

Trusts & Estates Syllabus

(as of Dec. 23, 2023) (subject to change)

Spring 2024
T&Th 11:00 a.m–12:15 p.m.
Room 102
Law 531-3 § 001

Prof. Drennan
wdrennan@siu.edu
Office: Room 220
314-943-4683 (cell)

“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* (6th ed. 2022) (published by Carolina Academic Press, LLC).

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/>.*

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SALUKI CARES and COUNSELING & PSYCHOLOGICAL SERVICES (CAPS). *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>. Associate Dean Angela Upchurch (aupchurch@siu.edu or (618) 536-8314) is available at the School of Law to help students access university resources. Additionally, counseling services are available through CAPS (Counseling and Psychological Services (CAPS) / Student Health Services / SIU). A counselor is at the law school every Wednesday from noon until 4:30 p.m. in Room 268 for drop-in appointments.*

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: Wednesdays from 3:30 p.m. to 5:30 p.m., 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.

Attachments incorporated by this reference: SIU School of Law Syllabus Attachment and the University Syllabus Attachment.

Trusts & Estates – Spring 2024 – Projected Reading Schedule

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

(as of Dec. 23, 2023, subject to change)

[General Notes: Unless otherwise indicated, you are not expected to work any of the “Problems” or “Questions” in the Casebook in advance. Unless otherwise indicated, for the Exam in this class, you will not be required to know the law of any particular State; we will focus on the majority rules and significant minority rules—generally if we discuss a minority approach, it is significant. When an example of a statute would be helpful, we will often use an Illinois statute, but again, unless otherwise indicated, you will not be expected to know specific Illinois rules for the Exam in this course.]

Class #1: Tuesday, Jan. 16, 2024: Review of Syllabus; Opportunities & An Overview of Inter-Generation Wealth Transfer, pages 3-14 middle; pages 34 to 36 (including the *Schneider v. Finmann* case)

Bonus Material for Class #1

Class #2: Thursday, Jan. 18, 2024: Continuing Overview 14 middle to 17 middle (on guardianships, uniform codes, and restatements); SKIP pages 17 bottom to 27; Duties Lawyers Owe Clients (and Others); READ pages 28 middle to 34 top (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. 23, 2024: Intestacy-Overview & Qualifying to Take, pages 39-73, but SKIP the State Constitutions and statutes, and the reprints of the Uniform Probate Code (UPC) sections at p. 43 to 44 middle (Florida Constitution), p. 47 middle to 51 bottom (including UPC statutes), p. 61 middle to 63 top (N.Y. statute and UPC statute), p. 65 middle to p. 68 bottom (UPC statutes) [Again, unless otherwise indicated, for the Exam in this class, you will not be required to know the law of any particular State; we will focus on the majority rules and significant minority rules—generally if we discuss a minority approach, it is significant.]

Bonus Materials for Class #3

Class #4: Thursday, Jan. 25, 2024: Stepchildren, Half Bloods, and Ancestors & Collateral Relatives pages 81 to 87 bottom; SKIP pages 87 bottom to 93; READ—Wills, including What’s a Will? The Mental Element pages 95 to 113 middle (including *In re Estate of Kuralt* and *In re Estate of Romero*)

Bonus Material for Class #4

Class #5: Tuesday, Jan. 30, 2024: Undue Influence p. 113 middle to 115 top; SKIP pages 115 top to 116 top (California statute); READ—Undue Influence cont. pages 116 to 125 top (including *In re Estate of Saucier*); Fraud & Tortious Interference with Expectancy pages 126 middle to 133 (including *Estate of Ellis*)

Bonus Materials Class #5

Class #6: Thursday, Feb. 1, 2024: CATCH-UP; Will Execution p. 134 to 141 bottom (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. 6, 2024: Competent Witnesses pages 141 bottom to 145 bottom (including *Estate of Parsons*); Attestation Clauses and Self-Proving Affidavits pages 145 bottom to 149; Holographic Wills pages 150 middle to 154; Mistake in Execution pages 154-163 (including *In re Estate of Wiltfong*); Protective Planning pages 164 middle to 171; Components of a Will; Integration; Incorporation by Reference; Independent Significance pages 171 middle to 176 middle (including *Simon v. Grayson*)

Bonus Materials for Class #7

Class #8: Thursday, Feb. 8, 2024: Interpreting Wills: Extrinsic Evidence pages 176 middle to 181 middle (including *Estate of Gibbs*); Interpretation or Reformation pages 181 bottom to 188 (including *Flannery v. McNamara*); Revocation pages 188 bottom to 196 top (including *Estate of Gushwa*) [Note: The New Mexico rule (in *Gushwa*) that a last will cannot be revoked by a formally executed “other writing” (p. 192 top) 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. 13, 2024: Revocation Cont-[CATCH-UP] Operation of Law: Revival, Dependent Relative Revocation, Options for Safeguarding Wills, pages 196 bottom-207 top (including *In re Estate of Patten*), SKIP pages 207 to 213

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

Class #10: Thursday, Feb. 15, 2024: Contracts Relating to Wills; Lifetime Alternatives to Wills: Lifetime Gifts, Joint Interests pages 215 to 228 bottom (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, Feb. 29]

Class #11: Tuesday, Feb. 20, 2024: Lifetime Alternatives continued; Property in Marriage, Transfer on Death Deeds, Lifetime Trusts pages 228 bottom to 238 bottom (including *Farkas v. Williams*); Pour-Over Wills, Ignoring Trust Form—Creditors’ Rights pages 240 to 241 middle (including *State St. Bank & Trust Co. v. Reiser*); (SKIM Life Insurance & Retirement Funds pages 241 middle to 247); READ—Changed Circumstances, Advancement, Satisfaction 249-262 middle (including *Yivo Institute*)

Bonus Materials for Class #11

Class #12: Thursday, Feb. 22, 2024: Divorce pages 262 middle to 267 (including *Friedman v. Hannan*); SKIP pages 268 to 271; READ—Acts of Beneficiaries; Disclaimers pages 272 to 277 (including *In re Estate of Holden*); SKIP pages 277 bottom to 280 top; Assignment of Expectancies p. 280

Bonus Materials for Class #12

Class #13: Tuesday, Feb. 27, 2024: Misconduct, Changes in Property, Classification of Gifts; Dividends and Stock Splits, Ademption pages 280 bottom to 297 bottom (including *Swansons' Estates; Wasserman v. Cohen*); SKIP pages 297 bottom to 299

Bonus Materials Class #13

Class #14: Thursday, Feb. 29, 2024: Abatement & Exoneration page 299 bottom to 300; Anti-Lapse pages 301 to 307 middle (including *Estate of Kehler*); SKIP pages 307 middle to 310

Bonus Materials Class #14

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

Class #15: Tuesday, March 5, 2024: Public Policy Limitations on the Freedom of Testation; Disinheriting Spouses pages 311 to 313 top; SKIP pages 313 top to 322 (*In re Kobylski*); READ—Right to Elect pages 323 to 343 middle (including *Bongaards v. Millen*) SKIP 343 middle to 353 bottom READ—Changes in Domicile; Agreements Waiving Marital Rights (Pre-Nups); 353 bottom to 360 (including *Estate of Hanau, In re Estate of Greiff*)

Bonus Materials Class #15

Class #16: Thursday, March 7, 2024: Forgotten Spouses & Children (Pretermitted or Omitted) pages 360 middle to 365; Intentional Disinheritance pages 365-367; Charitable Gifts; Additional Public Policy Limits (including ART) 368 to 377 (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 21st]

[SPRING BREAK: Saturday, March 9 to Sunday, March 17]

Class #17: Tuesday, March 19, 2024: Planning for Incapacity – Financial Durable Power of Attorney pages 381 to 397 top (including *Russ*); SKIP pages 398 to 400 middle; READ—Health Care Decisionmaking pages 400 middle to 411 (including *Cruzan*)

Bonus Materials for Class #17

Class #18: Thursday, March 21, 2024: Trusts – Overview & Creation—Intent 415 to 429 (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 21st

Class #19: Tuesday, March 26, 2024: Trusts—Overview & Creation Cont.—Trust Property; Trustee; Beneficiaries; Trust Purpose; Formalities pages 431 to 448; *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 28, 2024: Nature of a Beneficiary's Interest; Discretionary and Support Trusts; Transfers of Beneficial Interests in Trust, pages 449 middle – 464 middle (including *Emmert*; *Broadway National Bank v. Adams*)

Bonus Materials for Class #20

Class #21: Tuesday, April 2, 2024 Class: Nature of Beneficiary's Interest cont. 464 middle-482 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 4, 2024: Reformation, Modification, and Termination of Trusts pages 482 middle to 497 top (including *Clafin* and *In re Trusteeship of Mayo*)

Bonus Material for Class #22 plus also posted: Practical Probate (8 pages from Dukeminier casebook and a few pages of Illinois forms)

Class #23: Tuesday, April 9, 2024: Charitable Trusts pages 497 bottom to 520 middle (including *St. Mary's Medical v. McCarthy*; *Obermeyer v. Bank of Am.*); Equitable Deviation pages 523 to 529 (including *Estate of Wilson*) [No Bonus Material for Class #23]

Class #24: Thursday, April 11, 2024: Federal Wealth Transfer Taxes page 17 bottom to page 27; Powers of Appointment pages 584 bottom to 597 top (including *Beals v. State St. Bank and Trust*)

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

Class #25: Tuesday, April 16, 2024: Problems in Trust Administration—Duty of Loyalty, pages 637-647 (including *Estate of Hines*) [Bonus Materials for Class #25]

Class #26: Thursday, April 18, 2024: Ethical Guidelines pages 648 middle to 652 middle; Investments pages 664 middle to 674 top (including *Estate of Janes*) [Bonus Materials for Class #26]

Class #27: Tuesday, April 23, 2024: Principal and Income Issues pages 693 bottom to 711 (including *In re Heller*) [Bonus Materials for Class #27]

Class #28: Thursday, April 25, 2024: Other Fiduciary Duties 712 middle to 729 top (including *Estate of Baldwin* and *Johnson v. Johnson*); Remedies for Breach of Fiduciary Duties; Bars to Relief; pages 729 bottom to 744 middle (including *Rothko* and *In re Williams*) [Bonus Materials for Class #28]

Title of Document: T&E S 2024 Syllabus Dec. 23, 2023

SYLLABUS ATTACHMENT
SIU SCHOOL OF LAW – Spring 2024

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/>.

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SAFETY 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>

Syllabus Attachment

Spring 2024

MISSION STATEMENT FOR SOUTHERN ILLINOIS UNIVERSITY CARBONDALE

SIU embraces a unique tradition of access and opportunity, inclusive excellence, innovation in research and creativity, and outstanding teaching focused on nurturing student success. As a nationally ranked public research university and regional economic catalyst, we create and exchange knowledge to shape future leaders, improve our communities, and transform lives.

IMPORTANT DATES:

Semester Classes Begin:01/16/2024

Last day to add full-term course (without Dean's signature):01/21/2024

Last day to withdraw from the University with a full refund:01/26/2024

Last day to drop a full-term course for a credit/refund:01/28/2024

Last day to drop a full-term course (W grade, no refund):.....03/31/2024

Final examinations:05/06/2024–05/10/2024

Note: Please verify the above dates with the Registrar calendar and find more detailed information on deadlines at <http://registrar.siu.edu/calendars>. For add/drop dates that apply to shorter-than-full-term courses, please look at the Schedule of Classes search results at <http://registrar.siu.edu/schedclass/index.php>

SPRING SEMESTER HOLIDAYS:

Martin Luther King, Jr.'s Birthday 01/15/2024

Spring Break 03/09/24-03/17/24

Total Solar Eclipse (classes cancelled) 04/08/24

DIVERSITY: Southern Illinois University Carbondale's goal is to provide a welcoming campus where all of our students, faculty and staff can study and work in a respectful, positive environment free from racism and intimidation. For more information visit: <http://diversity.siu.edu>. Additional informational flyer.

DISABILITY SUPPORT SERVICES: 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 <https://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.

MILITARY COMMUNITY: There are complexities of being a member of the military community and also a student, and military and veteran related developments can complicate academic life. If you are a member of the military community and in need of accommodations please visit Veterans Services at <http://veterans.siu.edu/>.

STUDENT MULTICULTURAL RESOURCE CENTER: The Student Multicultural Resource Center serves as a catalyst for inclusion, diversity and innovation. As the Center continues its work, we are here to ensure that you think, grow and succeed. We encourage you to stop by the Center, located in the Student Services Building Room 140, to see the resources available and discover ways you can get involved on the campus. Visit us at <https://smrc.siu.edu/>.

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SIU COUNSELING AND PSYCHOLOGICAL SERVICES (CAPS): Mental health counseling services are available by calling CAPS at (618) 453-5371. CAPS offers confidential same-day services and ongoing counseling. For after hours crisis care, students are encouraged to call 988, 911, or present to their nearest emergency room.

WITHDRAWAL POLICY (Undergraduate Only): Students who officially register for a session must officially withdraw from that registration in a timely manner to avoid being charged as well as receiving a failing grade for those classes. An official withdrawal must be initiated by the student, or on behalf of the student through the academic unit, and be processed by the Registrar's office. For the proper procedures to follow when dropping courses and when withdrawing from SIUC visit: <http://registrar.siu.edu/students/withdrawal.php>.

SIUC'S EARLY WARNING INTERVENTION PROGRAM (EWIP): Students enrolled in courses participating in SIUC's Early Warning Intervention Program might be contacted by University staff during a semester. More information can be found at the University Core Curriculum's Overview webpage: <https://corecurriculum.siu.edu/for-faculty/>.

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CATALOGS:

catalog.siu.edu

gradcatalog.siu.edu - Graduate policies often vary from Undergraduate policies. To view the applicable policies for graduate students, please refer to the graduate catalog.

CENTER FOR LEARNING AND SUPPORT SERVICES:

Tutoring: <https://clss.siu.edu/>

Math Labs: <http://math.siu.edu/courses/course-help.php>

WRITING CENTER: <http://write.siu.edu/>

PLAGIARISM: See the Student Conduct Code: <http://srr.siu.edu/student-conduct-code/>

INCOMPLETE POLICY (Undergraduate Only): <http://registrar.siu.edu/grades/incomplete.php>

REPEAT POLICY: <http://registrar.siu.edu/students/repeatclasses.php>

MORRIS LIBRARY HOURS: <https://libcal.lib.siu.edu/hours/>

ADVISEMENT: <http://advisement.siu.edu/>

SIU ONLINE: <https://online.siu.edu/>