

# WILLS, TRUSTS, and ESTATES SYLLABUS

Professor Akilah N. Folami

Fall 2018

## REQUIRED TEXTS

**Casebook:** Dukeminier, Johanson, Lindgren & Sitkoff, WILLS, TRUSTS, & ESTATES (**10<sup>th</sup> Ed.**) (“CB”).

## AVAILABILITY/CONTACT INFORMATION

Via in Person in my office: (by scheduled appointment).

Via online livestream (by scheduled appointment).

Via email (Akilah.Folami@Hofstra.edu): Emails answered generally on or before Friday.

## COURSE OVERVIEW: LEARNING OBJECTIVES

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 (1) absence of this class. More than that can result in a mandatory grade reduction or dismissal 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. NOTE: Make-Up Classes, Extra Review Classes, or Conference Calls may be scheduled (with sufficient notice) and held via an online live platform.

If you exceed the permitted absences by failing to sign in, you may be administratively withdrawn from the course.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](http://lawschool.westlaw.com) website and follow the links through TWEN to the Folami Wills, Trusts, and Estates class 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.

### **(8/21) & (8/23)**

#### **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. 16-28.
- d. Transfer of Decedent’s Estate. Pgs. 40-51.

#### **Hours 3 & 4**

##### II. WILLS: TESTAMENTARY CAPACITY

- a. Grounds for Will Contest: Mental Capacity. Pgs. 263-281.

**(8/28) & (8/30)**

**Hours 1 & 2**

- ii. Undue Influence. Pgs. 283-301.

**Hours 3 & 4**

- iii. Undue Influence cont'd. Pgs. 301-310.
- iv. Fraud/Duress/Interference. Pgs. 310-324.

**III. WILLS: EXECUTION - Formalities.**

- a. Attested wills
  - i. Requirement of Due Execution. Pgs. 141-157.

**(9/4) & (9/6)**

**Hours 1 & 2**

- ii. Competency of Witnesses (Purging Statutes) and Model Execution. Pgs. 157-163.
- iii. Execution Mistakes and Remedies. Pgs. 163-183, 195-197.

**Hours 3 & 4**

- b. Notarized and Holographic wills. Pgs. 197-216.

**(9/11 NO SCHEDULED CLASS) & (9/13)**

**Hours 1 & 2**

**III. REVOCATION OF WILLS**

- a. Revocation by writing or physical act. Pgs. 217-231.
- b. Partial revocation and Dependent relative revocation and revival. Pgs. 231-238.
- c. Revocation by operation of law: change in family circumstances. Pgs. 238-240.

**(9/15) MOCK ESSAY EXAM released on TWEN on 9/11 to be submitted via TWEN by today at 11:59p.m.**

**(9/16) SELF-CORRECTING ESSAY CHART REVIEW released on TWEN**

on 9/11 to be submitted via TWEN by today at 11:59p.m.

**(9/18 NO SCHEDULED CLASS) & (9/20)**

**Hours 1 & 2**

IV. COMPONENTS OF A WILL. Pgs. 240-255.

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

**(9/25) & (9/27)**

**Hours 1 & 2**

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

- a. Interpretation of Wills. Pgs. 325-341.
- b. Correcting Mistakes. Pgs. 341-351.

**Hours 3 & 4**

VI. LAPSE and Anti-lapse: (Death of Beneficiary Before Death of Testator). Pgs. 352-368.

**(10/2) & (10/4)**

**Hours 1 & 2**

- a. Class Gifts and anti-lapse. Pgs. 368-373.

**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. Introduction to the intestacy statutory scheme and Simultaneous Death. Pgs. 63-79.
- b. Descendants. Pgs. 79-84.

**(10/9) & (10/11)**

**Hours 1 & 2**

- c. Ancestors and Collaterals and Negative Wills. Pgs. 84-90.

**Hours 3 & 4**

- II. Transfers to Children: Adoption. Pgs. 90-102.
  - a. Equitable adoption. Pgs. 102-110.
  - b. Posthumously born children, posthumously conceived children, and/or children of same-sex parents. Pgs. 110-122.
  - c. Advancements to children. Pgs. 122-124.
  - d. Managing a minor's property. Pgs. 124-127.
- III. Bars to Succession and Disclaimer. Pgs. 127-135, 135-140.

**(10/16) & (10/18)**

**Hours 1 & 2**

- III. Other Limitations on Freedom of Disposition: Protecting Spouse and Children.
  - a. Spousal Support Rights. Pgs. 560-564.
  - b. Marital Property and the Traditional Elective Share. Pgs. 519-528.

**Hours 3 & 4**

- i. Property subject to elective share and Pre-nup Waivers. Pgs. 528-535, 540- 553.
- c. Community Property. Pgs. 553-560.

**(10/23) & (10/25)**

**Hours 1 & 2**

- d. Spouse omitted from premarital will. Pgs. 571-574.
- e. Child omitted from premarital will. Pgs. 574-583.

**TRUSTS: CREATION, TYPES, AND CHARACTERISTICS**

- I. Introduction. Pgs. 385-401.
  - a. Creating a Trust. Pgs. 401-414.

**Hours 3 & 4**

- b. The Requirement of a Trust Res. Pgs. 414-418.
- II. Trust Beneficiaries. Pgs. 419-423.
  - a. Pet Beneficiaries. Pgs. 423-429.
  - b. Writing Requirement. Pgs. 429, 433-437.

**(10/30) & (11/1)**

**Hours 1 & 2**

- III. Revocable Trust
  - a. Introduction. Pgs. 439-448.
  - b. Subsidiary Rules. Pgs. 459-471.

**Hours 3 & 4**

- IV. Discretionary Distributions to Beneficiaries. Pgs. 612-624.
- V. Discretionary and Spendthrift Trusts. Pgs. 695-712.

**(11/6) & (11/8)**

**Hours 1 & 2**

- VI. Modification and Termination. Pgs. 727-742.
  - a. Trustee Removal. Pgs. 750-757.

**Hours 3 & 4**

## **FUTURE INTERESTS AND LIMITS ON TRUST DURATION**

- I. Future Interests
  - a. Classifications of Future Interests. (HANDOUT Pgs. 623-630).

**(11/11) MOCK SHORT ANSWER QUESTIONS released on TWEN on 11/8 to be submitted via TWEN by today 11:59p.m.**

**(11/13) & (11/15)**

**Hours 1 & 2**

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

**(11/20 CLASS CANCELLED)**

**(11/27) & (11/29)**

**Hours 1 & 2**

MOCK TIMED IN CLASS EXAM

**Hours 3 & 4**

Review

**(12/4)**

**Hours 1 & 2 Review**