SYLLABUS
FOR
ESTATES AND TRUSTS
FALL 2017

Professor David English
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Coverage

Wills and Trusts is a four hour elective that will teach the law of wills, trusts and related concepts within a practice context.

Required Course Materials

(2) Estates and Trusts Supplement

There is a page on TWEN for this course on which will be found a copy of this syllabus and the Supplement. A complete set of powerpoint slides will also be posted.

Assignments

The assignments in the course commentary very roughly correspond to daily assignments for a 50 minute class. You should expect that we will cover from three to five assignments per week.

Grading

There will be a final exam which will count as 100% of the grade. You may bring anything into the exam, including a calculator.

Instructor

I am the W.F. Fratcher Professor of Law at the University of Missouri at Columbia, where I have taught Property, Trusts and Estates, Estate Planning, Federal Income Tax and Elder Law. Before becoming a law teacher, I was an associate in the estate planning and probate department at the Chicago law firm of McDermott, Will and Emery, and an estate planning and tax associate and later partner at the Chicago law firm of D’Ancona and Pflaum.

I spend much of my time as a Uniform Law Commissioner for the State of Missouri. I was the Reporter (principal drafter) of the Uniform Trust Code, the Uniform Health-Care Decisions Act, and
the Uniform Adult Guardianship Jurisdiction Act. I also spend much of my time working with professional organizations. I am currently the Chair-Elect of the ABA Section of Real Property Trust and Estate Law and Co-Chair of the Guardianship Statutory Task Force of the Missouri Developmental Disabilities Council. I am also the immediate past Chair of the ABA Commission on Law and Aging, and the immediate past Chair of the Probate and Trust Committee of the Missouri Bar.

**Office Hours**

I maintain an open door policy. The best time for questions is immediately after class.

**Audio/Video Recording**

Recording of any part of the class session, in any action or video format, is not permitted without my permission.

**Attendance Policy**

According to American Bar Association accreditation guidelines, students must attend 80% of all classes. Any student who misses more than 8 regularly scheduled classes during the semester may be withdrawn from the course. Attendance will be taken beginning with the second week of class.
Mandatory Notices

Academic Dishonesty

Academic dishonesty can result in a lowered grade or failure of the course, dismissal from the school, and even disqualification for the bar exam. Academic dishonesty includes but is not limited to cheating, plagiarism, unauthorized possession of exams, and unauthorized changing of grades.

ADA Statement

If you have special needs eligible for assistance under the Americans with Disabilities Act (ADA) and desire such assistance, please contact the Office of Disability Services, Memorial Union S5, 882-4696, or the Associate Dean for Academic Affairs immediately. Reasonable efforts will be made to accommodate your special needs.

Diversity of Viewpoints

The School of Law community welcomes diversity and respects student rights. Students who have questions concerning the quality of instruction in this class may address concerns to either the Dean or Director of the Office of Student Rights and Responsibilities. All students will have the opportunity to submit an anonymous evaluation of the instructor at the end of this course.

Learning Objectives

Students will:
1. acquire substantive law background for practice in the fields of estate planning, estate and trust administration, and fiduciary litigation;
2. gain knowledge useful for the wills and trusts questions on the bar exam;
3. become familiar with the more common estate planning documents;
4. learn how to analyze estate and trust statutes and the policy reasons behind the particular provisions

Assessment: summative (final exam)
Standard 303 compliant (simulation/law clinic/field placement)? No
SCHEDULE OF ASSIGNMENTS

Key to Assignments:

Book: Readings in Wills, Trusts & Estates
Readings: Articles in Supplement
Cases: Cases in Supplement
EPForms: Estate Planning Forms Supplement
Statute: Statute in Supplement

PROBATE PROCESS

Assignments 1-3 – Introduction/Overview of Probate Process

Book: 1.1, 13.1, 13.2, 13.5
Readings: Questions on Estate Planning, p. 124
Cases: Tulsa v. Pope, p. 166
Statute: UPC 1-201, 3-801, 3-803, 3-805, 3-1201 to 3-1202

INTESTATE SUCCESSION

Assignments 4-6 -- Basic Rules

Book: 2.1-2.3
Statute: UPC 2-101, 2-102, 2-103, 2-104, 2-105, 2-106, 2-107, 2-701, 2-709

Assignment 7 – Advancements/Slayers

Book: 2.6-2.7
Cases: Estate of Mahoney, p. 174
Statute: UPC 2-109, 2-114, 2-609, 2-803

Assignment 8 – Children Born Out of Wedlock

Book: 2.9
Statute: UPC 2-115, 2-117, 2-705, Uniform Parentage Act 201, 204

Assignment 9 – Adoption

Book: 2.10
Statute: UPC 2-113, 2-116, 2-118, 2-119, 2-122, 2-705

Assignment 10 – The New Biology
Assignment 11–Interviewing the Client

Readings: Getting Ready for Your Appointment, p. 129
Estate Planning for Digital Assets, p. 131
Other: Client Questionnaire
Engagement Letter
(Posted on TWEN)

FORMALITIES

Assignments 12-13--Will Execution

Book: 4.1-4.3
Readings: Will Execution, p. 134
Cases: In re Taylor’s Estate, p. 179
In re Estate of Parsons, p. 182
Readings: Will Execution
EPForms: Will Form Attestation Clause and Self-proving affidavit, pp. 114-116
Statute: UPC 2-501, 2-502, 2-503, 2-504, 2-505, 2-506

Assignment 14–Trusts: An Introduction

Book: 4.6
Cases: Farkas v. Williams, p. 187
Statute: UTC 103, 401

Assignments 15 and 16–POD Arrangements/Joint Accounts

Book: 4.7-4.8
Cases: Henkle v. Henkle, p. 194
Gross v. Gross, p. 199
Fix v. Fix, p. 202
Statute: RSMo 461.005, 461.025, 461.028, 461.033, 461.042, 461.043, 461.045, 461.051, 461.054

REVOCATION

Assignments 17 and 18--Will Revocation
Assignment 19—Divorce

Book: 5.4
Statute: UPC 2-804

EXTRINSIC EVIDENCE

Assignment 20—Interpretation

Book: 6.1 (pp. 313-324)
Cases: Breckner v. Prestwood, p. 230
     Estate of Ihl v. Oetting, p. 236
Statute: UPC 2-805, 2-806; UTC 415, 416

Assignment 21—Components of Wills

Book: 6.2
Cases: Simon v. Grayson, p. 239
Statute: UPC 2-510, 2-511, 2-512, 2-513

INCAPACITY AND UNDUE INFLUENCE

Assignments 22 and 23—Standing/Incapacity

Book: 7.1, 13.3
Cases: Estate of Getty, p. 242
     Morse v. Volz, p. 247
     Fountain v. Schlanker, p. 248
     In re Honigman’s Will, p. 253
Statute: UPC 3-407, 3-720, 3-905

Assignments 24 and 25—Undue Influence

Book: 7.3
Cases: Vancil v. Carpenter, p. 257
ADEMPTION, ABATEMENT AND LAPSE

Assignments 26 and 27–Changes in Property

- Book: 8.1-8.3
- Cases: Estate of Swoyer, p. 261
- Statute: UPC 2-601, 2-605, 2-606, 2-607, 2-609, 3-902

Assignments 28 to 29–Death and Lapse

- Book: 8.5
- Cases: Janus v. Tarasewicz, p. 264
- Statute: UPC 1-107(5), 2-602, 2-603, 2-604, 2-702

TRUST LAW

Assignments 30-32–Creation of Trusts

- Book: 9.1-9.3
- Readings: Sources of American Trust Law, p. 135
  Primer on American Trust Law--Overview and Types of Trusts, Trust
  Creation, pp. 138-143 (pts. 1-3)
  Uses of Trusts in Family Estate Planning in the US, p. 153
- Statute: UTC 101, 102, 105, 106, 401 to 404, 406 to 409, 601

Assignment 33-34–The Revocable Trust

- Book: 9.4
- Readings: Primer on American Trust Law, Revocable Trusts--pp. 143-144 (pt.4)
  Creation and Use of Revocable Trusts in the US, p.157
- Will: Pourover provision (p.117), Revocable trust provisions (p.118)
- Statute: UTC 602 to 604

Assignments 35 to 37--Drafting Dispositive Provisions

- Book: 9.7
- Readings: Choosing a Guardian, p. 162
- Cases: Old Colony v. Rodd, p. 269
- Readings: Choosing a Guardian,
- Will: 4.1-4.8, 5.1, pp. 98-100
- Statute: UTC 803, 814, 1004
Assignment 38--Avoiding Creditors

Book: 9.8
Readings: Primer on American Trust Law, Trust Distribution--pp. 145-146 (pt. 5)
Cases: Shelley v. Shelley, p. 274
Will: 6.7, p.109
Statute: UTC 501 to 505

Assignments 39 and 40--Trust Modification and Termination

Book: 9.9
Readings: Primer on American Trust Law--Revocation and Modification of Trusts, pp. 146-148 (pt.6)
Cases: In re Estate of Brown, p. 282
In re Riddell, p. 285
Statute: UTC 111, 301, 303 to 305, 410 to 412, 414 to 417, 706, 817

Assignments 41 and 42--Charitable Giving

Book: 9.10
Readings: Primer on American Trust Law, Charitable Trusts--pp. 148-149 (pt. 7)
Cases: In re Neher’s Will, p. 291
Statute: UTC 405, 413

FIDUCIARY ADMINISTRATION

Assignments 43 and 44--The Duties of Loyalty and Due Care

Book: 12.1
Readings: Primer on American Trust Law--Duties of Trustee, pp. 149-151 (pt. 8)
Cases: Estate of Rothko, p. 293
Statute: UTC 706, 801, 802, 804, 1001, 1002, 1008

Assignment 45 --The Duty to Invest

Book: 12.2, 12.4 (pp. 586-589)
Readings: Primer on American Trust Law, Powers of the Trustee--p.151-152 (pt. 9)
Cases: Shriners Hospital v. Gardiner, p. 306
Statute: Principal and Income Act 104, Prudent Investor Act 1 to 10

Assignment 46–Duty to Keep the Beneficiaries Informed
ELDER LAW

Assignments 47-49--Planning for Incapacity

Book: 14.1-14.5
Readings: Durable Power of Attorney: “Springing” or “Surviving,” p. 164
Cases: Cruzan v. Director, Mo. Dep’t Health, p. 311
EPForms: Durable Power of Attorney form, p. 119
Statute: RSMo 404.700, 404.703(4), 404.705.1, 404.710, 404.800, 404.805, 404.815, 404.820, 459.010, 459.015

FAMILY PROPERTY

Assignments 50 and 51--Omitted Spouse and Children

Book: 3.5-3.6
Cases: In re Estate of Shannon, p. 321
        Azcunce v. Estate of Azcunce, p. 325
        Espinosa v. Sparber, et al., p. 329
EPForms: Will Form 1.3, p. 95
Statute: RSMo 473.620, 474.010, 474.235, 474.240

Assignment 52--Statutory Allowances

Book: 3.3-3.4
Statute: RSMo 474.250 to 474.300

Assignment 53--Marital Property Systems

Book: 3.7
Statute: RSMo 474.110

Assignment 54--The Missouri Elective Share

Cases: McDonald v. McDonald, p. 332
Statute: RSMo 474.120, 474.150, 474.160 to 474.230