

WILLS, TRUSTS & ESTATES

LAW 650, SEC. 1

SPRING SEMESTER 2023

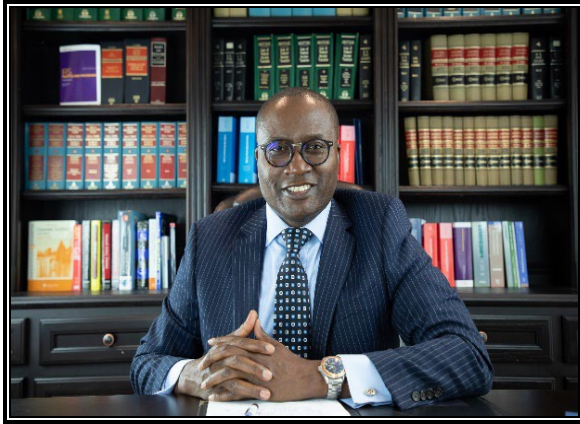
(UPDATED JANUARY 7, 2023)

PROFESSOR AITSEBAOMO

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THE PROFESSOR



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LOCATION: 236C

OFFICE HOURS: MWR 4.30PM -6PM OR BY APPT

ACKNOWLEDGMENT BY STUDENT

By signing up for and attending this class, you acknowledge that you have read and understood the content of this syllabus. If you have any questions, please contact me at your earliest convenience.

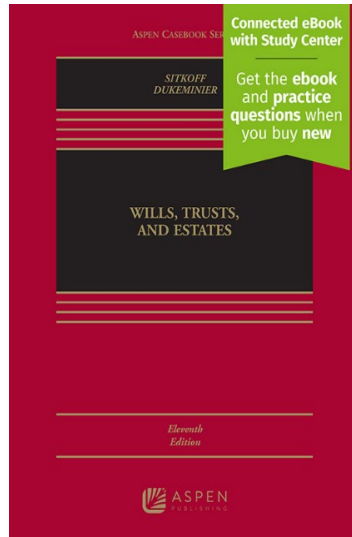
NOT A CONTRACT

This syllabus is not a contract. Accordingly, it is subject to change at any time with or without notice.

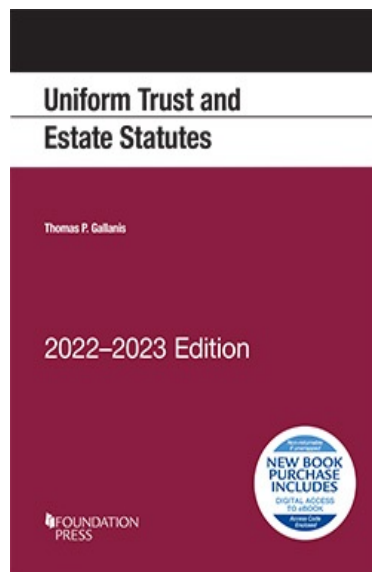
COURSE BOOKS & MATERIAL

Required Textbooks:

1. WILLS, TRUSTS, AND ESTATES, by SITKOFF, DUKEMINIER,
Aspen Casebook Series, Eleventh Edition.
Available at TSU bookstore and online.



2. Uniform Trust and Estate Statutes, 2022-2023 Edition (or newer) by Thomas P. Gallanis
West Academic ISBN 978-1-63659-9564



COURSE DESCRIPTION & OBJECTIVE

DESCRIPTION:

This course covers, in scope, the various types of wills, execution of wills, the rules governing changes in beneficiaries after the will is executed, wills contests, revocation of wills, intestacy, probate administration, trusts, and trust administration.

OBJECTIVE:

The objective of this course is to introduce law students to the fundamentals of succession planning by learning the rules and acquiring the requisite knowledge and drafting skills necessary for utilizing planning instruments, such as wills and trusts, to effect family wealth transmission to heirs or beneficiaries.

STUDENT LEARNING OUTCOMES

At the conclusion of this course, students should have a working knowledge of the various types of wills, their execution and revocation, issues relating to changes in beneficiaries after will is executed, the procedures and grounds for contesting a will, intestacy, probate administration, trusts and trust administration.

To evaluate the students' progress in understanding the subject matter, the professor utilizes both formative and summative assessments. The goal of the assessments utilized in this course is to evaluate the student's critical thinking skills, test the student's ability to (1) identify legal issues raised by a hypothetical factual examination question; (2) separate material which is relevant from that which is not; (3) present a reasoned analysis of the relevant issues in a clear, concise, and well-organized composition; and (4) demonstrate an understanding of the fundamental legal principles relevant to the answer supplied to the issues raised by the factual examination question.

To that end, there will be two summative examinations in this course - a mid-term examination, valued at 20 percent of final letter grade and a cumulative final examination, valued at 70 percent of your final letter grade.

NOTE ABOUT MULTISTATE ESSAY EXAMINATION ADMINISTERED ON THE UBE.

Wills, Trusts, and Estates is featured on the Multistate Essay Examination (MEE) portion of the Uniform Bar Examination (UBE) administered by the NCBE. There is a total of about 12 MEE subject areas, including Decedents' Estates; Trusts, and Future Interests, that an examinee is required to prepare for when taking the UBE. However, the actual MEE questions on each administration consists of only 6 of the 12 subject areas and is administered on the Tuesday before the last Wednesday in February and July of each year. Accordingly, there is a chance Wills and Trust may not appear on a given exam.

The primary distinction between the MEE and the MBE is that the MEE requires the examinee to demonstrate an ability to communicate effectively in writing.

GRADING

Your syllabus reflects the reading assignments for each class. You are to read all assignments, including the cases, footnotes, and questions, before coming to class, and be ready to debrief the cases, if, and when, called upon by your professor.

Mid-Term: March 7, 2023.	20%
Cumulative Final Exam: 9AM FRIDAY MAY 5 th 2023, RM 106*	70%
<u>Possible</u> in-Class Practice Quizzes/Practice Problems at Professor's discretion	*Extra credit points may be given at <u>Professor's discretion only.</u>
Attendance and Participation, respectively, each would make up 5% of your grade.	10%

The grading and letter grades for this course will be computed using the TMSL 2nd year curve.

*Check the Law School final exam schedule, as updated, for any changes.

ACCOMMODATIONS

PLEASE REFER TO THE STUDENT ACCOMMODATIONS HANDBOOK FOR SPECIFIC PROCEDURES.

Title IX information for course syllabus

Texas Southern University is committed towards encouraging and supporting a welcome inclusive university community where all community members enjoy a community free from sex discrimination, harassment and violence. As a result, you should know that university faculty members and staff are required to notify the University Title IX Coordinator of any instances of sex discrimination and harassment, sexual violence, dating violence, domestic violence, or stalking. Sharing this information ensures that those harmed are provided support resources. What this means is that as your professor, I am required to report any incidents that are directly disclosed to me, or of which I am somehow made aware. The University's Counseling Center is available to you if you want to speak with someone confidentially. Please visit the University's Counseling Center's website www.tsu.edu/ucc for additional information.



THURGOOD MARSHALL SCHOOL OF LAW

Covid 19 Information Sheet

HEALTH AND SAFETY ON CAMPUS

1. Students are expected to continuously self-screen for the symptoms of COVID-19. The Center for Disease Control has a list of COVID-19 symptoms: <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>. If you begin to show symptoms, notify your professor and leave the classroom. Limit contact with other individuals on campus and contact your healthcare provider for further guidance.
2. If, before coming to campus, a student starts exhibiting any symptoms of COVID-19 or does not feel well, the student should not attend class in person. The student should immediately notify the Assistant Dean for Student Development (virgie.mouton@tmslaw.tsu.edu) and attend classes online.
3. Students who have been sick with COVID-19 symptoms, tested positive for COVID-19, or have been potentially exposed to someone with COVID-19 should attend classes online until they are cleared by their healthcare provider. The following is taken from the TSU & Coronavirus FAQs, <http://www.tsu.edu/about/administration/marketing-and-communications/coronavirus/faqs.html>:

Those who have recently traveled internationally or believe they have been exposed to the virus and are experiencing influenza-like illness, with fever greater than 100.3, and symptoms, including cough, body aches, severe sore throat or runny nose, should seek medical attention, especially if symptoms worsen.

Students should contact TSU Health Services (713-313-7173) and identify themselves as having flu-like symptoms to obtain further recommendations and guidance. Students should also consult with their regular health care provider or seek treatment at a local health center if they are overseas. Please call ahead to your health care provider to notify them of the reason for your visit.

For additional information about COVID-19, including signs and symptoms, transmission and risk of exposure, and what to do if you are exhibiting symptoms, please refer to the resources section. The CDC's website and Texas Department of State Health Services (DSHS) will also issue guidance for those planning to travel or who have recently returned.
4. While on campus and in classrooms, students should observe the rules for social distancing, social health etiquette, and general cleanliness.
 - a. Students should practice hand hygiene, cough etiquette, and general cleanliness.

- b. Students should maintain at least 6 feet separation in all directions from other individuals.
- c. Face coverings (over the nose and mouth) are required for all students. Students without a face covering will not be allowed to enter the classroom. Students with an approved exemption and who notify their professor before the start of class may be allowed to wear a face shield instead of a face mask.
- d. Students should wash or disinfect their hands before each class and after any physical interaction with other persons in the classroom.
- e. Students should maintain classroom cleanliness. Students should create a clean classroom environment by putting away unnecessary personal items and cleaning their seating area intermittently.
- f. Students should not expect to enter the Law Building on a day other than the designated day for in-person attendance for an enrolled course. Entry will be permitted only if administration can determine that the maximum occupancy for COVID-19 social distance protocol has not been exceeded.
- g. Students who do not comply with the rules for social distancing, social health etiquette, and general cleanliness may be subject to discipline up to expulsion from law school.

ATTENDANCE POLICY

- 5. Students are required to attend classes consistent with the format of the enrolled course.
 - a. Hybrid – instruction for courses in this format is delivered in person and simultaneously online. Enrolled students are divided into groups and required to attend weekly in-person classes on the weekday(s) predetermined by administration for the designated group. Students may only attend in-person classes on the administration-determined day to ensure that all enrolled students are guaranteed a physical seat for the class. Other class days for the week are to be attended online. Students who have COVID-related health and safety concerns in attending in-person classes must obtain a remote-instruction waiver from the Office of Student Affairs. The waiver can be requested for the entire semester or temporary, based upon the personal circumstance of the affected student.
 - b. Online – instruction for courses in this format is delivered 100% online.
 - c. For the 100% online course and the hybrid course online instruction component, both the American Bar Association and the Law School rules obligate the professor to obtain assurance that the person who logs into the course online, participates in class, takes quizzes and exams, and engages in collaborative exercises, is the student enrolled in the course. Without being limited to the following methods of attendance verification, professors may require attendance to be contingent upon confirmation of identity via webcam or require webcams to remain on for the entire class period.

ATTENDANCE & CLASS PREPARATION PROFESSIONALISM

Class Attendance: Mandatory

Class meets TWR from 3PM – 4:10PM in RM 208. A student who misses more than the requisite number of absences, as prescribed in the Students' Rules & Regulations, shall be subject to a grade reduction. You do not have to inform me of your absences or give any explanation for them. I may give no other notice to you that you are in danger of a grade reduction.

Class Preparation:

Prior to each class you are required to prepare for the class by reading and understanding all of the assigned materials for that class and be prepared to answer any hypothetical questions posed by the professor regarding the assigned materials

Professionalism

All students are required to stay in class (or signed in on-line), unless for restroom breaks or as otherwise directed, for the duration of each class period. Students are not permitted to sign in their names as present, but then leave the class. No side chats including blackboard chats, talks, or other distracting activities of any kind is permitted while professor is teaching. A student who wishes to speak during class may raise his or her hand indicating such, and then proceed to speak when acknowledge to do so by the professor. Students who violate these rules may be asked to leave the class or log-off, at the election of the professor.

POLICIES & PROCEDURES

Student Rules:

It is the responsibility of each student to know the rules and regulations of Thurgood Marshall School of Law. You can access the Rules and Regulations Handbook on TMSL's website, www.tsulaw.edu, and clicking on the **"Students" tab, then "Student Affairs," "Student Rules and Regulations," and finally "Student Rules and Regulations 2023-2024" as amended.**



THURGOOD MARSHALL SCHOOL OF LAW

TEXAS SOUTHERN UNIVERSITY ACADEMIC CALENDAR 2022 – 2023

SPRING SEMESTER 2023

SPRING SEMESTER 2023 (SEVENTY DAYS OF CLASSES)

School Opens	Monday	January 2, 2023
First Day of Class	Monday	January 9,
2023 Last Day to ADD/DROP	Wednesday	January 11,
2023 M L K Holiday (No Classes)	Monday	January 16,
2023 Purge of all unpaid course selections	Monday	February 2,
2023 Mid Term Examinations	Mon – Fri	March 6 - 10,
2023		
Spring Break	Mon – Fri	March 13 – 17, 2023
Good Friday (No Classes)	Friday	April
7, 2023 Last Day to Drop a Class	Monday	April
10, 2023 Last Day of Classes	Wednesday	April
26, 2023 First Year Professors' Grades Due	Wednesday	April
26, 2023		
Reading Period (No Classes)	Thur – Sun	April 27 – April
30, 2023 Final Examinations	Mon- Fri	May 1 – May 12,
2023		
Hooding Ceremony	Friday	May 12, 2023
Commencement Exercises	Saturday	May 13, 2023

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

READING ASSIGNMENTS

I. EXECUTION OF WILLS

#1. What is a will?

- A. UPC §1-201(57)
- B. Wills: Formalities and Forms
- C. Sitkoff/Dukeminier, pages 143-144.

II. TYPES OF WILLS

#2. Attested Wills – Execution UPC §2-502

- A. The core formalities. Sitkoff/Dukeminier, pages 144-146
- B. Requirements to make will.
 - 1. Who may make a Will: Age. UPC §2-501
 - 2. Testamentary capacity, Sitkoff/Dukeminier, pages 272
 - i. Mental Capacity (must be of sound mind). Sitkoff/Dukeminier, pages 272
 - ii. *In re Wrights's Estate*, Sitkoff/Dukeminier, pages 273-277
 - iii. *Wilson v. Lane*. Sitkoff/Dukeminier, pages 278-281.
 - iv. Insane delusion test, Sitkoff/Dukeminier, pages 281-282.
 - v. *In re Strittmater's Estate*, Sitkoff/Dukeminier, pages 282-284.
 - vi. *Breedon v. Stone*, Sitkoff/Dukeminier, pages 284-289
- C. Writing. UPC §2-502(a)(1)

#3 Signature requirement. UPC §2-502(a)(2)

- A. **Testator's & Witnesses.** UPC §2-502(a); Sitkoff/Dukeminier pgs. 146; 159.
 - 1. *Bitetzakis v. Bitetzakis*, Sitkoff/Dukeminier pgs. 156-159.
 - 2. *Taylor v. Holt*, Sitkoff/Dukeminier pgs. 160-162
- B. **The Meaning of "Presence"** Sitkoff/Dukeminier pgs. 151-152.
 - 1. Line of *Sight*.
 - 2. *Read Stevens v. Casdorff*, 508 S.E. 2d 610, excerpt reproduced in Casebook page 151, under *Three Examples (a)*.
- C. **The Conscious Presence Test.** Sitkoff/Dukeminier, pg. 151. Read Comment UPC§2-502(a) Subsection(a)
 - 1. *Nichols v. Rowan* – Supplement
 - 2. *Morris v. Estate of West* – Supplement
 - 3. UPC §2-502(a) dispensation.
- D. **"Presence" during the Covid-19 Pandemic**, Sitkoff/Dukeminier pgs. 153.
 - 1. *Matter of Ryan*, Sitkoff/Dukeminier pgs. 153-155.
- E. **Order of Signing; Subscription & Addition After Signature; Delayed Attestation**, Dukeminier/Sitkoff, pg. 162

#4. Interested witnesses and purging statutes, UPC §2-505(b). Sitkoff/Dukeminier, pages 163-164. See Texas Estates Code §254.002. Supplement.

- #4A. **Model execution ceremony**, Sitkoff/Dukeminier, pages 164-166.
- #4B. **Safeguarding a Will**. Sitkoff/Dukeminier, pages 166-167
- #4C. **Substantial compliance with the wills Act**.
John H. Langbein, Sitkoff/Dukeminier, pages 147-148.
- #4D. **The strict compliance rule**, Sitkoff/Dukeminier, pages 148-149, top.
 1. *In Re Groffman*, Sitkoff/Dukeminier, 2nd Paragraph, pgs. 149 – 151
 2. *In Re Pavlinko's Estate*, Dukeminier/Sitkoff, pgs. 167-170
- #4E. **Ad hoc relief from strict compliance**, Sitkoff/Dukeminier, pages 167. Top.
 - A. *In re Snide*, Sitkoff/Dukeminier, pages 170-173. Read Notes; pgs. 170-174.
- #4F. **The unfulfilled promise of substantial compliance**. Sitkoff/Dukeminier, pgs. 175-178.
- #4G. **Harmless error rule**, Sitkoff/Dukeminier, pages 178-183.
 - A. *In re Estate of Hall*, Sitkoff/Dukeminier, pages 183-187.
- #4H. **Clear and convincing evidence**, Sitkoff/Dukeminier, pages 186-187.
 - A. *In re Probate of Will and Codicil of Macool*, Sitkoff/Dukeminier, pages 187-193.
 - B. Probating an Unsigned Instrument, Sitkoff/Dukeminier, pgs. 193-194
- #4I. **Writings, documents, and electronic or digital wills & Clear and Convincing Evidence**. Sitkoff/Dukeminier, pages 194-196.
 - A. *In re Estate of Horton*, Sitkoff/Dukeminier, pgs. 196-204.
- #4J. **Self-proving affidavit**, UPC §2-504 (b); Sitkoff/Dukeminier, pages 159, Note 2. Texas Estates Code §251.104. Supplement
- #5A. **Holographic wills**. Sitkoff/Dukeminier Pgs. 205-206.
 - A. UPC §2-502(b). Texas Estates Code §251.052, Supplement.
 - B. Dukeminier, pages 198-199.
 - C. Discerning Testamentary Intent, Sitkoff/Dukeminier Pgs. 206.
 - D. *In re Kimmel's Estate*, Sitkoff/Dukeminier, pages 206-210.
- #5B. **Preprinted Will Forms**, Sitkoff/Dukeminier, pg. 211.
 - A. *In re Estate of Gonzalez*, Sitkoff/Dukeminier, pages 211-214.
 - B. Extent of the Testator's Handwriting. Sitkoff/Dukeminier, pages 215-217
- #5C. **Extrinsic Evidence**. *In Re Estate of Kuralt*, Sitkoff/Dukeminier Pgs. 217-224.
- #5D. **Oral wills**
 - A. Not recognized in majority of states UPC §2-502(a)(1)
- #5E **Conditional wills**
 - A. Sitkoff/Dukeminier, pages 211.
 - B. *Eaton v. Brown*, Supplement.
 - C. *In re Pascal's Estate*, Supplement.

III. COMPONENTS OF A WILL

#6. Components of a will. Sitkoff/Dukeminier, pg. 248.

- A. Integration
 - 1. Sitkoff/Dukeminier, pages 248.
 - 2. *In re Estate of Rigsby*, Sitkoff/Dukeminier, pages 248-251.
 - 3. *Estate of Hall*, Supplement
- B. Incorporation by reference. UPC §2-510; 2-513 Exception for tangible personal property.
 - 4. Sitkoff/Dukeminier, pages 252.
 - 5. *Clark v. Greenhalge*, Sitkoff/Dukeminier, pages 252-261.
 - 6. See Wills Requirements: *Texas Estates Code §251.051*, Supplement.
- C. Acts of independent significance. UPC §2.512
 - 7. Sitkoff/Dukeminier, pages 261-262.
 - 8. *Souder v. Johnson*, Supplement.
 - 9. *Texas Estates Code §255.001-.003*.
- D. Republication by codicil. UPC §2-507, Sitkoff/Dukeminier, pages 251-252.

IV. CHANGES IN BENEFICIARIES AFTER WILL IS EXECUTED

#7. Lapsed gifts

- A. Sitkoff/Dukeminier, pgs. 359 - 360.
 - 1. *In re Estate of Russell*, Sitkoff/Dukeminier, pages 360-365.
 - a. Anti-Lapse Statute UPC §2-603; TX Estates Code §§255.153-154
 - 2. Sitkoff/Dukeminier, pages 365-370.
 - 3. *Routolo v. Tietjen*, Sitkoff/Dukeminier, pages 370-376.
- B. Class gifts
 - 1. Sitkoff/Dukeminier, pages 377.
 - 2. *Dawson v. Yucus*, Sitkoff/Dukeminier, pages 378-382.
 - 3. Class closing Rule – Rule of Convenience. Sitkoff/Dukeminier, pages 893-896.
- C. Changes in Property after Execution of Will: Ademption
 - 1. Sitkoff/Dukeminier, pages 382-383.
 - 2. *In re Estate of Anton*, Sitkoff/Dukeminier, pages 383-391.

V. FREEDOM OF DISPOSITION AND RESTRICTIONS ON TESTAMENTARY POWER

#8A. Freedom of Disposition: Dead Hand Control

- A. Introduction: Freedom of disposition, Sitkoff/Dukeminier, pages 1-5
- B. *Shapira v. Union National Bank*, Sitkoff/Dukeminier, pages 5-16.

#8B. Limits on Freedom of Disposition: Protection of the Spouse and Children

- A. Protection of surviving spouse, Sitkoff/Dukeminier, pages 529-538.
- B. Spouse elective share, Sitkoff/Dukeminier, pages 529-538.
- C. *Sulliva v. Burkin*, Sitkoff/Dukeminier, pages 539-545.
- D. Protection of children

- E. Unintentional Disinheritance of a Child -- Pretermitted child statutes
 - 1. Sitkoff/Dukeminier, pages 586-588. UPC §2-302
 - 2. Texas Estates Code §255.051-056.
 - 3. *Gray v. Gray*, Sitkoff/Dukeminier, pages 588-594.
 - 4. *In re Estate of Jackson*, Sitkoff/Dukeminier, pages 595-597.

VI. REVOCATION OF WILLS

#9. Methods of Revocation of wills

- A. UPC §2-507(a)
- B. Revocation by subsequent written instrument, Sitkoff/Dukeminier, pages 224-226.
- C. *Thompson v. Royall*, Sitkoff/Dukeminier, pages 226-229.
- D. Revocation by physical
- E. *Harrison v. Bird*, Sitkoff/Dukeminier, pages 229-233.
- D. Harmless error in revocation
 - 1. *In re Estate of Stoker*, Sitkoff/Dukeminier, pages 233-238.
- E. Revocation by operation of law UPC §2-804(b) Revocation Upon Divorce.
 - 1. Sitkoff/Dukeminier, pages 246-247.
- F. Pour-over will. Sitkoff/Dukeminier, pages 475-476.

VII PROBATE OF WILLS & ADMINISTRATION

#10. The probate process:

- A. Probate terminology Sitkoff/Dukeminier, pages 42-46.
- B. Probate administration, Sitkoff/Dukeminier, pages 46-51.
- C. Can probate be avoided, Sitkoff/Dukeminier, pages 51-53.
- D. Duties to intended beneficiaries, Sitkoff/Dukeminier, pg.54
- E. *Simpson v. Calivas*, Sitkoff/Dukeminier, pages 54-59.
- F. Joint representation
- G. *A.v.B.*, Sitkoff/Dukeminier, pages 59-64.

#11A TEXAS DISTINCTIONS

- A. Period of Admitting Will to Probate, TX Estates Code §256.003, Supplement.
- B. Eligible Applicants for Probate of Will, TX Estates Code §256.051, Supplement.
- C. Contents of Application for Probate of Will, TX Estates Code §256.052, Supplement.
- D. General Proof Requirements, TX Estates Code §256.151-152, Supplement.
- H. Proof of Execution of Attested Wills, TX Estates Code §256.153, Supplement
- I. Proof of Execution of Holographic Wills, TX Estates Code §256.154, Supplement

#11B Presumptions and burden of proof, UPC §§ 3-407; 3-406(1),

- A. **Self-proving affidavit** UPC §§ 2-504; 3-406(2), (3)

VIII. NONPROBATE TRANSFERS & PLANNING FOR INCAPACITY

- #12A. Non probate transfers & planning for incapacities**, Sitkoff/Dukeminier, pg. 33; 449-456.

TEXAS DISTICTIONS

1. **Nontestamentary Transfers**, TX Estates Code §§ 111.051, Supplement
2. Automobile transfers, Trans. Code §501.031, Supplement.
3. Community property survivorship agreement, TX Estates Code §112.152, Supplement.
4. Individual Retirement Accounts, TX Estates Code §111.052, Supplement.
5. Right of Survivorship Agreements, TX Estates Code §111.001, Supplement.

#12B. **Planning for incapacity** Sitkoff/Dukeminier, pages 449-456.

- A. Life insurance, Sitkoff/Dukeminier, pages 480- 481.
- B. *Cook v. Equitable Life Assurance Society*, Sitkoff/Dukeminier, pages 482-486.
- C. Pension and Retirement Plans, Sitkoff/Dukeminier, pages 487-489
- D. *Nunnenman v. Estate of Grubbs*, Sitkoff/Dukeminier, pages 490-494.
- E. *Egelhoff v. Egelhoff*, Sitkoff/Dukeminier, pages 494-498.
- F. Pay-on-death and transfer-on-death contracts, Sitkoff/Dukeminier, pages 500-502.
- G. *Varela v. Bernachea*, Sitkoff/Dukeminier, pages 502-506.
- H. Nonprobate transfer of real property, Sitkoff/Dukeminier, pages 505-506.
- I. Health Care; Advance Directives; Living wills; Durable Power of Attorney; Physician Aid in Dying; Disposition of Body, Sitkoff/Dukeminier, pages 521-527. Texas Health and Safety Code §166.033 Form of Written Directive

IX WILLS CONTESTS

#13A. **Procedures for contesting a will**

- A. Wills: Capacity and Contests, Sitkoff/Dukeminier, pages 271--272.
- B. Time to contest a will, TX Estates Code §55.001, Supplement
- C. Proper parties UPC §1-201(23).
- D. Burden of proof, UPC§ 3-407.

#13B. **Grounds for contesting a will**

- A. Lack of testamentary capacity, Sitkoff/Dukeminier, pg. 272.
- B. Undue influence
 1. What is undue influence? Sitkoff/Dukeminier, pages 289-291.
 2. *In re Estate of Sharis*, Sitkoff/Dukeminier, pages 291-295
 3. Undue influence & Testamentary capacity; Presumptions & burden shifting. Sitkoff/Dukeminier, pgs. 295-297..
 4. *In re Will of Moses*, Sitkoff/Dukeminier, pages 298-302.
 5. *In Re Kaufmann's Will*, Sikoff/Dukeminier pages 302-304.
 6. *Lipper v. Weslow*, Sitkoff/Dukeminier, pages 304-310.
 7. No Contest Clauses, Sitkoff/Dukeminier, pg. 311. UPC§§2-517; 3-905. TX Estates Code §254.005, Supplement.

#14C. **Bequests to Lawyers & Fiduciary Appointments**

- A. Sitkoff/Dukeminier, pages 312-313.
- B. Planning for and avoiding a will contest. Sitkoff/Dukeminier, pages 313-317.

#14D. Duress

- A. Sitkoff/Dukeminier, pages 318
- B. *Latham v. Father Divine*, Sitkoff/Dukeminier, pgs. 318-322.

#14E. Fraud & Intentional Interference

- A. Sitkoff/Dukeminier, pages 323-325.
- B. *Schilling v. Herrera*, Sitkoff/Dukeminier, pgs. 326-332.

X. INTESTACY: AN ESTATE PLAN BY DEFAULT

#15A. Why do so many people die intestate?

- A. Sitkoff/Dukeminier, pages 66-74.
- B. Intestate share of surviving spouse, Sitkoff/Dukeminier, pages 75-78.
- C. Unmarried cohabiting partners, Sitkoff/Dukeminier, pages 77-79.
- D. The Problem of Simultaneous Death, Sitkoff/Dukeminier, pg. 79-92
- E. Intestate share of children: Descendants, Representation, etc. Sitkoff/Dukeminier, pages 82.
- F. Majority rule: Per capital with representation (Modern Per Stirpes). Sitkoff/Dukeminier, pages 83-84.
- G. Strict per stirpes. Sitkoff/Dukeminier, pages 82-83.
- H. Per capital at each generation level: modern trend. Sitkoff/Dukeminier, pgs. 84-86.

XI. TRUSTS, CHARACTERISTICS AND CREATION

#16A. What is a Trust?

- A. Sitkoff/Dukeminier, pages 395-410.

- B. Types of Trusts – Lecture
 - 1. Express trusts
 - 2. Implied trusts

#16B. Creation of trusts

- A. Sitkoff/Dukeminier, pages 411-412.
- B. Elements or Formal Requirements to Create Trust UPC §402
 - 1. Settlor
 - 2. Must have capacity
 - 3. Manifestation of present (not future) intent to create trust
 - i. Manifestation by writing, words, or conduct
 - ii. Precatory language. Sitkoff/Dukeminier, page 413.
 - iii. *Haltom v. Austin Nat'l Bank*, 487 S.W. 2d 201 (Tex Civ. App.—Austin 1972). Supplement.
 - iv. Deed of Trust, Sitkoff/Dukeminier, pg. 413.
 - v. *Jiminez v. Lee*, Sitkoff/Dukeminier, pg. 414-418.
 - vi. Declaratory Trust, Sitkoff/Dukeminier, pg. 418.

- i. *Hebrew University Ass'n v. Nye*, Sitkoff/Dukeminier, pg. 419-422..
- ii. *Hebrew University Ass'n v. Nye*, Sitkoff/Dukeminier, pg. 422-424.
- 4. Trust property. Sitkoff/Dukeminier, page 424
 - i. There must be Trust res, to have a Trust.
 - ii. *Unthank v. Rippstein*, Sitkoff/Dukeminier, pages 424-428.
- 5. Trustee
 - i. Acceptance by Trustee Sitkoff/Dukeminier, pg. 417-418.
- 6. Beneficiary
 - i. Must be ascertainable. UTC §402(a)(3). Sitkoff/Dukeminier, page 428
 - ii. *Clark v. Campbell*, Sitkoff/Dukeminier, pages 428-432.
 - iii. *In re Searight's Estate*. Sitkoff/Dukeminier, pages 433-438.
- 7. Valid trust purpose
 - i. Trust purpose must be legal.
 - ii. *Hunt v. Carroll*, 157 S.W. 2d 429 (Tex. App.-Beaumont 1941). Supplement.
 - iii. *Stewart v. RepublicBank Dallas*, 698 S.W. 2d 786 (Tex. App.-Fort Worth 1985). Supplement.

XII. CHARITABLE TRUSTS

#17B. Distinguishing characteristics of charitable trusts from express private Trusts.

- A. Charitable purpose, for example: Sitkoff/Dukeminier, pages 767-768.
 - 1. Relief of poverty
 - 2. Advancement of education
 - 3. Advancement of religion
 - 4. Promotion of health
 - 5. Performance of government functions.
 - 6. *Shenandoah Valley National Bank v. Taylor*, Sitkoff/Dukeminier, pages 768-775.
 - 7. *Marsh v. Frost Nat'l Bank*, 129 S.W. 3d 174 (Tex. App.—Corpus Christi 2004) – SUPPLEMENT
 - 8. *Taysum v. El Paso Nat'l Bank*, 256 S.W. 2d 172 (Tex. Civ. App.—El Paso 1952) – SUPPLEMENT
 - 9. *Wooten v. Fitz-Gerald*, 440 S.W. 2d 719 (Tex. App. – El Paso 1969) SUPPLEMENT
- B. Enforcement of Charitable Trusts
 - 10. Traditional Law & Settlor Standing, Sitkoff/Dukeminier, pgs. 790-792.
 - 11. *Smithers v. St. Luke's Roosevelt Hospital Center*, Sitkoff/Dukeminier, pgs. 792-805.
 - 12. The state attorney general, as the people's representative, has duty and standing to sue to enforce terms of trust
- C. Applicability of Cy pres doctrine, Sitkoff/Dukeminier, pgs. 776.
 - 13. If setlor's charitable purpose becomes Illegal, Impossible, or Impracticable and so cannot be carried out. Sitkoff/Dukeminier, pgs. 776.

14. *In re Neher's Will*, Sitkoff/Dukeminier, pages 776-781.
15. Wasteful: *San Francisco Chronicle*: The Buck Trust, Sitkoff/Dukeminier, pgs. 781-784.
16. Deviation: *Philadelphia Story*: The Barnes Foundation, Sitkoff/Dukeminier, pgs. 785-788.
17. *In English v. Johnson*, Supplement
18. *Women Christian Temperance Union*, Supplement.

XIII. DISCRETIONARY TRUSTS

- A. **#18A. Discretionary trusts explained. UTC §504(b).** Sitkoff/Dukeminier, pg. 708-709.
 1. *Kolpack v. Torres*, 829 S.W. 2d 913. 915 (Tex. App.—Corpus Christi 1992). Supplement
 - A. Creditor's rights.
 - B. Discretionary Support Trust & Collapsing the Categories, Sitkoff/Dukeminier pg. 707-708.

XIV. SUPPORT TRUSTS

- #18B. Support trust defined. UTC §504**
- A. Support provision: Traditional view, Sitkoff/Dukeminier, pages 706-707.
 - B. *Young v. McCoy*, 54 Cal. Rptr. 3d 847 (App. 2007), Sitkoff/Dukeminier, pg. 706-707, read case under b. Support Trust.
 - C. *State v. Rubion*, 308 S.W. 2d 4 (Tex. 1957). Supplement.

XV. SPENDTHRIFT TRUSTS

- #19A. Spendthrift trust -- Explained. UTC §103(16), §502. See also, Tex. Prop. Code §112.035,** Sitkoff/Dukeminier, pg. 709-712.
- A. Creditor's Claim Against Settlor, UTC§505; TX Prop. Code §112.035(d).
 - B. Exceptions to Spendthrift Provision, UTC §503.; TX Estates Code §112.035(d); Sitkoff/Dukeminier, pg. 712.
 - C. *Scheffel v. Krueger*, Sitkoff/Dukeminier, pg. 713-717.
 - D. *First National Bank of Beaumont v. Howard*, 229 S.W. 2d 781 (Tex. 1950). Supplement.

XVI. HONORARY TRUSTS

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- B. The "Trouble" with Leona Helmsley's Will, Sikkoff/Dukeminier, pg. 438.
- C. Honorary trust defined. UTC§409(1)
- D. Trust for care of animal. UTC §408
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XVII. POWERS & RESPONSIBILITIES OF TRUSTEE

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- B. Duty of loyalty – No self-dealing. UTC §§ 801, 802, 803. Tex. Prop. Code §§113.051
- C. No Further Inquiry Rule, Sitkoff/Dukeminier, pages 611-614.
 - 10. *Hartman v. Hartle*, Sitkoff/Dukeminier, pages 608 -609.
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- D. Conflict of Interest.
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- F. The Principal & Income Problem, *Sikkoff/Dukeminier*, pg. 675-676.
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 - 1. *Davis v. US Bank National Association*, Sitkoff/Dukeminier, pages 759-765.

#19C. Exculpation of Trustee

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#19D. Liability of Trustee to Beneficiary

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