

# ***Trusts & Estates Syllabus***

*(as of Jan. 6, 2023) (subject to change)*

**Spring 2023**  
**T&Th 5:00 p.m–6:15 p.m.**  
**Room 202**  
**Law 531-3 § 001**

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*“A will speaks at death.” Clev. St. L. Rev. 1017, 1021 (2013) (“Not Quite Dead Yet!”)*

*“A will can save one’s family from being put into a quagmire pit of legal conundrums.” – Henrietta Newton Martin*

*“Put not your trust in money, but put your money in trust.” – Oliver Wendell Holmes (1858)*

*“A funeral director was asked in a recent radio interview, “What happens . . . if the deceased has left instructions for a very simple funeral, but the survivors insist on something more [expensive and] elaborate?” The funeral director answered, “Well, at a time like that, who are you going to listen to.?”—Tanya K. Hernandez (1999)*

*“I never cease to be amazed at the . . . [estate planning] problems individuals get themselves into without planning and obtaining professional advice.”—Judge James R. Clatterbaugh*

**Required Materials:** Andersen & Bloom, *Fundamentals of Trusts and Estates* (5<sup>th</sup> ed. 2017) (published by Carolina Academic Press, LLC). Recently, Carolina Academic Press published a 6<sup>th</sup> edition of this casebook (dated 2022). We will be using the 5<sup>th</sup> edition (dated 2017) in this course.

**Writing Assignments:** We likely will have two writing assignments during the semester. The first writing assignment will be optional and shall involve drafting all or part of a Last Will and Testament. The second writing assignment will be a bar exam type exercise. Satisfactory completion of the second writing assignment will be 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. It will be a closed book exam. Your grade for the course will be based on the final exam. At the time this Syllabus was prepared, the day and time for the final exam had not been scheduled.

**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 at SIU.** Emergency response information is available on posters in buildings on campus, on the Emergency Preparedness at 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](http://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 use the DSS Student Portal to notify their faculty members and the School of Law Registrar's Office of their accommodations.*

**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](mailto:siucares@siu.edu), <http://salukicare.siu.edu/index.html>. Assistant Dean Judi Ray is available at the School of Law to help students access university resources. Her email is [judiray@siu.edu](mailto:judiray@siu.edu), and her phone number is 618- 453-3135.*

**COVID-19.** SIU's policy on face masks and social distancing is consistent with the guidance from the Centers for Disease Control and Prevention and the Illinois Department of Public Health. For up-to-date information, students, faculty, and staff should visit SIUC's COVID website ([siu.edu/coronavirus](http://siu.edu/coronavirus)), which includes the Saluki Safety Plan. People can also send an email to [pandemicinfo@siu.edu](mailto:pandemicinfo@siu.edu).

**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.

**Office Hours:** Tuesday from 12:15 to 1 pm, and Thursday from 2:45 to 3:30 pm, and by appointment; may be by phone or zoom.

**Safety and Awareness Facts and Education:** Title IX makes it clear that violence and harassment based on sex and gender is a Civil Rights offense subject to the same kinds of accountability and the same kinds of support applied to offenses against other protected categories such as race, national origin, etc. If you or someone you know has been harassed or assaulted, you can find the appropriate resources here: <http://safe.siu.edu>

**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 designations 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 and without a will or other estate planning arrangements.
- 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.
- Evaluate whether various legal doctrines and regimes provide fair and equal opportunities to all to freely transfer property at death regardless of the availability of legal counsel or other resources.

## ***Trusts & Estates – Spring 2023 – Projected Reading Schedule***

*(all page references are to the Casebook--Fundamentals of Trusts and Estates, except as otherwise noted)*

*(as of Jan. 6, 2023, subject to change)*

Class #1: Tuesday, Jan. 17, 2023: Review of Syllabus; Opportunities & An Overview of Inter-Generation Wealth Transfer, pages 3-14 middle; pages 33 bottom to 36 middle (including the *Schneider v. Finmann* case)

Bonus Material for Class #1

Class #2: Thursday, Jan. 19, 2023: Continuing Overview 14 to 17 middle (on guardianships, uniform codes, and restatements); SKIP pages 17 middle to 27; Duties Lawyers Owe Clients (and Others); READ 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. 24, 2023: Intestacy-Overview & Qualifying to Take pages 39-42 bottom; SKIP pages 42 bottom & 43 (regarding the Florida Constitution); READ—Intestacy cont. pages 44 to 45 top; SKIP pages 45 top to 47; READ—Intestacy cont. pages 47 bottom to 57 middle; SKIP pages 57 middle to 60 middle; READ—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. 26, 2023: Half Bloods, Stepchildren, and Ancestors & Collateral Relatives pages 69 middle to 75; SKIP pages 75 bottom to 80; READ—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, Jan. 31, 2023: Undue Influence p. 97 bottom to 98; SKIP pages 98 bottom to 100; READ—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 *Estate of Ellis*)

Bonus Materials Class #5

Class #6: Thursday, Feb. 2, 2023: CATCH-UP; Will Execution p. 118 to 126 (including *In re DeMaris Estate*)

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. 7, 2023: 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; Integration; Incorporation by Reference; Independent Significance pages 154 middle to 159 middle (including *Simon v. Grayson*)

Bonus Materials for Class #7

Class #8: Thursday, Feb. 9, 2023: 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*) [Note: The New Mexico rule (in *Gushwa*) that a will cannot be revoked by a formally executed “other writing” (p. 174 bottom) is not the majority/Barbri Outline approach.]

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

Class #9: Tuesday, Feb. 14, 2023: Revocation Cont-[CATCH-UP] Operation of Law: Revival, Dependent Relative Revocation, Options for Safeguarding Wills, pages 179-188 (including *In re Estate of Patten*), SKIP pages 189 to 195

Bonus Material for Class #9 (including *Campbell v. Griefen*, 27 N.E.2d 606 (Ill. App. 1<sup>st</sup> Dist. 1940))

Class #10: Thursday, Feb. 16, 2023: Contracts Relating to Wills; Lifetime Alternatives to Wills: Lifetime Gifts, Joint Interests pages 197 to 209 top (including *Henkle v. Henkle*)

Bonus Materials for Class #10 (including *Keith v. Lulofs*, 724 S.E.2d 695 (Va. 2012))

**[Probably Hand-Out Optional Writing Assignment #1 – Drafting a Last Will & Testament - likely due Thursday, March 2]**

Class #11: Tuesday, Feb. 21, 2023: 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); RAD—Changed Circumstances, Advancement, Satisfaction 229-242 middle (including *Yivo Institute*)

Bonus Materials for Class #11

Class #12: Thursday, Feb. 23, 2023: Divorce pages 242 bottom to 247 (including *Friedman v. Hannan*); SKIP pages 248 & 249; READ—Acts of Beneficiaries; Disclaimers pages 250 to 256 (including *In re Estate of Holden*); SKIP pages 257 to 259 middle

Bonus Materials for Class #12

Class #13: Tuesday, Feb. 28, 2023: Misconduct, Changes in Property, Classification of Gifts; Dividends and Stock Splits, Ademption pages 260 top to 276 top (including *Swansons' Estates; Wasserman v. Cohen*); SKIP pages 276 top & 277

Bonus Materials Class #13

Class #14: Thursday, March 2, 2023: 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

### **Optional Writing Assignment #1 (Will Drafting Exercise) Likely Due**

Class #15: Tuesday, March 7, 2023: Protecting the Family; Disinheriting Spouses pages 289 & 290; SKIP pages 291 to 299 (*In re Kobylski*); READ—Right to Elect pages 300 middle to 304 bottom; SKIP pages 304 bottom to 330 (including *Bongaard v. Millen & Lawrence Waggoner* article); READ—Changes in Domicile; Agreements Waiving Marital Rights (Pre-Nups); 331-337 middle (including *Estate of Hanau, In re Estate of Greiff*)

Bonus Materials Class #15

Class #16: Thursday, March 9, 2023: Forgotten Spouses & 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 Required WAC Assignment/Bar-Assessment Problem [probably due March 23<sup>rd</sup>]**

## **[SPRING BREAK: March 11 to March 19]**

Class #17: Tuesday, March 21, 2023: Planning for Incapacity – Financial Durable Power of Attorney pages 357 to 372 (including *Russ*); SKIP pages 373 to 376 middle; READ—Health Care Decisionmaking pages 376 middle to 387 (including *Cruzan*)

Bonus Materials for Class #17

Class #18: Thursday, March 23, 2023: Trusts – Overview & Creation—Intent 391 to 405 middle (including *Burton v. Irwin, Estate of Zukerman*)

Bonus Materials for Class #18 (including *Whittaker v. Stables*, 791 N.E. 2d 588 (Ill. App. 2003))

**Answer to WAC Assignment/Bar-Assessment Problem likely due March 23<sup>rd</sup>**

Class #19: Tuesday, March 28, 2023: Trusts—Overview & Creation Cont.—Trust Property; Trustee; Beneficiaries; Trust Purpose; Formalities pages 406 middle-424 middle; *Kully v. Goldman, Gordon v. Portland Trust Bank, Morsman*) [including material on Unidentifiable Beneficiaries and Resulting Trusts]

Bonus Material for Class #19

Class #20: Thursday, March 30, 2023: Nature of a Beneficiary's Interest; Discretionary and Support Trusts; Transfers of Beneficial Interests in Trust, pages 424 middle – 439 top (including *Emmert; Broadway National Bank v. Adams*)

Bonus Materials for Class #20

Class #21: Tuesday, April 4, 2023 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 6, 2023: Reformation, Modification and Termination of Trusts pages 457 middle to 471 top (including *Clafin* and *In re Trusteeship of Mayo*)

Bonus Material for Class #22 plus separate on the TWEN page—Practical Probate (8 pages from Dukeminier casebook and a few pages of Illinois forms)

Class #23: Tuesday, April 11, 2023: 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*) [No Bonus Material for Class #23]

Class #24: Thursday, April 13, 2023: 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*)

[Bonus Materials for Class #24, including *U.S. v. Windsor*]

Class #25: Tuesday, April 18, 2023: Problems in Trust Administration—Duty of Loyalty, pages 603-613 (including *Estate of Hines*) [Bonus Materials for Class #25]

Class #26: Thursday, April 20, 2023: Ethical Guidelines pages 614-617; Investments pages 629-637 middle (including *Estate of Janes*) [Bonus Materials for Class #26]

Class #27: Tuesday, April 25, 2023: Principal and Income Issues pages 657 bottom to 674 (including *In re Heller*) [Bonus Materials for Class #27]

Class #28: Thursday, April 27, 2023: Other Fiduciary Duties 675 to 691 (including *Estate of Baldwin* and *Johnson v. Johnson*); Remedies for Breach of Fiduciary Duties; Bars to Relief; pages 692 to 705 (including *Rothko* and *In re Williams*) [Bonus Materials for Class #28]

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