Rest. (Third) of Property: Wills	§2.5, cmt. m	Parent & Child Relationship

WEEK 2

MONDAY, AUGUST 26, 2019 (Class 4)

Chapter 2. Inheritance and Relationship

B. Who is a Child?

Read: pp. 61-85, *Wheeling Dollar Savings & Trust v. Singer*, *DeHart v. DeHart Dampier v. Williams* (adoption by estoppel—Tex. distinction) and *In re Estate of Womack* (class gift) (on TWEN)

Relevant Uniform Code Sections		
UPC	§1-201(5)	Child
UPC	§2-103(b)	Share of Heirs other than Surviving Spouse

UPC	§2-104	Individual in Gestation
UPC	§2-107	Kindred of Half Bloods
UPC	§2-122	Equitable Adoption
UPC	§2-603	Anti-Lapse; Deceased Devisee; Class Gifts
UPC	§2-115	Definitions
UPC	§2-115(4)	Functioned as a Parent of the Child
UPC	§2-118	Adoptee and Adoptee's Adoptive Parent or Parents
UPC	§2-119 & cmt	Adoptee and Adoptee's Genetic Parents
UPC	§2-120	Child Conceived by Assisted Reproduction Other than Child Born to Gestational Carrier
UPC	§2-121	When Posthumously Conceived Gestational Child Treated as in Gestation
UPC	§2-705	Class Gifts Construed to Accord with Intestate Succession; Exceptions
Rest. (Third) of Property: Wills	§2.5, cmt. d	Parent & Child Relationship

Relevant Texas Code Sections		
Tex. Est.	§201.057	Collateral Kindred of Whole and Half Bloods
Tex. Est.	§255.154	Devisee Under Class Gift
Tex. Est.	§255.401	Posthumous Class Gift Membership

**After Class 4, complete the "Who Is a Child" Exercise Sheet (posted on TWEN) to self-assess your understanding of the status rules. This practice assignment is optional.

TUESDAY, AUGUST 27, 2019 (Class 5)

****Vocabulary Quiz (see Appendix A & B and Glossary above)**

Chapter 2. Inheritance and Relationship

C. Who is a Parent?

D. Who is a Spouse?

Read: pp. 85-91 (Note: Civil unions are not recognized in Texas)

Relevant Uniform Code Sections

UPC	§2-114	Parent Barred from Inheriting in Certain Circumstances
UPC	§2-802	Effect of Divorce, Annulment, and Decree of Separation
UPC	§2-803(b)	Forfeiture of Statutory Benefits
Unif. Paren. Act	§201	Establishment of Parent-Child Relationship
Unif. Paren. Act	§203	Consequences of Establishing Parentage
Unif. Paren. Act	§204	Presumption of Parentage
Unif. Paren. Act	§614	Precluding Establishment of Parentage by Perpetrator of Sexual Assault
Unif. Marriage & Divorce Act	§209	Putative Spouse
Rest. (Third) of Property: Wills	§2.2, cmt. e	Putative Spouse

Relevant Texas Code Sections		
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. Ins.	§1103.151	Forfeiture
Tex. Const.	Article I, §21	Corruption of Blood; Forfeiture of Estate; Descent in Case of Suicide

THURSDAY, AUGUST 29, 2019 (Class 6)

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

A. Introduction

B. Share for Surviving Spouse

Read: pp. 93-105

Skim: Descent and Distribution Handout (in conjunction with Texas code sections)

Relevant Uniform Code Sections		
UPC	§1-201(20)	Heirs
UPC	§1-201(58)	Separate Property
UPC	§1-201(59)	Community Property
UPC	§2-702	Requirement of Survival by 120 Hours
UPC	§2-101	Intestate Estate
UPC	§2-102	Share of Spouse
UPC	§2-103	Share of Heirs other than Surviving Spouse
UPC	§2-104	Requirement of Survival by 120 Hours; Individual in Gestation
UPC	§2-105	No Takers
UPC	§1-109	Cost of Living Adjustment of Certain Dollar Amounts
Rest. (Third) of Property: Wills	§2.2, cmt. c	Nonuniform Probate Code Law

WEEK 3

MONDAY, SEPTEMBER 2, 2019

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

TUESDAY, SEPTEMBER 3, 2019 (Class 7)

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

- C. Share to Lineal Descendants
- D. Share to Ancestors and Collateral Heirs and Escheat to the State
- E. The Representation Models
- F. Reducing the Intestate Share for Advancements

Read: pp. 107-124 (Note: Texas follows *per capita with representation.*) and 136-

139

Relevant Uniform Code Sections		
UPC	§2-102	Share of Spouse
UPC	§2-103	Shares of Heirs Other than Surviving Spouse

UPC	§2-104	Requirement of Survival by 120 Hours; Individual in Gestation
UPC	§2-105	No Taker
UPC	§2-106	Representation
UPC	§2-109	Advancements
UPC	§2-702	Requirement of Survival by 120 Hours
Rest. (Third) of Property: Wills	§1.2 & cmt. d	Requirement of Surviving the Decedent

Relevant Texas Code Sections		
Tex. Est.	§201.101	Determination of Per Capita with Representation
Tex. Est.	§201.103	Treatment of Intestate's Estate
Tex. Est.	§201.151	Determination of Advancement; Date of Valuation
Tex. Est.	§201.152	Survival of Recipient Required

THURSDAY, SEPTEMBER 5, 2019 (Class 8)

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

F. Reducing the Intestate Share for Advancements Cont'd

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

Read: Read: pp. 128-131 and *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 Uniform Code Sections		
UPC	§2-109	Advancements
UPC	§2-110	Debts to Decedent
UPC	§2-1102	Definitions
UPC	§2-1105	Power to Disclaim; General Requirements; When Irrevocable

UPC	§2-1106	Disclaimer of Interest in Property
UPC	§2-1108 cmt.	Disclaimer of Interest by Trustee
UPC	§2-1112	Delivery or Filing
UPC	§2-1113	When Disclaimer Barred or Limited
UPC	§2-1114	Tax Qualified Disclaimer
UPC	§2-1115	Recording of Disclaimer

Relevant Texas 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. Prop.	§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 9, 2019 (Class 9)

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

- A. Introduction
- B. The Different Laws of Wills and Will Substitutes
- C. Why Use Will Substitutes?
- D. Determining Which Property Is Probated and Which is Not

Read: pp. 135-157 and *Westerfeld v. Huckaby* (living trusts) (on TWEN)

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

Relevant Uniform Code Sections		
UPC	§1-201(18)	Governing Instrument
UPC	§6-101	Nonprobate Transfers on Death
UPC	§6-201	Definitions
UPC	§6-203	Types of Accounts; Existing Accounts
UPC	§6-204	Forms
UPC	§6-211	Ownership During Lifetime
UPC	§6-212	Rights at Death
UPC	§6-213(b)	Alteration of Rights
UPC	§6-214	Accounts and Transfers Nontestamentary
UPC	§6-216	Community Property and Tenancy by the Entirety
UPC	§6-221	Authority of Financial Institution
UPC	§6-222	Payment on Multiple-Party Account
UPC	§6-223	Payment on POD Designation

Relevant Texas Code Sections		
Tex. Est.	§101.002	Effect of Joint Ownership of Property
Tex. Est.	§111.001	Right of Survivorship Agreements Authorized
Tex. Est.	§112.051	Agreement of 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

TUESDAY, SEPTEMBER 10, 2019 (Class 10)

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

- D. Determining Which Property Is Probated and Which is Not
- 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?

Inter Vivos Transfers (Gifts) and Gifts Causa Mortis

Read: pp. 157-175 and *Dorman v. Arnold* (inter vivos gifts and causa mortis)
(posted on TWEN)

Relevant Uniform Code Sections		
UPC	§6-301	Definitions
UPC	§6-302	Registration in Beneficiary Form; Sole or Joint Tenancy Ownership
UPC	§6-303	Registration in Beneficiary Form; Applicable Law
UPC	§6-305	Form of Registration in Beneficiary Form
UPC	§6-306	Effect of registration in Beneficiary Form
UPC	§6-307	Ownership on Death of Owner
UPC	§6-309	Nontestamentary Transfer on Death
UPC	§6-402	Definitions
UPC	§6-405	Transfer on Death Deed Authorized
UPC	§6-406	Transfer on Death Deed Revocable
UPC	§6-407	Transfer on Death Deed Nontestamentary
UPC	§6-408	Capacity of Transferor
UPC	§6-409	Requirements
UPC	§6-410	Notice, Delivery, Acceptance, Consideration Not Required

UPC	§6-412	Effect of Transfer on Death Deed During Transferor's Life
UPC	§6-413	Effect of Transfer on Death Deed at Transferor's Death
UPC	§6-414	Disclaimer
UPC	§2-603 cmt.	Theory of Lapse
UPC	§2-706(b)	Life Insurance; Retirement Plan; Account with POD Designation; Transfer-on-Death Deed; Deceased Beneficiary
UPC	§2-803	Effect of Homicide on Intestate Succession, Wills, Trusts, Joint Assets, Life Insurance and Beneficiary Designations
UPC	§2-804	Revocation of Probate and Nonprobate Transfer by Divorce; No Revocation by Other Changes of Circumstances

THURSDAY, SEPTEMBER 12, 2019 (Class 11)

Chapter 9. Will Validity

- A. Introduction
- B. Legal Requirements for the Testator
- C. Formalities Required in the Will (writing requirement)
- E. Dispensing with Formalities (Substantial Compliance)

Conditional and Contractual Wills

Read: pp. 179-186, 217-230 and 370-372 (contracts concerning wills) and *Stephen v. Colman* and *Estate of Annie Ruth Danford* (both testamentary capacity), *Price v. Huntsman* (testamentary intent) and *Estate of Gilbert* (contractual wills) (on TWEN) (Note: Texas requires full compliance (not harmless error) except for Savings Statute)

DUE at start of class: (1) Case Brief for *Stephen v. Colman* (focus on testamentary capacity) (only handwritten briefs will be accepted for credit)

Relevant Uniform Code Sections		
UPC	§1-201(57)	Will
UPC	§2-501	Who May Make a Will
UPC	§2-502(a)	Execution; Witnessed or Notarized Wills; Holographic Wills
UPC	§2-503	Harmless Error
UPC	§2-514	Contracts Concerning Succession
UPC	§2-602	Will May Pass All Property and After-Acquired Property

UPC	§2-702(b)	Requirement of Survival by 120 Hours under Governing Instrument
UPC	§2-702(d)	Exceptions
Rest. (Third) of Property: Wills	§3.1 cmt. g, j, & q	Attested Wills
Rest. (Third) of Property: Wills	§8.1(b)	Requirement of Mental Capacity

Relevant Texas Code Sections		
Tex. Est.	§22.034	Will
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

WEEK 5

MONDAY, SEPTEMBER 16, 2019 (Class 12)

Chapter 9. Will Validity

C. Formalities Required in the Will

Read: pp. 187-199 (through interested witnesses), pp. 203-205 (notarized will & putting formalities into practice) and *Orozco v. Orozco* (signature), *Muhlbauer v. Muhlbauer* (proxy), *Nichols v. Rowan* (conscious presence), *Franks v. Chapman* (notary as witness) and Tex. Ethical Opinion 360 (all on TWEN)

Relevant Uniform Code Sections		
UPC	§2-502(a) & (c) & cmt.	Execution; Witnessed or Notarized Wills; Extrinsic Evidence
UPC	§2-503	Harmless Error
UPC	§2-505	Who May Witness/Interested Witness
Rest. (Third) of Prop.: Wills	§3.1 cmt. i, j, k, m, n, o, q & p	Attested Wills

Relevant Code Sections		
Tex. Est.	§251.051	Written, Signed, and Attested
Tex. Est.	§254.002	Bequests to Certain Subscribing Witness
Tex. Gov't.	§311.005(6)	General Definitions; Signed

TUESDAY, SEPTEMBER 17, 2019 (Class 13)

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. 200-202 and 206-215 (self-proved & holographic will), pp. 230-238 and *Maul v. Williams* (surplusage rule), *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 Uniform Code Sections		
UPC	§2-504	Self-Proved Will
UPC	§3-406	Formal Testacy proceedings; Contested Cases
UPC	§2-502(b)	Holographic Wills
UPC	§2-502(c)	Extrinsic Evidence
UPC	§2-506	Choice of Law
Rest. (Third) of Prop.: Wills	§3.2 rptrs. note	Extent of Handwritten Portion
MRPC	1.4 ex. 1.4-1	Communication
MRPC	1.7	Conflicts of Interest: Current Clients
MRPC	1.8	Conflicts of Interest: Current Clients: Specific Rules
MRPC	1.15	Safekeeping Property
UPC	§2-515	Deposit of Will with Court in Testator's Lifetime
UPC	§2-516	Duty of Custodian of Will; Liability

Relevant Code Sections		
Tex. Est.	§251.052	Exception for Holographic Wills

Tex. Est.	§251.053	Exception for Foreign and Certain Other Wills
Tex. Est.	§251.101	Self-Proved Will
Tex. Est.	§251.107	Self-Proved Holographic Will
Tex. Est.	§254.003	Devises to Certain Attorneys and Other Persons

THURSDAY, SEPTEMBER 19, 2019 (Class 14)

Chapter 10. Interpreting the Will

A. Introduction

B. What Constitutes the Will?

Integration, Incorporation by Reference, Republication by Codicil, Facts of Independent Significance & Content Rules and Memorandum at Death (not recognized in Texas)

Read: pp. 243-254, *Clark v. Dennison* and *Houser v. Moore* (on TWEN)

Relevant Uniform Code Sections		
UPC	§1-201(57)	Will
UPC	§2-507	Revocation by Writing or by Act
UPC	§2-510	Incorporation by Reference
UPC	§2-510	Events of Independent Significance
UPC	§2-513	Separate Writing Identifying Devise of Certain Types of Tangible Property
Rest. (Third) of Prop.: Wills	§3.4	Republication by Codicil

Relevant Texas 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 23, 2019 (Class 15)

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

Pour-Over Wills, Reformation, Classification of Devise, Lapse/Anti-Lapse, Class Gifts, and Ademption by Extinction/Nonademption of Specific Devises

Read: pp. 254, 262-276 and 279-282 and *Brinker v. Wobaco Trust Ltd.* (pour-over will provisions), *Hurt v. Smith* (types of bequests), *Rodgers v. Carter* (will construction & ademption—Tex. distinctions), *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 Uniform Code Sections		
UPC	§2-511	Uniform Testamentary Additions to Trusts Act
UPC	§2-601	Scope
UPC	§2-602	Will May Pass All Property and After-Acquired Property
UPC	§2-603	Antilapse; Deceased Devisee; Class Gifts
UPC	§2-604	Failure of Testamentary Provision
UPC	§2-606	Nonademption of Specific Devises; Unpaid Proceeds of Sale, Condemnation, or Insurance; Sale by Conservator or Agent
UPC	§2-705	Class Gifts Construed to Accord with Intestate Succession; Exceptions
UPC	§2-805	Reformation to Correct Mistakes
UPC	§2-805	Modification to Achieve Transferor's Tax Objectives
Rest. (Third) of Prop.: Wills	§3.8 cmt. a, c, d	Pour-Over Devises
Rest. (Third) of Prop.: Wills	§5.2(c) & cmt. c	Failure ("Ademption") of Specific Devises by Distinction
Rest. (Third) of Prop.: Wills	§10.2 cmt. d, e, f, & g	Permissible Evidence for Determining Donor's Intention
Rest. (Third) of Prop.: Wills	§12.1	Reforming Donative Documents to Correct Mistakes
Rest. (Third) of Prop.: Wills	§12.2	Modifying Donative Documents to Achieve Donor's Tax Objectives

Relevant Texas Code Sections		
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

TUESDAY, SEPTEMBER 24, 2019 (Class 16)

Chapter 10. Interpreting the Will

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

Accessions, Satisfaction (Ademption by Satisfaction, Exoneration, Abatement, Apportionment, Disclaimers and Deemed Death

Read: pp. 282-306 and *Estate of Heider* (exoneration)

Homework Exercise: Abatement Order and Exoneration Worksheet

Relevant Uniform Code Sections		
UPC	§2-605	Increase in Securities; Accessions
UPC	§2-607	Nonexoneration
UPC	§2-609	Ademption by Satisfaction (note: UPC §1-109 re Advancements)
UPC	§3-814	Encumbered Assets
UPC	§3-902	Distribution; Order in which Assets Appropriated; Abatement
UPC	§3-9A-101	Uniform Estate Tax Apportionment Act
UPC	§1-1071-1	Evidence of Death
UPC	§2-702	Requirement of Survival by 120 Hours (Note: UPC §2-104 for same survival rule under intestacy)
UPC	§2-1105	Power to Disclaim; General requirements; When Irrevocable
UPC	§2-1106	Disclaimer of Interest in Property
UPC	§2-1113	When Disclaimer Barred or Limited

Relevant Texas Code Sections		
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.	§310.003	Allocation of Expenses
Tex. Est.	§355.109	Abatement of Bequests
Tex. Prop.	§240.009	Power to Disclaim; General Requirements; When Irrevocable

THURSDAY, SEPTEMBER 26, 2019 (Class 17)

Chapter 11. Revoking the Will and Will Contests

A. Introduction

B. Revocation by Subsequent Instrument or by Physical Act

C. Revocation by Changed Circumstances (operation of law)

Read: pp. 319-338 and *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 Uniform Code Sections		
UPC	§2-507	Revocation by Writing or by Act
Rest. (Third) of Prop.: Wills	§4.1 & cmt. f, g & j	Revocation of Wills
UPC	§2-202(a)	Elective-Share Amount
UPC	§2-301	Entitlement of Spouse; Premarital Will
UPC	§2-803	Effect of Homicide on Intestate Succession, Wills, Trusts, Joint Assets, Life Insurance, and Beneficiary Designations
UPC	§2-804	Revocation of Probate and Nonprobate transfers by Divorce; No revocation by Other Changes of Circumstances

Relevant Texas Code Sections		
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.	§123.053	Effect of Revocation
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
Tex. Ins.	§1103.151	Forfeiture

WEEK 7

MONDAY, SEPTEMBER 30, 2019 (Class 18)

Chapter 11. Revoking the Will and Will Contests

D. The Impact of Revocation

E. Will Contests

Revocation Cont'd, Standing for Will Contest, Limitations Period, Testamentary Capacity Challenge, and Insane Delusion

Read: pp. 338-347 and *Pope v. Garrett* (constructive trust), *Brackenridge v. Roberts* (revival—Tex. distinction), *Aven v. Green* (republication), and *Chambers v. Chambers* and *Burton v. Bell* (both dependent relative revocation) **and** pp. 347-356 and *Logan v. Thomason* (standing), and *Lindley v. Lindley* (insane delusion & witness testimony)

In-Class Exercise: Will Contest Worksheet (start)

Relevant Uniform Code Sections		
UPC	§1-201(23)	Interested Person
UPC	§2-501	Who May Make Will
UPC	§2-503	Harmless Error
UPC	§2-507 cmt.	Dependent Relative Revocation
UPC	§2-509	Revival of Revoked Will
UPC	§2-604	Failure of Testamentary Provision
UPC	§3-108(a)(3)	Probate; Testacy and Appointment Proceedings; Ultimate Time Limit
UPC	§3-401	Formal Testacy Proceedings; Nature; When Commenced
UPC	§3-407	Formal Testacy Proceedings; Burden in Contested Cases
Rest. (Third) of	§8.1 cmt. h, m & s	Requirement of Mental Capacity

TUESDAY, OCTOBER 1, 2019 (Class 19)

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)

Undue Influence, Fraud, Duress, Tortious Interference, Mistake and No Contest Clauses

Read: pp. 356-369 and *Rothermel v. Duncan* (undue influence), *Estate of Koontz* and article titled “Estate of Koontz: Another summary judgment overturned” (all on TWEN) and *Archer v. Anderson* (tortious interference—Tex. distinction)

In-Class Exercise: Will Contest Worksheet Cont'd

****Distribute Issue Spotting Exercise** (for homework and class next week)

Relevant Uniform Code Sections		
UPC	§2-517	Penalty Clause for Contest
UPC	§3-407	Formal Testacy Proceedings; Burden in Contested Cases
Rest. (Third) of Prop.: Wills	§8.3 & cmt. b, d, e, f, g, h & k	Undue Influence, Duress, or Fraud
Rest. (Third) of Prop.: Wills	§8.3(d)	Undue Influence, Duress, or Fraud
Rest. (Third) of Prop.: Wills	§8.5 illus.	No-Contest Clauses

THURSDAY, OCTOBER 3, 2019 (Class 20)

Chapter 12. Protecting the Family

- A. Introduction
- B. History of Adult Partner Protections
- C. Differing Protections under Community Property and Common Law Property Systems
- D. Protections for the Surviving Spouse—The Elective Share
- E. The UPC Approach to the Elective Share
- F. Prenuptials and Other Marital Agreements

Read: pp. 601-636 and *Avery v. Johnson* (widow’s election—Tex. distinction)

(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 Uniform Code Sections		
UPC	§2-201	Definitions
UPC	§2-202	Elective Share
UPC	§2-203	Composition of the Augmented Estate; Marital-Property Portion
UPC	§2-204	Decedent's Net Probate Estate
UPC	§2-205	Decedent's Nonprobate Transfers to Others
UPC	§2-206	Decedent's Nonprobate Transfers to the Surviving Spouse
UPC	§2-207	Surviving Spouse's Property and Nonprobate Transfers to Others
UPC	§2-208	Exclusions, Valuation, and Overlapping Application
UPC	§2-209	Sources from Which Elective Share Payable
UPC	§2-210	Personal Liability of Recipients
UPC	§2-211	Proceeding for Elective Share; Time Limit
UPC	§2-212	Right of Election Personal to Surviving Spouse; Incapacitated Spouse
UPC	§2-213	Effect of Premarital or Marital Agreement on Right to Elect and Other Rights
UPC	§2-214	Protection of Payors and Other Third Parties
Rest. (Third) of Prop.: Wills	9.2(a), (c) & cmt. b & g	Surviving Spouse's Elective Share under the Revised Uniform Probate Code

Relevant Texas 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.	§102.003	Passage of Homestead
Tex. Est.	§123.002	Treatment of Decedent's Former Spouse

WEEK 8

MONDAY, OCTOBER 7, 2019 (Class 21)

Chapter 12. Protecting the Family

G. Protections for an Omitted Spouse and Child

Read: pp. 636-655 and *Bailey v. Warren* (pretermitted child—Tex. distinction)

Handout: Pretermitted Child Exercises

Bring to Next Class: Issue Spotting Worksheet

Relevant Uniform Code Sections		
UPC	§2-301	Entitlement of Spouse; Premarital Will
UPC	§2-302	Omitted Children
Rest. (Third) of Prop.: Wills	9.5	Protection of Surviving Spouse Against Unintentional Disinheritance by a Premarital Will
Rest. (Third) of Prop.: Wills	9.6 & cmt. f	Protection of Child or Descendant Against Unintentional Disinheritance

Relevant Texas 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

TUESDAY, OCTOBER 8, 2019 (Class 22)

****Midterm Topics Revisited**

Due in Class: Issue Spotting Worksheet

Submit: Top 3 Legal Topics to Review for Midterm Preparation

THURSDAY, OCTOBER 10, 2019 (Class 23)

****Midterm Topics Revisited**

WEEK 9

****MIDTERM EXAMINATION WEEK****

MONDAY, OCTOBER 14, 2019 (Class 24)

NO CLASS

TUESDAY, OCTOBER 15, 2019 (Class 25)

****MIDTERM****

THURSDAY, OCTOBER 17, 2019 (Class 26)

NO CLASS: Prepare for new topic of probate administration.

WEEK 10

MONDAY, OCTOBER 21, 2019 (Class 27)

Chapter 15. Administration of the Probate Estate

- A. Introduction
- B. Matters That Need Immediate Attention
- C. Where to Probate the Estate—Jurisdiction and Venue
- D. Formal and Informal Procedures to Probate Estates—In General

Texas Independent and Dependent Administration & Simplified Administration

Read: pp. 751-763, re-read pp. 142-143 (advantages of probate)

Relevant Uniform Code Sections		
UPC	§3-201	Venue for First and Subsequent Estate Proceedings; Location of Property
UPC	§3-401	Formal Testacy Proceedings; Nature; When Commenced
UPC	§3-1201	Collection of Personal Property Affidavit
UPC	§4-204	Proof of Authority-Bond
UPC	§4-205	Powers

Relevant Texas Code Sections		
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.	§33.052	Concurrent Venue
Tex. Est.	§33.053	Probate Proceedings in More Than One Country
Tex. Est.	§33.054	Jurisdiction to Determine Venue

TUESDAY, OCTOBER 22, 2019 (Class 28)

Chapter 15. Administration of the Probate Estate

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

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

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

H. Duty to Manage the Property of the Estate

Read: pp. 763-773 and *Estate of Jones, Garton v. Rockett, Matter of Estate Standefer* (all—will not produced in court & copy of will), *McMahan v. McMahan* (designating independent administration), *Boyles v. Gresham* (disqualifying executor) and *McMahan v. Naylor* (heirship proceeding)

Relevant Uniform Code Sections		
UPC	§2-504	Self-Proved Will
UPC	§3-203	Priority Among Persons Seeking Appointment as Personal Representative
UPC	§3-204	Demand for Notice of Order or Filing Concerning Decedent's Estate
UPC	§3-301	Informal Probate or Appointment Proceedings; Application; Contents
UPC	§3-302	Informal Probate; Proof and Findings Required
UPC	§3-306	Informal Probate; Notice Requirements

UPC	§3-307	Informal Appointment Proceedings; Delay in Order; Duty of Registrar; Effect of Appointment
UPC	§3-401	Formal Testacy Proceedings; Nature; When Commenced
UPC	§3-402	Formal Testacy or Appointment Proceedings; Petition; Contents
UPC	§3-406	Formal Testacy Proceedings; Contested Cases
UPC	§3-407	Formal Testacy Proceedings; Burdens in Contested Cases
UPC	§3-409	Formal Testacy Proceedings; Order; Foreign Wills
UPC	§3-414	Formal Proceedings Concerning Appointment of Personal Representative
UPC	§3-603	Bond Not Required Without Court Order, Exceptions
UPC	§3-604	Bond Amount; Security; Procedure; Reduction
UPC	§3-608	Termination of Appointment; General
UPC	§3-609	Termination of Appointment; Death or Disability
UPC	§3-610	Termination of Appointment; Voluntary
UPC	§3-611	Termination of Appointment by Removal; Cause; Procedure
UPC	§3-703	General Duties; Relation and Liability to Persons Interested in Estate; Standing to Sue
UPC	§3-704	Personal Representative to Proceed Without Court Order; Exception
UPC	§3-705	Duty of Personal Representative; Information to Heirs and Devisees
UPC	§3-706	Duty of Personal Representative; Inventory and Appraisal
UPC	§3-707	Employment of Appraisers
UPC	§3-708	Duty of Personal Representative; Supplementary Inventory
UPC	§3-709	Duty of Personal Representative; Possession of Estate
UPC	§3-710	Power to Avoid Transfers
UPC	§3-711	Powers of Personal Representative; In General
UPC	§3-715	Transactions Authorized for Personal Representative; Exceptions
UPC	§3-1101	Effect of Approval of Agreements Involving Trusts,

		Inalienable Interests, or Interests of Third Persons
Rest. (Third) of Prop.: Wills	§4.1 cmt. j & k	Revocation of Wills

Relevant Texas Code Sections		
Tex. Est.	§22.017	Independent Executor
Tex. Est.	§22.018	Interested Person; Person Interested
Tex. Est.	§33.001	Probate of Wills and Granting of Letters Testamentary and of Administration
Tex. Est.	§33.004(a)	Heirship Proceedings
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
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.	§301.002	Period for Filing Application for Letters Testamentary or of Administration

THURSDAY, OCTOBER 24, 2019 (Class 29)

Chapter 15. Administration of the Probate Estate

- I. Duties Associated with Creditors
- J. Important Matters to be Addressed before Finalizing the Estate
- K. Closing the Estate—The Final Accounting and The Final Distribution
- L. Ethical Issues in Estate Administration

Inventory, Appraisement & List of Claims, Setting Aside the Homestead and Exempt Property in Texas, Family Allowance, Creditor Claims, Sales/Leases, Accountings, & Closing the Estate in Texas

Read: pp. 773-790 and 792-802 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 Uniform Code Sections		
UPC	§1-201(23)	Interested Person
UPC	§3-715(22) & (17)	Transactions Authorized for Personal Representative; Exceptions
UPC	§3-801	Notice to Creditors
UPC	§3-803	Limitations on Presentation of Claims
UPC	§3-804	Manner of Presentation of Claims
UPC	§3-805	Classification of Claims
UPC	§3-806	Allowance of Claims
UPC	§3-807	Payment of Claims
UPC	§3-811	Counterclaims
UPC	§3-813	Compromise of Claims
UPC	§3-814	Encumbered Assets
UPC	§2-401	Applicable Law
UPC	§2-402	Homestead Allowance
UPC	§2-403	Exempt Property
UPC	§2-404	Family Allowance
UPC	§6-102 & cmts.	Liability of Nonprobate Transferees for Creditor Claims and Statutory Allowances
UPC	§3-1001	Formal Proceedings Terminating Administration; Testate or Intestate; Order of General Protection
UPC	§3-1002	Formal Proceedings Terminating Testate Administration; Order Construing Will Without

		Adjudicating Testacy
UPC	§3-1003	Closing Estates; By Sworn Statement of Personal Representative
UPC	§3-1005	Limitations on Proceedings Against Personal Representative
UPC	§3-1008	Subsequent Administration
UPC	§3-902	Distribution; Order in Which Assets Appropriated; Abatement
UPC	§3-915	Distribution to Person Under Disability

Relevant Texas Code Sections		
Tex. Const.	Article XVI, §50	Homestead; protection from forced sale; mortgages, trust deeds and liens
Tex. Prop.	§42.001	Personal Property Exemption
Tex. Prop.	§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.	§353.101	Family Allowance
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.	§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

WEEK 11

MONDAY, OCTOBER 28, 2019 (Class 30)

****Midterm Exam Debrief**

**Listen to the following podcast in preparation for trusts:

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

****Begin Trusts****

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.

TUESDAY, OCTOBER 29, 2019 (Class 31)

Chapter 8. Creation of Trusts

A. Introduction

B. Creation—Elements of a Trust

Read: pp. 375-412 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)

****IN CLASS: Trusts Vocabulary Quiz** (see terminology above and Uniform Trust Code §103)

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

Relevant Uniform Code Sections		
UTC	§102	Scope
UTC	§103 & cmt.	Definitions
UTC	§401	Method of Creating Trust
UTC	§402	Requirements for Creation
UTC	§402(a)(5) & cmt.	Requirements for Creation
UTC	§404	Trust Purposes
UTC	§405	Charitable Purposes
UTC	§601	Capacity of Settlor of Revocable Trust
UTC	§602	Revocation or Amendment of Revocable Trust
UTC	§701	Declining or Accepting Trusteeship
UTC	§704	Vacancy in Trusteeship; Appointment of Successor
UTC	§705	Resignation of Trustee
Rest. (Third) of	§2 & cmt. g, i	Definition of Trust

Trusts	& b	
Rest. (Third) of Trusts	§3 & cmt. a, c, & d	Settlor, Trust Property, Trustee, and Beneficiary
Rest. (Third) of Trusts	§4	Terms of the Trust
Rest. (Third) of Trusts	§7 & cmt. g	Nature and Definition of Resulting Trusts
Rest. (Third) of Trusts	§8	When Express Trust Fails in Whole or in Part
Rest. (Third) of Trusts	§9 & cmt. d	Purchase-Money Resulting Trusts
Rest. (Third) of Trusts	§10(a), (b), & (c) & cmt. g	Method of Creating Trust
Rest. (Third) of Trusts	§11 cmt. c	Capacity of Settlor to Create Trust
Rest. (Third) of Trusts	§13 & cmts. a-d	Intention to Create Trust
Rest. (Third) of Trusts	§17	Creation of Testamentary Trusts
Rest. (Third) of Trusts	§18 & cmt. a & e	Secret Trusts
Rest. (Third) of Trusts	§19	“Pour-Over” Dispositions by Will
Rest. (Third) of Trusts	§20	Validity of Oral Inter Vivos trusts
Rest. (Third) of Trusts	§22	Writing Required by Statute of Frauds
Rest. (Third) of Trusts	§28	Charitable Purposes
Rest. (Third) of Trusts	§29, cmt. e, j & k	Purposes and Provisions that are Unlawful or Against Public Policy
Rest. (Third) of Trusts	§31	Trust Does Not Fail for Lack of Trustee
Rest. (Third) of Trusts	§32	Capacity of Individual to Be Trustee
Rest. (Third) of Trusts	§33	Corporation and Other Entities as Trustees
Rest. (Third) of Trusts	§36	Resignation of Trustee
Rest. (Third) of Trusts	§37	Removal of Trustee

Trusts		
Rest. (Third) of Trusts	§40 & cmt. b, e	Any Property May be Trust Property
Rest. (Third) of Trusts	§41	Expectancies; Nonexistent Property Interests
Rest. (Third) of Trusts	§42, cmt. a	Extent and Nature of Trustee's Title
Rest. (Third) of Trusts	§62 cmts.	Rescission and Reformation
Rest. (Third) of Trusts	§69	Merger

THURSDAY, OCTOBER 31, 2019 (Class 32)

Chapter 8. Creation of Trusts

B. Creation—Elements of a Trust

C. Revocable Trusts

Read: pp. 412-438

Relevant Uniform Code Sections		
UPC	§2-511	Testamentary Additions to Trusts
UPC	§2-903	Reformation
UTC	§105	Default and Mandatory Rules
UTC	§402(a)(3)(A)	Requirements for Creation
UTC	§407	Evidence of Oral Trust
UTC	§408	Trust for Care of Animal
UTC	§409	Noncharitable Trust Without Ascertainable Beneficiary
UTC	§413	Cy Pres
UTC	§601	Capacity of Settlor of Revocable Trust
UTC	§603(a)	Settlor's Powers; Powers of Withdrawal
UTC	§1008	Exculpation of Trustee
Rest. (Third) of Trusts	§4, cmts. d-g	Terms of the Trust
Rest. (Third) of Trusts	§18 & cmt. a & c	Secret Trusts

Rest. (Third) of Trusts	§22 & cmt. a & b	Writing Required by Statute of Frauds
Rest. (Third) of Trusts	§23	Signing Requirement: When and By Whom?
Rest. (Third) of Trusts	§26	Tentative ("Totten" or Bank Account) Trusts
Rest. (Third) of Trusts	§28	Charitable Purposes
Rest. (Third) of Trusts	§42 cmt. a	Extent and Nature of Trustee's Title
Rest. (Third) of Trusts	§43	Persons Who May Be Beneficiaries
Rest. (Third) of Trusts	§44 & cmt. a & b	Definite-Beneficiary requirement
Rest. (Third) of Trusts	§45 & cmt. c & e	Members of a Definite Class as Beneficiaries
Rest. (Third) of Trusts	§47 & cmt. a, d & e	Trusts for Noncharitable Purposes
Rest. (Third) of Trusts	§48, cmt. a	Beneficiaries Defined; Incidental Benefits
Rest. (Third) of Trusts	§49 & cmt. b & c	Extent of Beneficiaries' Interests
Rest. (Third) of Trusts	§55, cmt. h	Transfers at Death
Rest. (Third) of Trusts	§67 & cmt. b	Failure of Designated Charitable Purpose; The Doctrine of Cy Pres

WEEK 12

MONDAY, NOVEMBER 4, 2019 (Class 33)

Chapter 9. Fiduciary Duties

- A. Introduction
- B. Duty of Obedience
- C. Duty of Loyalty
- D. Duty to Inform and Report
- E. Duty of Impartiality
- F. Duty of Care or Prudence

Read: pp. 439-466

Relevant Uniform Code Sections		
UTC	§303	Representation by Fiduciaries and Parents
UTC	§304	Representation by Person Having Substantially Identical Interest
UTC	§801	Duty to Administer Trust
UTC	§802	Duty of Loyalty
UTC	§803	Impartiality
UTC	§806	Trustee's Skills
UTC	§809	Control and Protection of Trust Property
UTC	§810	Recordkeeping and Identification of Trust Property
UTC	§811	Enforcement and Defense of Claims
UTC	§812	Collecting Trust Property
UTC	§813	Duty to Inform and Report
Rest. (Third) of Trusts	§38, cmt. d	Trustee's Compensation and Indemnification
Rest. (Third) of Trusts	§76	Duty to Administer the Trust in Accordance with Its Terms and Applicable Law
Rest. (Third) of Trusts	§77 & 77(2) & 77(3)	Duty of Prudence
Rest. (Third) of Trusts	§78 & cmt. e(2)	Duty of Loyalty
Rest. (Third) of Trusts	§85 & cmt. c-f	Extent of trustees' Powers
Rest. (Third) of Trusts	§86(1)	Fiduciary Duties and the Exercise of Trustee Power
Rest. (Third) of Trusts	§88	Power to incur and Pay Expenses

TUESDAY, NOVEMBER 5, 2019 (Class 34)

Chapter 9. Fiduciary Duties

- F. Duty of Care or Prudence
- G. Allocation of Principal and Income
- H. Remedies for Breach of Trust
- I. Removal of Trustees
- J. Trust Protectors and Powers to Direct

Read: pp. 465-492

Relevant Uniform Code Sections		
UPIA	§1	Prudent Investor Rule
UPIA	§2	Standard of Care; Portfolio Strategy; Risk and Return Objectives
UPIA	§3	Diversification
UPIA	§7	Investment Costs
UPIA	§8	Reviewing Compliance
UPIA	§9	Delegation of Investment and Management Functions
UTC	§704	Vacancy in trusteeship; Appointment of Successor
UTC	§706	Removal of Trustee
UTC	§804	Prudent Administration
UTC	§807	Delegation by Trustee
UTC	§809	Control and Protection of Trust Property
UTC	§810	Recordkeeping and Identification of Trust Property
UTC	§1001	Remedies for Breach of Trust
UTC	§1002	Damages for Breach of Trust
UTC	§1003	Damages in Absence of Breach
UTC	§1008	Exculpation of Trustee
UTC	§1010	Limitation on Personal Liability of Trustee
UTC	§1012	Protection of Person Dealing with Trustee
Uniform Prin. and Income Act	§103	Fiduciary Duties; General Principles
Uniform Prin. and Income Act	§104	Trustee's Power to Adjust
Rest. (Third) of Trusts	§36, cmt. a	Resignation of Trustee
Rest. (Third) of Trusts	§38, cmt. b & d	Trustee's Compensation and Indemnification
Rest. (Third) of Trusts	§76	Duty to Administer the Trust in Accordance with its Terms and Applicable Law
Rest. (Third) of Trusts	§77, cmt. b(2)	Duty of Prudence
Rest. (Third) of Trusts	§80 & cmt. c & e	Duty with Respect to Co-Trustee

Rest. (Third) of Trusts	§83	Duty to Keep Records and Provide Reports
Rest. (Third) of Trusts	§86	Fiduciary Duties and the Exercise of Trustee Powers
Rest. (Third) of Trusts	§90 & cmt. g, l-o	General Standard of Prudent Investment

THURSDAY, NOVEMBER 7, 2019 (Class 35)

Chapter 9. Fiduciary Duties cont'd

WEEK 13

MONDAY, NOVEMBER 11, 2019 (Class 36)

Chapter 10. 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. 493-519

Relevant Uniform Code Sections		
UTC	§501	Rights of Beneficiary's Creditor or Assignee
UTC	§504	Discretionary Trusts; Effect of Standard
UTC	§814 & cmt.	Discretionary Powers; Tax Savings
Rest. (Third) of Trusts	§49 & cmt. b	Duty to Keep Records and Provide Reports
Rest. (Third) of Trusts	§50 & cmt. b, (d)(2)-(3) & e	Enforcement and Construction of Discretionary Trusts
Rest. (Third) of Trusts	§51	Voluntary Transfers Inter Vivos
Rest. (Third) of Trusts	§52 cmt. a	Intention to Transfer
Rest. (Third) of Trusts	§53, cmt. a	Need for a Writing
Rest. (Third) of Trusts	§54	Effect of Successive Transfers
Rest. (Third) of Trusts	§56	Rights of Beneficiary's Creditors

Rest. (Third) of Trusts	§58, 58(1) & cmt.(d)(2)	Spendthrift Trusts; Validity and General Effect
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TUESDAY, NOVEMBER 12, 2019 (Class 37)

Chapter 10. Rights of Beneficiaries and Creditors in Trust Property; Modification and Termination of Trusts

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

D. Modification and Termination of Trusts

Read: pp. 519-555 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 Uniform Code Sections		
UTC	§103(16)	Spendthrift Provision
UTC	§305	Appointment of Representative
UTC	§402	Requirements for Creation
UTC	§410	Modification or Termination of Trust; Proceedings for Approval or Disapproval
UTC	§411	Modification or Termination of Noncharitable Irrevocable Trust by Consent
UTC	§412	Modification or Termination Because of Unanticipated Circumstances or inability to Administer Trust Effectively
UTC	§414	Modification or Termination of Uneconomic Trust
UTC	§415	Reformation to Correct Mistakes
UTC	§416	Modification to Achieve Settlor's Tax Objectives
UTC	§417	Combination and Division of Trusts
UTC	§502	Spendthrift Provision
UTC	§503	Exceptions to Spendthrift Provisions
UTC	§506	Overdue Distribution
UTC	§505(a)	Creditor's Claims Against Settlor
UTC	§602	Revocation or Amendment of Revocable Trust
Rest. (Third) of Trusts	§58, 58(2) & cmt. d(2)	Spendthrift Trusts; Validity and General Effect
Rest. (Third) of Trusts	§59(a), (b) & cmt. a(1) & d	Spendthrift Trusts: Exception for Particular Types of Claims

Rest. (Third) of Trusts	§61	Completion of Period or Purpose for Which Trust Was Created
Rest. (Third) of Trusts	§62, cmt. c & b	Rescission and Reformation
Rest. (Third) of Trusts	§63 & cmt. i	Power of Settlor to Revoke or Modify
Rest. (Third) of Trusts	§65 & cmt. e	Termination or Modification by Consent of Beneficiaries
Rest. (Third) of Trusts	§67	Failure of Designated Charitable Purpose
Rest. (Third) of Trusts	§69 & cmt. b	Merger
UTDA (Decanting)	§4	Fiduciary Duty
UTDA (Decanting)	§7	Notice: Exercise of Decanting Power
UTDA (Decanting)	§9	Court Involvement
UTDA (Decanting)	§11	Decanting Power under Expanded Distributive
UTDA (Decanting)	§12	Decanting Power under Limited Distributive Discretion
UTDA (Decanting)	§16	Change in Compensation
UTDA (Decanting)	§17	Relief from Liability and Indemnification

THURSDAY, NOVEMBER 14, 2019 (Class 38)

Chapter 10. Rights of Beneficiaries and Creditors cont'd

WEEK 14

MONDAY, NOVEMBER 18, 2019 (Class 39)

Chapter 11. Charitable Trusts

- A. Charitable Purpose
- B. Charitable—Not Benevolent
- D. Modification of Charitable Trusts
- E. Enforcement of Charitable Trusts

Read: pp. 809-842 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 Uniform Code Sections		
UTC	§103(4)	Charitable Trust
UTC	§405	Charitable Purposes
UTC	§412	Modification or Termination because of Unanticipated Circumstances or Inability to Administer Trust Effectively
UTC	§413	Cy Pres
Rest. (Third) of Trusts	§8	When Express Trust Fails in Whole or in Part
Rest. (Third) of Trusts	§28 & cmt. a-e	Charitable Purposes
Rest. (Third) of Trusts	§29	Purposes and Provisions that Are Unlawful or against Public Policy
Rest. (Third) of Trusts	§67	Failure of Designated Charitable Purpose: The Doctrine of Cy Pres

TUESDAY, NOVEMBER 19, 2019 (Class 40)

Chapter 11. Powers of Appointment and the Rule Against Perpetuities

- A. What Is a Power of Appointment?
- B. Creating a Power of Appointment
- C. Exercising a Power of Appointment
- D. Release, Failure to Exercise, and an Express Statement of Nonexercise
- E.

Read: pp. 557-592

Relevant Uniform Code Sections		
UPC	§2-603(b)(5)	
UPAA (Powers of Appointment)	§201	Creation of Power of Appointment
UPAA (Powers of Appointment)	§301	Requisites for Exercise of Power of Appointment
UPAA (Powers of Appointment)	§302	Intent to Exercise: Determining Intent from Residuary Clause
UPAA (Powers of Appointment)	§304	Substantial Compliance with Donor-Imposed Formal Requirement
UPAA (Powers of Appointment)	§306	Appointment to Deceased Appointee or Permissible Appointee's Descendant

UPAA (Powers of Appointment)	§308	Selective Allocation Doctrine
UPAA (Powers of Appointment)	§309	Capture Doctrine: Disposition of Ineffectively Appointed Property Under General Power
UPAA (Powers of Appointment)	§310	Disposition of Unappointed Property under Released or Unexercised General Power
UPAA (Powers of Appointment)	§311	Disposition of Unappointed Property under Released or Unexercised Nongeneral Power
UPAA (Powers of Appointment)	§403	Method of Release
UPAA (Powers of Appointment)	§405	Power to Contract: Power of Appointment Not Presently Exercisable
UPAA (Powers of Appointment)	§501	Creditor Claim: General Power Created by Powerholder
UPAA (Powers of Appointment)	§503	Power to Withdraw
UTC	§505	Creditor's Claims against Settlor
Rest. (Third) of Prop.: Wills	§17.1, cmt. g	Power of Appointment Defined
Rest. (Third) of Prop.: Wills	§18.1	Power of Appointment: How Created
Rest. (Third) of Prop.: Wills	§19.4	Donee's Residuary Clause
Rest. (Third) of Prop.: Wills	§19.12	Appointment to Deceased Appointee or Permissible Appointee's Descendants; Application of Antilapse Statute
Rest. (Third) of Prop.: Wills	§19.19	Allocation of Property Appointed in Document that Also Disposes of Owned Property
Rest. (Third) of Prop.: Wills	§19.21	Disposition of Ineffectively Appointed Property under General Power
Rest. (Third) of Prop.: Wills	§19.22	Disposition of Unappointed Property under Lapsed General Power
Rest. (Third) of Prop.: Wills	§20.3, cmt. d	Methods of Releasing a Releasable Power
Rest. (Third) of Prop.: Wills	§22.3	Creditors of the Donee—General Power Created by Someone Other Than the Donee

THURSDAY, NOVEMBER 21, 2019 (Class 41)

Chapter 11. Powers of Appointment and the Rule Against Perpetuities

F. Contingent Future Interests and the Rule Against Perpetuities

Read: pp. 593-600

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

Relevant Uniform Code Sections		
UPC	§2-901	Statutory Rule Against Perpetuities
UPC	§2-903	Reformation
UTC	§2-904	Exclusions from Statutory Rule Against Perpetuities
Rest. (Third) of Prop.: Wills	§27.1	Statement of the Rule Against Perpetuities

WEEK 15

MONDAY, NOVEMBER 25, 2019 (Class 42)

**Legal Concepts Revisited

****DUE: Current Event Summary (Hard Copy Due at Start of Class)**

TUESDAY, NOVEMBER 26, 2019 (Class 43)

**Legal Concepts Revisited

IMPORTANT DATES

VOCABULARY QUIZZES

Intestacy & Wills Vocabulary Quiz Wednesday, August 27 (in class)
Trust Vocabulary Quiz Tuesday, October 29 (in class)

COURT OBSERVATION

Probate Form Due Thursday, November 21 (hard copy in class)

CURRENT EVENT SUMMARY

Summary Due Monday, November 25 (hard copy in class)

MIDTERM EXAM

Tuesday, October 15, 2019 3:00-4:10 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.’” – 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>