

WILLS, TRUSTS, and ESTATES SYLLABUS

Professor Akilah N. Folami

2015 Summer Session I

REQUIRED TEXTS

Casebook: Dukeminier, Johanson, Lindgren & Sitkoff, WILLS, TRUSTS, & ESTATES (**9th Ed. 2013**) (“CB”).

OFFICE HOURS I will be in my office immediately following class on most days. To ensure a meeting time though, please email or call to make an appointment.

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Course Overview

The purpose of this class is to provide you with a solid overview of the law regarding intestacy, wills, and trusts. Through case analysis, and statutory interpretation, you will become familiar with many of the core concepts of estate planning.

GRADING POLICY

Your grade will be based upon the score that you earn on your final exam. Subject to my discretion, grades may be adjusted up to account for consistent and exceptional class participation, or down to account for repeated absences or failures to be properly prepared.

CLASS PARTICIPATION AND ATTENDANCE

Attendance: The rules of the New York State Court of Appeals and the American Bar Association require law students to be in good and regular attendance in the courses for which they are registered. To comply with these rules, you must attend at least 85% of the regularly-scheduled classes in this course. Thus, you may not have more than four (4) absences of this class.

I will provide sign-in sheets for each regularly-scheduled class, which shall be the dispositive evidence regarding your absence from a given class. Each student is responsible for signing in. Falsification of sign-in sheets is a violation of the Code of Academic Conduct.

If you exceed the permitted absences by failing to sign in, you may be administratively withdrawn from the course. No prior notice may be given, and you will receive notification from the Office of Academic Records indicating the withdrawal. Any such withdrawal may have serious ramifications for your financial aid, academic standing, and date of graduation. If you are excessively absent from several classes, you may face additional sanctions, including but not limited to denial of certification of good and regular attendance to the New York State Board of Law Examiners, or other state bar examiners.

If you believe you must be absent from class for more than the permitted number of classes, you should contact the Office of Student Affairs as soon as possible. **You are responsible for keeping track of your own absences and for notifying the Office of Student Affairs, as soon as possible, if you believe you must be absent from class for more than the permitted number of classes.** Accommodations may be made for students who must be absent for religious reasons and in cases of truly compelling hardship. Any request for an exception must be accompanied with appropriate documentation and provided to the Office of Student Affairs.

Tardiness: I will circulate the sign-in sheet at the beginning of each class. If you are not present at that time, you will be marked absent. If you are late, please see me at the end of class and before I leave the classroom to ask me to change your absence mark to a tardy mark. For purposes of this policy, two tardies may affect your class participation grade and/or may be counted as one absence.

Class Participation: Each of you should be prepared to participate in every class discussion. By random selection, I will call on students to answer some questions and ask for volunteers for others. In the event of an emergency or if you are not prepared for class on a given day, **please email me at least 30 minutes prior to class that you do not wish to participate on that day. If I do not receive such email, I will presume that you are prepared for class discussion and receptive to being called on.** Again, it is at my discretion to determine to what extent, the repeated submission of such emails may have on your final grade.

I would like to recognize each student who has a question or comment but sometimes we must move forward to another topic when there are hands still in the air. When this happens, please feel free to ask me your question after class or during my office hours or to contact me to set up an appointment to discuss your question further.

Being prepared for class shall include not only reading the designated reading assignment but also completing any handouts/exercises that may be distributed during the course. Subject to my discretion, grades may be adjusted up to account for consistent and exceptional class participation or down to account for repeated absences or failure to be properly prepared.

TWEN SITE

The class TWEN (The West Education Network) site contains the class syllabus and will contain any updates/announcements, including the reading assignments for this class that will be posted on a weekly basis. (To access the TWEN site, go to the lawschool.westlaw.com website and follow the links through TWEN to the Folami Wills, Trusts, and Estates Fall 2012 page.) I may post other items to TWEN, so it is incumbent upon you to register on the class TWEN site, with a working e-mail address, so that you will receive all of the necessary class materials and updates.

ASSIGNMENTS:

You may often find that you need to read the material more than once, so plan accordingly. The following is an outline of the topics and readings we will cover in class.

As a general guideline, we will cover approximately thirty (30) to forty (40) pages a week. **I reserve the right to change and adjust this outline and assignments based on the pace and progress of the class, the topics of particular interest to the class, and otherwise, as I deem necessary.** Any changes will be announced in class, posted on TWEN, and/or emailed to you via the email address you have provided on TWEN. The pages listed for each assignment refer to the Dukemenier casebook, except where otherwise noted.

The schedule below is a rough estimate of what topics will be covered at what hour. I will attempt to abide by this schedule but reserve the right to implement and make adjustments as deemed necessary based on the class constitution.

(5/20)

Hours 1 & 2

WEALTH TRANSFER UPON DEATH: THE FUNDAMENTALS

I. Introduction

- a. Wescot t v. Robbins, 40 S.E.2d 461 (N.C. 1946).
(You may download the case off of TWEN from the “Other Course Materials” link).
- b. Dead Hand. Pgs. 1-15.
- c. Economics of inheritance. Pgs. 16-26.
- d. Transfer of Decedent’s Estate. Pgs. 41-51.

Hours 3 & 4

II. WILLS: TESTAMENTARY CAPACITY

- a. Grounds for Will Contest: Mental Capacity

- i. Mental Capacity. Pgs. 265-283.

(5/25) No CLASS Memorial Day Holiday

(5/26) Tuesday—Monday Class Schedule Due to Memorial Day Cancellation

Hours 1 & 2

- ii. Undue Influence. Pgs. 283-305.

Hours 3 & 4

- iii. Undue Influence cont'd. Pgs. 305-313.
- iv. Fraud/Duress/Interference. Pgs. 313-326.

III. WILLS: EXECUTION - Formalities.

- a. Attested wills
 - i. Requirement of Due Execution. Pgs. 147-165.

(5/27)

Hours 1 & 2

- ii. Competency of Witnesses, Purging Statutes, and Model Execution. Pgs. 165-171.
- v. Execution Mistakes. Pgs. 172-189.

Hours 3 & 4

- b. Notarized and Holographic wills. Pgs. 196-215.

(5/31) Folami Make Up Class for Class Cancellation on June 22nd

Hours 1 thru 4.

TBA

(6/1)

Hours 1 & 2

III. REVOCATION OF WILLS

- a. Revocation by writing or physical act. Pgs. 215-229.
- b. Dependent relative revocation and revival. Pgs. 230-239.

- c. Revocation by operation of law: change in family circumstances. Pgs. 239-241.

Hours 3 & 4

IV. COMPONENTS OF A WILL. Pgs. 241-258.

- a. Integration of wills.
- b. Republication by codicil.
- c. Incorporation by reference.
- d. Acts of independent significance.

(6/3)

Hours 1 & 2

V. SUBSTANTIVE MISTAKES AND THE ADMISSION OF EXTRINSIC EVIDENCE: (Ambiguity, Mistake, and Omission).

- a. Interpretation of Wills. Pgs 327-343.
- b. Correcting Mistakes. Pgs 343-351.

Hours 3 & 4

VI. LAPSE: (Death of Beneficiary Before Death of Testator). Pgs 351-361.

(6/8)

Hours 1 & 2

- a. Anti-Lapse and Class Gifts. Pgs. 361-373.

Hours 3 & 4

VII. CHANGES IN PROPERTY AFTER EXECUTION OF WILL. Pgs. 373-384.

INTESTACY AND PROVIDING FOR FAMILY

I. RIGHTS OF SURVIVING FAMILY MEMBERS.

- a. Intestacy and Introduction to the statutory scheme. Pgs 63-75.
- b. Simultaneous death. Pgs. 75-81.

(6/10)

Hours 1 & 2

REVIEW

- c. Shares of Descendants. Pgs. 81-85.
- d. Shares of Ancestors and Collaterals. Pgs. 85-91.

Hours 3 & 4

- II. Transfers to Children: Adoption. Pgs. 91-104.
 - a. Equitable adoption. Pgs. 104-109.
 - b. Posthumous Children. Pgs. 109.
 - c. Nonmarital Children. Pgs. 110.
 - d. Posthumously Conceived and Same Sex Children. Pgs. 111-112, 120 -126 (FYI: READ briskly).
 - e. Rights of Descendants Omitted From the Will. Pgs. 563-566.
 - f. Advancements to Children. Pgs. 126-129.
 - g. Managing a Minor's Property. Pgs. 129-132 [FYI: READ briskly].
- III. Bars to Succession
 - a. Homicide. Pgs. 132-140 [FYI: READ briskly].
 - b. Disclaimer Pgs. 141-145 [FYI: READ briskly]

(6/15)

Hours 1 & 2

- III. Marital Property Systems. Pgs. 511-520.
 - a. Spousal elective share.
 - i. The elective share.
 - b. Additional Rights of a Surviving Spouse. Pgs. 552-556.

Hours 3 & 4

- c. Property subject to elective share and Pre-nup Waivers. Pgs. 520-527, 532- 545.
- d. Community property. Pgs. 545-552.

(6/17)

Hours 1 & 2

- e. Spouse omitted from premarital will. Pgs. 563-566.

REVIEW (material covered since May 31st)

TRUSTS: CREATION, TYPES, AND CHARACTERISTICS

- I. Introduction. Pgs. 385-400.
 - a. Creating a Trust. Pgs. 400-414.

Hours 3 & 4

- b. The Requirement of a Trust Res. Pgs. 414-417..
- II. Trust Beneficiaries. Pgs. 417-421.
 - a. Pet Beneficiaries. Pgs. 421-426.
 - b. Writing Requirement. Pgs. 426-435.

(6/22) CLASS CANCELLED (Hours made up on May 31st)

(6/24)

Hours 1 & 2

- III. Revocable Trust
 - a. Introduction. Pgs. 435-446,
 - b. Subsidiary Rules. Pgs. 457-469.

Hours 3 & 4

- IV. Discretionary Distributions to Beneficiaries. Pgs. 603-614.
- V. Discretionary and Spendthrift Trusts. Pgs. 687-670, 714-716 (READ Briskly).

(6/28) Folami Make Up Class for Class Cancellation on July 6th

Hours 1 & 2

- VI. Modification and Termination. Pgs. 717-730.
 - a. Termination of Trusts.

Hours 3 & 4

- c. Trustee Removal. Pgs. 736-743.

(6/29)

Hours 1 & 2

FUTURE INTERESTS AND LIMITS ON TRUST DURATION

I. Future Interests

- a. Classifications of Future Interests. (HANDOUT Pgs. 623-630).
- b. Class Gifts and the Class-Closing Rule. (HANDOUT Pgs. 662-669).

Hours 3 & 4

I. Rule Against Perpetuities

- a. Introduction. (HANDOUT Pgs. 671-678).

(7/1)

Hours 1 & 2

- b. Remote Vesting. (HANDOUT Pgs. 678-690).
- c. Perpetuities Reform. (HANDOUT Pgs. 695-704).

REVIEW

(7/6) CLASS CANCELLED (Hours made up on June 28th)