

Trusts & Estates Syllabus

(subject to change)

Spring 2020

T&Th 5:00 p.m–6:15 p.m.

Room 204

Law 531-3 § 001

Prof. Drennan

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618-453-8729 (office)

314-943-4683 (cell)

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 by passing around a roll sheet for you to sign. 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 is scheduled for Friday, May 1, 2020 at 1:15 p.m.

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 requisites of wills; will substitutes; the nature, creation and termination of trusts; charitable trusts, and fiduciary administration.

Emergency Procedures: Southern Illinois University Carbondale is committed to providing a safe and healthy environment for study and work. Because some health and safety circumstances are beyond our control, we ask that you become familiar with the SIUC Emergency Response Plan and Building Emergency Response Team (BERT) program. Emergency response information is available on posters in buildings on campus, available on BERT’s website at www.bert.siu.edu, Department of Safety’s website www.dps.siu.edu (disaster drop down) and in an Emergency Response Guideline pamphlet. Know how to respond to each type of emergency.

Instructors will provide guidance and direction to students in the classroom in the event of an emergency affecting your location. It is important that you follow these instructions and stay with your instructor during an evacuation or sheltering emergency. The Building Emergency Response Team will aid your instructor in evacuating the building or sheltering within the facility.

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.

Disability Policy: Disability Support Services provides the required academic and programmatic support services to students with permanent and temporary disabilities. DSS provides centralized coordination and referral services. If you think you may be eligible for accommodations but have not yet obtained approval please contact DSS immediately at 618-453-5738 or <https://disabilityservices.siu.edu>. You may request accommodation 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.

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.

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) 453-5714 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.

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 2020
Bonus Material Class #1
Projected Reading Schedule
(subject to change)

Class #1: Tuesday, Jan. 14, 2020: Opportunities & An Overview of Inter-Generation Wealth Transfer, pages 3-14 middle; start Duties Lawyers Owe Clients (and Others) pages 33 bottom to 36 top (including *Schneider v. Finmann*)

Bonus Material for Class #1 (practitioner reflections; euphemism & dysphemism; history; differences in state T&E laws including discussion of *Payne v. Stalley*)

Class #2: Thursday, Jan. 16, 2020: Opportunities & An Overview of Inter-Generation Wealth Transfer cont., pages 14 middle-17; SKIP 17 bottom to 27; Duties Lawyers Owe Clients (and Others) cont. pages 28-33 middle (including *Fabian v. Lindsay*)

Bonus Material for Class #2 (including extra facts from *Fabian v. Lindsay*; *Needham v. Hamilton*, 459 A.2d 1060 (D.C. Ct. App. 1983))

Class #3: Tuesday, Jan. 21, 2020: 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 48 to 57 middle (no need to work the problems on page 48); 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 Material for Class #3 (Intestacy; Simultaneous Death)

Class #4: Thursday, Jan. 23, 2020: Intestacy—Half Bloods, Stepchildren, and Ancestors & Collateral Relatives; Allocating Shares pages 69 middle to 75; SKIP pages 75 bottom to 80.

Wills; Creation—What's a Will? The Mental Element pages 81 to 97 bottom (including *Kuralt* and *Romero*)

Bonus Material for Class #4 (Intestacy—How to Divide Property; Intro to Wills; Intent; Capacity)

Class #5: Tuesday, Jan. 28, 2020: Undue Influence p. 97 bottom to 98; SKIP pages 98 bottom to 100; Undue Influence cont. pages 100 bottom to 109 (including *Saucier*); Fraud & Tortious Interference with Expectancy pages 110 bottom to 117 (including *Ellis*)

Bonus Material for Class #5 (just one page on Undue Influence & Statute of Limitations)

Class #6: Thursday, Jan. 30, 2020: Will Execution p. 118 to 121; SKIP pages 122 to 123 middle; Will Execution cont. 123 middle to 126 (including *DeMaris*)

Bonus Material for Class #6 Will Execution (including *Ellis v. Flanagan*, 97 N.E. 696 (IL 1912) and *Clarkson v. Kirtright*, 126 N.E. 54 (IL 1920), also the “hand” case)

Class #7: Tuesday, Feb. 4, 2020: Competent Witnesses pages 126 bottom to 130 (including *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 *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 Material for Class #7 (including the classic story about Holographic Wills; *In re Bakhaus Estate*, 102 N.E.2d 818 (Ill. 1951))

Class #8: Thursday, Feb. 6, 2020: Interpreting Wills: Extrinsic Evidence pages 159 bottom to 164 middle (including *Estate of Gibbs*); Interpretation or Reformation pages 164 middle to 170 (including *Flannery v. McNamara*); Revocation 171 middle to 178 middle (including *Estate of Gushwa*)

Bonus Material for Class #8 (*In re Bakhaus Estate*, 102 N.E.2d 818 (Ill. 1951))

Class #9: Tuesday, Feb. 11, 2020: Revocation cont., Revival, Dependent Relative Revocation, Contracts Relating to Wills pages 179-188 (including *Patten*), SKIP pages 189 to 195

Bonus Material for Class #9 (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))

Class #10: Thursday, Feb. 13, 2020: Lifetime Alternatives to Wills: Gifts, Joint Interests pages 197 to 209 top (including *Henkle*)

[Probably Hand-Out WAC Assignment #1 – Drafting a Last Will & Testament - likely due Thursday, February 27]

Bonus Material for Class #10: Why Clients Want to Avoid Probate (one page); additional material, consisting of some Illinois statutes, will not be tested directly on the exam—the Illinois statutes are just interesting background.

Class #11: Tuesday, Feb. 18, 2020: 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 *Reiser*); (SKIM Life Insurance & Retirement Funds pages 222 middle to 228); Changed Circumstances, Advancement, Satisfaction 229-242 middle (including *Yivo Institute*)

Bonus Material for Class #11 (nothing that will be tested directly on the final exam – just some Illinois statutes that may be interesting background)

Class #12: Thursday, Feb. 20, 2020: Divorce; Disclaimer pages 242 bottom to 247 (including *Friedman*); SKIP pages 248 & 249; pages 250 to 256 (including *Holden*); SKIP pages 257 to 259 middle

Bonus Material 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, Feb. 25, 2020: Misconduct; Changes in Property; Ademption pages 260 top to 276 top (including *Swansons' Estates*; *Wasserman v. Cohen*); SKIP pages 276 top to 277; Abatement & Exoneration page 278

Bonus Materials for Class #13 (nothing that will be tested directly on the final exam – just some Illinois statutes that may be interesting background)

Class #14: Thursday, Feb. 27, 2020: Lapse & Anti-Lapse pages 279 to 285 middle (including *Estate of Kehler*); SKIP pages 285 middle to 288

Protecting the Family; Disinheriting Spouses pages 289 & 290; SKIP pages 291 to 299; Right to Elect pages 300 bottom to 304 bottom; SKIP pages 304 bottom to 330

Changes in Domicile; Agreements Waiving Marital Rights (Pre-Nups); Forgotten Spouses and Children; Intentional Disinheritance 331-343 (including *Hanau, Estate of Grieff*)

[WAC ASSIGNMENT DUE?]

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

Class #15: Tuesday, March 3, 2020: Charitable Gifts; Public Policy Limits (including ART) 344 to 353 (including *Hecht v. Superior Court*)

LIKELY HAND-OUT 2nd WAC ASSIGNMENT [PROBABLY DUE AT END OF CLASS MARCH 31st]

Bonus Materials for Class #15 (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))

Class #16: Thursday, March 5, 2020: 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 #16 (TO BE ADDED)

Spring – Break – Saturday, March 7, 2020 to Sunday March 15, 2020