

Trusts & Estates Syllabus

(subject to change)

Spring 2021
T&Th 4:30 p.m–5:45 p.m.
Online (by zoom)
Law 531-3 § 001

Prof. Drennan
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Room 220
Office Hours: Wed 11:30–1:30 pm

Required Materials: Andersen & Bloom, *Fundamentals of Trusts and Estates* (5th ed. 2017)
(published by Carolina Academic Press, LLC).

Writing Assignments: We likely will have two writing assignments during the semester. One writing assignment will be drafting all or part of a Last Will and Testament. The other writing assignment will be a bar exam type exercise. Satisfactory completion of the writing assignments is required to be eligible to take the exam and complete the course.

Attendance Policy: Attendance will be taken at the beginning of class. Under the Rules of the School of Law, a student may not accumulate absences in a course numbering in excess of three times the credit hours for the course during the semester. Thus, because we meet twice a week, the maximum number of absences in this course is six (6) classes. The Rules provide for three options if a student accumulates absences in excess of the allowable number. The professor may recommend that: (a) the student be given the lowest possible grade; (b) the student be given a “W”; or (c) the student be allowed to continue in the course with a grade reduction.

Final Exam & Grading: There will be one exam at the end of the semester. Your grade for the course will be based on the final exam. The final exam period for the law school is from Tuesday, April 27 to Friday, May 7. At the time this syllabus was prepared, the day and time for the exam for this course had not yet been posted.

Course Description: The course deals with problems arising in the administration of estates, including who inherits property when a decedent leaves no will; the formal requirements of wills; will substitutes; will interpretation, various doctrines for distributing property under a will, and restrictions on testamentary freedom. The latter portion of the course considers the nature, creation and termination of trusts; charitable trusts, and fiduciary administration.

EMERGENCY PROCEDURES: *We ask that you become familiar with **Emergency Preparedness @ SIU**. Emergency response information is available on posters in buildings on campus, on the **Emergency Preparedness @ SIU** website, and through text and email alerts. To register for alerts, visit: <http://emergency.siu.edu/>.*

DISABILITY POLICY. *SIU Carbondale is committed to providing an inclusive and accessible experience for all students with disabilities. Disability Support Services coordinates the implementation of accommodations. If you think you may be eligible for accommodations but have not yet obtained approval please contact DSS immediately at 618-453-5738 or disabilityservices.siu.edu. You may request accommodations at any time, but timely requests help to insure accommodations are in place when needed. Accommodations and services are determined through an interactive process with students and may involve consideration of specific course design and learning objectives in consultation with faculty. Upon completion of a Disability Accommodation Agreement with DSS, students should bring the agreements for each course to the School of Law Registrar's Office to ensure the School of Law provides the proper classroom and examination accommodations. Accommodation [request](#) and [renewal](#) forms can be found here: <https://law.siu.edu/academics/>.*

SALUKI CARES. *The purpose of Saluki Cares is to develop, facilitate and coordinate a university-wide program of care and support for students in any type of distress—physical, emotional, financial, or personal. By working closely with faculty, staff, students and their families, SIU will continue to display a culture of care and demonstrate to our students and their families that they are an important part of the community. For Information on Saluki Cares: (618) 453-2461, or siucares@siu.edu, <http://salukicare.siu.edu/index.html>. At the School of Law, Assistant Dean Judi Ray is also available to help students access university resources. Her email is judiray@siu.edu, and her phone number is 618-453-3135.*

COVID-19. As a condition of on-campus enrollment, all SIUC students are required to engage in safe behaviors to avoid the spread of COVID-19, including the requirement that all students wear a mask in campus buildings, including classrooms, laboratories, and studios when others are present, regardless of social distancing. Students are expected to follow physical or social distancing guidelines by keeping at least 6 feet from others, and practicing good hand hygiene. Failure to comply with this policy may result in dismissal from the current class session. If the student refuses to leave the classroom after being dismissed, the student may be referred to the Office of Student Rights and Responsibilities. SIUC will follow federal, state and county public health recommendations and mandates in all decisions relating to university operation. Students should regularly review the link for the [SIUC COVID-19 response](#)

Recording of Classes: Students and the professor may record classes from their regular location in the classroom, unless the professor announces in class that this policy has changed. Recordings of the class may not be shared with persons who are not enrolled in this class without the professor's prior consent. The professor may share recordings with members of the Law School's IT department or as otherwise necessary.

Plagiarism: Plagiarizing another's work, in whole or in part, is a violation of the Honor Code and can lead to serious penalties, including expulsion. An Honor Code investigation must also be reported to the Bar Examiners, even if you are cleared of any violation. The Honor Code defines plagiarism as: passing off another's ideas, words, or work as one's own, including written, oral, multimedia, or other work, either word for word or in substance, unless the student author credits the original author and identifies the original author's work with quotation marks, footnotes, or other appropriate designation in such a way as to make clear the true author of the work.

Workload Expectation: The American Bar Association standards for accrediting law schools contain a formula for calculating the amount of work that constitutes one credit hour. According to ABA Standard 310(b)(1), “a ‘credit hour’ is an amount of work that reasonably approximates: (1) not less than one hour of classroom or direct faculty instruction and two hours of out-of-class student work per week for fifteen weeks, or the equivalent amount of work over a different amount of time.” This is a 3-credit hour class, meaning that we will spend two 75-minute blocks of time together each week (on Tuesdays and Thursdays). ABA Interpretation 310-1 states that 50 minutes suffices for an hour of classroom instruction, but an “hour” for out-of-class work is 60 minutes. The amount of assigned reading and out of class preparation should take you a minimum of 3 hours for each class session. All told, applying the ABA standard to the number of credits offered for this class, you should plan on spending a minimum of 9 hours per week (3 in class and 6 preparing for class) on course-related work.

Student Learning Outcomes: At the end of this course, students will be able to:

- Explain who inherits property if an individual dies with property in his or her name alone.
- Describe when an estate must “go through probate” and know essential questions that an attorney needs to ask in order to create a probate estate.
- Explain the potential disadvantages for a family if a probate estate must be established to pass property to other family members, friends, or charities.
- Advise a client on the various methods that can be used to avoid probate, including but not limited to the use of a revocable trust.
- Draft substantive sections of a Last Will and Testament.
- Analyze an existing Last Will and Testament and determine whether it is valid.
- Explain the potential disadvantages of using a guardianship for the management of someone’s property if they become mentally incapacitated and the potential advantages of a financial durable power of attorney.
- Analyze problems that can occur when the facts change between the time a client prepares estate planning documents and the client’s death, including problems addressed by the anti-lapse statute, and the doctrine of ademption.
- Explain the potential advantages of having a durable health care power of attorney, living will, or advance directive.
- Advise a client regarding the essential elements of a trust, how to make a trust effective, and the methods for interpreting, amending, or revoking a trust.
- Analyze a trust and determine whether it is revocable or irrevocable and whether it is valid and enforceable.

Trusts & Estates – Spring 2021 – Projected Reading Schedule

(as of 1/13/21; subject to change)

Class #1: Tuesday, Jan. 19, 2021: Review of Syllabus; Opportunities & An Overview of Inter-Generation Wealth Transfer, pages 3-14; pages 33-36 (including the *Schneider v. Finmann* case)
Bonus Material for Class #1

Class #2: Thursday, Jan. 21, 2021: Continuing Overview 14 to 17 (on guardianships, uniform codes, and restatements); SKIP 17 bottom to 27; Duties Lawyers Owe Clients (and Others) pages 28-33 (including the *Fabian v. Lindsay* case)
Bonus Material for Class #2 (including *Needham v. Hamilton*, 459 A.2d 1060 (D.C. Ct. App. 1983))

Class #3: Tuesday, Jan. 26, 2021: Intestacy-Overview & Qualifying to Take p. 39-42 bottom; SKIP pages 42 bottom & 43; Intestacy cont. pages 44 to 45 top; SKIP pages 45 top to 47; Intestacy cont. pages 47 bottom to 57 middle; SKIP pages 57 middle to 60 middle; Children of Assisted Reproduction pages 60 middle to 64 (including *Finley* case); SKIP pages 64 bottom to 69 middle
Bonus Materials for Class #3

Class #4: Thursday, Jan. 28, 2021: Half Bloods, Stepchildren, and Ancestors & Collateral Relatives pages 69 middle to 75; SKIP pages 75 bottom to 80; Wills; What's a Will? The Mental Element pages 81 to 97 bottom (including *In re Estate of Kuralt* and *In re Estate of Romero*)
Bonus Material for Class #4

Class #5: Tuesday, Feb. 2, 2021: Undue Influence p. 97 bottom to 98; SKIP pages 98 bottom to 100; Undue Influence cont. pages 100 bottom to 109 (including *In re Estate of Saucier*); Fraud & Tortious Interference with Expectancy pages 110 bottom to 117 (including *Ellis*)
Bonus Materials Class #5

Class #6: Thursday, Feb. 4, 2021: CATCH-UP; Will Execution p. 118 to 126 (including *DeMaris*)
Bonus Material for Class #6 (including *Ellis v. Flanagan*, 97 N.E. 696 (IL 1912) and *Clarkson v. Kirtright*, 126 N.E. 54 (IL 1920))

Class #7: Tuesday, Feb. 9, 2021: Competent Witnesses pages 126 bottom to 130 top (including *Estate of Parsons*); Attestation Clauses and Self-Proving Affidavits pages 131 to 133; Holographic Wills pages 134 middle to 137; Mistake in Execution pages 138-146 (including *In re Estate of Wiltfong*); Protective Planning pages 147 bottom to 153 top; Components of a Will; Incorporation by Reference pages 154 middle to 159 middle (including *Simon v. Grayson*)
Bonus Materials for Class #7

Class #8: Thursday, Feb. 11, 2021: Interpreting Wills: Extrinsic Evidence pages 159 bottom to 166 top (including *Estate of Gibbs*); Interpretation or Reformation pages 166 bottom to 170 (including *Flannery v. McNamara*); Revocation pages 171 middle to 178 middle (including *Estate of Gushwa*)
Bonus Materials for Class #8 (including *In re Bakhaus Estate*, 102 N.E.2d 818 (Ill. 1951))

Class #9: Tuesday, Feb. 16, 2021: Revocation cont., Revival, Dependent Relative Revocation, Contracts Relating to Wills pages 179-188 (including *In re Estate of Patten*), SKIP pages 189 to 195

Class #10: Thursday, Feb. 18, 2021: Lifetime Alternatives to Wills: Gifts, Joint Interests pages 197 to 209 top (including *Henkle v. Henkle*)

Bonus Materials for Class #10 (including *Campbell v. Griefen*, 27 N.E.2d 606 (Ill. App. 1st Dist. 1940) and *Keith v. Lulofs*, 724 S.E.2d 695 (Va. 2012))

[Probably Hand-Out WAC Assignment #1 – Drafting a Last Will & Testament - likely due Thursday, March 4]

Class #11: Tuesday, Feb. 23, 2021: Lifetime Alternatives continued; Property in Marriage, Transfer on Death Deeds, Lifetime Trusts pages 209 middle to 218 (including *Farkas v. Williams*); Pour-Over Wills, Ignoring Trust Form—Creditors' Rights pages 219 middle to 222 middle (including *State St. Bank & Trust Co. v Reiser*); (SKIM Life Insurance & Retirement Funds pages 222 middle to 228); Changed Circumstances, Advancement, Satisfaction 229-242 middle (including *Yivo Institute*)

Bonus Materials for Class #11

Class #12: Thursday, Feb. 25, 2021: Divorce; Disclaimer pages 242 bottom to 247 (including *Friedman v. Hannan*); SKIP pages 248 & 249; pages 250 to 256 (including *In re Estate of Holden*); SKIP pages 257 to 259 middle

Bonus Materials for Class #12 (nothing that will be tested directly on the final exam – just some Illinois statutes that may be interesting background)

Class #13: Tuesday, March 2, 2021: Misconduct, Changes in Property, Dividends, Stock Splits, Ademption pages 260 top to 276 top (including *Swansons' Estate; Wasserman v. Cohen*); SKIP pages 276 top & 277

Bonus Materials Class #13

Class #14: Thursday, March 4, 2021: Abatement & Exoneration page 278; Anti-Lapse pages 279 to 285 middle (including *Estate of Kehler*); SKIP pages 285 middle to 288

Bonus Materials Class #14 (nothing that will be tested directly on the final exam—just some Illinois statutes that may be interesting background)

WAC Assignment Likely Due

Class #15: Tuesday, March 9, 2021: Protecting the Family; Disinheriting Spouses pages 289 & 290; SKIP pages 291 to 299; Right to Elect pages 300 middle to 304 bottom; SKIP pages 304 bottom to 330; Changes in Domicile; Pre-Nups; Forgotten Spouses and Children; Intentional Disinheritance 331-343 (including *Hanau, Estate of Griefff*)

Bonus Materials Class #15

Class #16: Thursday, March 11, 2021: Forgotten Spouses of Children (Pretermitted or Omitted) pages 338-341 middle; Intentional Disinheritance pages 342-343; Charitable Gifts; Public Policy Limits (including ART) 344 to 353 (including *Hecht v. Superior Court*)
Bonus Materials for Class #16 (including *Meksras Estate*, 63 Pa. D. & C 2d 371 (Penn. Ct. Common Pleas) and *Hall v. Eaton*, 631 N.E.2d 805 (Ill. App. Ct. 1994))

Likely Hand Out 2nd WAC Assignment [probably due on March 25th]

Class #17: Tuesday, March 16, 2021: Planning for Incapacity – Financial Durable Power of Attorney pages 357 to 372 (including *Russ*); SKIP pages 373 to 376 middle; Health Care Decisionmaking pages 376 middle to 387 (including *Cruzan*)
Bonus Materials for Class #17

Class #18: Thursday, March 18, 2021: Trusts – Overview & Creation 391 to 405 middle (including *Burton v. Irwin, Zukerman*)
Bonus Materials for Class #18 (including *Whittaker v. Stables*, 791 N.E. 2d 588 (Ill. App. 2003))

Class #19: Tuesday, March 23, 2021: Trusts—Overview & Creation Cont. Pages 406-424; *Kully v. Goldman, Gordon v. Portland Trust Bank, Morsman*) [additional material on Resulting Trusts & Constructive Trusts]

Class #20: Thursday, March 25, 2021: Nature of a Beneficiary's Interest 424 middle – 439 top (including *Emmert; Broadway National Bank v. Adams*)
WAC Assignment Likely Due
Bonus Materials for Class #20

Class #21: Tuesday, March 30, 2021 Class: Nature of Beneficiary's Interest cont. 439 middle-457 middle (including *Shelley v. Shelley; Pohlmann v. Nebraska Dept. of Health and Human Services*)
Bonus Material for Class #21 (including *Dep't of Mental Health v. Phillips*, 500 N.E.2d 29 (Ill. 1986))

Class #22: Thursday, April 1, 2021: Reformation, Modification and Termination of Trusts pages 457 middle to 471 top (including *Claflin* and *In re Trusteeship of Mayo*)
Bonus Material for Class #11: Practical probate (8 pages from Dukeminier casebook and a few pages of Illinois forms)

Class #23: Tuesday, April 6, 2021: Charitable Trusts pages 471–495 middle (including *St. Mary's Medical v. McCarthy; Obermeyer v. Bank of Am.*); Equitable Deviation pages 495 middle to 501 (including *Estate of Wilson*)

Class #24: Thursday, April 8, 2021: Federal Wealth Transfer Taxes page 17 bottom to page 26 middle; Powers of Appointment pages 553 middle to 565 top (including *Beals v. State St. Bank and Trust*)

Class #25: Tuesday, April 13, 2021: Problems in Trust Administration 603-613 (including *Estate of Hines*)

Class #26: Thursday, April 15, 2021: Ethical Guidelines 614-617; Investments 629-637 middle (including *Estate of Janus*)

Class #27: Tuesday, April 22, 2021: Principal and Income Issues pages 657 to 674 (including *In re Heller*)

Class #28: Thursday, April 24, 2021: Other Fiduciary Duties 675 to 691 (including *Estate of Baldwin* and *Johnson v. Johnson*); Remedies for Breach of Fiduciary Duties 692 to 705 (including *Rothko* and *In re Williams*)

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