WILLS, TRUSTS, & ESTATES
SYLLABUS

Professor Akilah N. Folami  Spring 2021

REQUIRED TEXTS

Casebook:  Dukeminier, Johanson, Lindgren & Sitkoff, WILLS, TRUSTS, &
ESTATES (10th Ed.) (“CB”).  NOTE: Do not need the edition
with the online access code.

AVAILABILITY/CONTACT INFORMATION

Via Zoom online livestream platform (by scheduled appointment).
Via email (Akilah.Folami@Hofstra.edu):

NOTE: Emails answered generally by 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.

Learning Outcomes

Upon completion of our course, each student should have acquired:

(1) a demonstrated and advanced knowledge of the rules and policies contained in
this particular area of law related to wills, trusts, and intestacy;

(2) a demonstrated and advanced knowledge of the roles and differing characteristics
of sources of law, such as the common law, uniform law, and legislation; and of
the roles of at least some of the perspective analysis of law, such as historical and
jurisprudential analytical perspectives;

(3) a demonstrated and advanced knowledge of extracting rules and policy from cases
and statutes, and of analyzing, interpreting and arguing differing interpretations of
rules and statutes;

(4) a demonstrated and advanced knowledge of conducting investigation of facts and
constructing a coherent narrative based on that investigation;
(5) a demonstrated and advanced knowledge of identifying legal issues in facts and applying rules and policy to facts; of weighing evidence to reach factual inferences; of constructing arguments and identifying flaws in an argument; of presenting analysis orally and arguing orally; and of using policy to analyze and persuade.

GRADING POLICY

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

Workload:

The Law School has adopted a “Credit Hour Policy.” A “credit hour” is an amount of work that reasonably approximates not less than one hour of classroom or direct faculty instruction (calculated as 50 minutes of classroom time) and two hours (120 minutes) of out-of-class student work per week for fifteen weeks (including one week for final exams), or the equivalent amount of work over a different amount of time. These requirements apply equally to all courses taught in the Law School, including distance education courses.

Grade:

The final examination may be either open-book, partial open-book, or closed-book and may consist of a combination of multiple-choice/true-false questions, short or long essay questions. It will be graded anonymously.

NOTE: As with the last few semesters, the exam administration for this exam may be virtual, as such, it will have hard stop and start times.

If applicable, each multiple-choice question will be worth a set value (yet to be determined), as will the long or short essay questions (yet to be determined).

CLASS PARTICIPATION AND ATTENDANCE

Location:

Mondays and Wednesdays, 2:10-4:00. All classes will meet online via Zoom Video Chat. There will be one or more built in 5-10 minute breaks within the hour.

The course’s TWEN site will contain a forum where all announcements regarding the class will be contained. It will be titled “Announcements” and will be located in the
Forum’s link. Please check this location daily, often more than once, as any changes or adjustments to the class meeting, reading assignment, etc., will be there.

Among other things, it is critical that each student have access to a PC or Mac with (1) speakers, (2) a microphone, (3) a webcam, and (4) a stable, solid Internet connection for each of the class meeting times. A complete list of technical requirements can be found here: https://support.zoom.us/hc/en-us/articles/201362023-System-Requirements-for-PC-Mac-and-Linux. While a cellphone may be used, continued use may prove difficulty for class participation and engagement. Therefore, students unable to fully participate in the Zoom class sessions, via both video and audio feed, on a regular and consistent basis may not be permitted to remain in the course, or may have their final grade adjusted for failure to be prepared for class.

Please adhere to the following rules for our Zoom Video Classes:

• Arrive to the live session at least 10 minutes early to make sure you can log in and that your equipment is working properly.
• When initiating your Zoom session, please provide Zoom with your full first and last name.
• Mute your microphone when you are not speaking
• To prevent audio echo, please mute your speakers and use earbuds or a headset if possible.
• Avoid using the chat feature – please ask your questions orally.
• Use the chat feature ONLY to type in your first and last name in the first 15 minutes of class for attendance purposes. If you have a question, I suggest that you raise your hand or send me a separate email outside of class, restraining from using the chat section for this reason, as I may not see it or it may be a distraction during class.

For help with Zoom, please contact the Law School’s helpdesk via lawhelp@hofstra.edu or phone (516-463-4192).

Again, for substantive questions or concerns regarding the class material, please email me. If you prefer to meet live, or if I believe a live discussion would be more appropriate given your questions or concerns, we will do so via Zoom Video Chat. To do so, I will set up a mutually convenient time for the session, and thereafter you’ll receive a link to click at the appropriate time to commence the meeting.

NOTE: I encourage you to take full advantage of this opportunity to meet with me (albeit virtually). And please do not feel as though you need to limit the subject of our meetings to class matters per se -- I would be happy to discuss with you more general law school concerns, career questions, or anything else that would be appropriate.
NOTE: I may also set up a student conference sign in sheet on our class TWEN site in which you may sign up for a meeting. If you do so, please send me an email informing me that you have done so 24 hours before the scheduled session time, including the topic for discussion.

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. More than that can result in a mandatory grade reduction or dismissal of this class.

In addition to me noting attendance at the beginning of class by those logged in and visibly present, it is more dispositive that you sign your first and last name in the Chat Section of our Zoom class session in the first 15 minutes class. Signing in after that may count as an absence (see Tardiness section below).

NOTE: Make-Up Classes, Extra Review Classes, or Conference Calls will be scheduled and held via Zoom Conference or via Podcast lecture, but will not be mandatory in terms of attendance. Any Make-Up Classes or Podcast Lecturers held during this course will be uploaded to our class TWEN site, Extra Review Classes may, however, night be.

If you exceed the permitted absences, you may be administratively withdrawn from the course. No prior notice may be given, and you will receive notification from the appropriate administrative office (i.e., Office of Student Affairs) 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 appropriate law school administrative office as soon as possible.

NOTE: You are responsible for keeping track of your own absences and for notifying the appropriate administrative office, 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, for example, and in cases of truly compelling hardship. Any request for an exception to these attendance requirements must be accompanied with appropriate documentation and provided to the appropriate administrative office.
Tardiness:

You must sign your first and last name in the Chat Section of our Zoom class within 15 minutes of the beginning of our class session. If you are not present (as reflected by signing in) within that time, you will be marked absent. If you are late, you may request to discuss it with me via email to request a change of your absence mark to a tardy mark, which shall be subject to my discretion. For purposes of this policy, two (2) tardies may affect your class participation grade and/or may be counted as one absence.

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.

NOTE: Please email me at least 120 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.

If you have a question during our class session be sure to virtually raise your hand (the raise your hand button is located in the Participant icon located at the bottom or top of your screen.). If I miss your hand, you may also feel free to unmute yourself to interject your question or comment as and if the circumstance permits.

While I would like to recognize each student who has a question or comment, 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, via email, or during my office hours or to contact me to set up a virtual appointment to discuss your question further.

NOTE: Being prepared for class shall include not only reading the designated reading assignment but also completing any handouts/exercises OR hypotheticals that may be distributed or announced during the course during class time or otherwise.

TWEN SITE

The class TWEN (The West Education Network) site contains the class syllabus, PowerPoint slides, and will contain any updates/announcements (announcements will be posted in the “Announcements” link found in the Forum’s link on the TWEN cite). 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 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 that we will cover in class. As a general guideline, we will cover approximately fifteen (15) to thirty-five (35) pages a week. The pages listed for each assignment refer to the Dukeminier casebook, except where otherwise noted. The scheduled assignments 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. Any changes will be announced in class, posted on TWEN (in the “Additional Assignments” link), and/or emailed to you via the email address you have provided on TWEN.

NOTE: The 1-2 and 3-4 hour designations below are loose predictions of the topics to be covered within those hours of class for that week of class. To be best prepared for the first class of the week, I strongly recommend reading the entire reading assigned for that week, as there may be instances where I go into the next assignment.

Please also note that there may be times where I do not complete the reading assigned. Unless I announce otherwise, please be prepared to discuss in the next class the reading assigned for that next class and that which was not discussed, yet assigned, for the prior class.

Week of 1/20:

Hours 1 & 2 (No Administratively Scheduled Class for 1/20)

Hours 3 & 4

WEALTH TRANSFER UPON DEATH: THE FUNDAMENTALS

1. Introduction

      (You may download the case off of TWEN from the “Other Course Materials” link).

Week of 1/27:

Hours 1 & 2

II. WILLS: TESTAMENTARY CAPACITY


Hours 3 & 4


Week of 2/1:

Hours 1 & 2


III. WILLS: EXECUTION - Formalities.

a. Attested wills


Hours 3 & 4

ii. Competency of Witnesses (Purging Statutes) and Model Execution. Pgs. 157-163.


Week of 2/8:

Hours 1 & 2


Hours 3 & 4

III. REVOCATION OF WILLS

a. Revocation by writing or physical act. Pgs. 217-231.

Week of 2/15:

Hours 1 & 2  TBD

Hours 3 & 4  TBD

Week of 2/22:

Hours 1 & 2

b. Partial revocation and Dependent relative revocation and revival. Pgs. 231-238.

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

a. Integration of wills.
b. Republication by codicil.
c. Incorporation by reference.

Hours 3 & 4

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

b. Correcting Mistakes. Pgs. 341-351.

Week of 3/1

Hours 1 & 2

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

Hours 3 & 4


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

Week of 3/8

Hours 1 & 2
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.

Hours 3 & 4
   c. Ancestors and Collaterals and Negative Wills. Pgs. 84-90.


Week of 3/15

Hours 1 & 2
   e. Bars to Succession and Disclaimer. Pgs. 127-135, 135-140.

III. Protecting Spouse and Children.
   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.

Week of 3/22

Hours 1 & 2
   d. Spouse omitted from premarital will. Pgs. 571-574.
   e. Child omitted from premarital will. Pgs. 574-583.

Hours 3 & 4 T.B.D [Mandatory Virtual Attendance to Breslin Center Programming on Race & Real Estate]
NOTE: Racial stratification and real estate as a family asset are intimately and substantially connected to wealth accumulation and its transfer.

Week of 3/29

Hours 1 & 2

TRUSTS: CREATION, TYPES, AND CHARACTERISTICS


Hours 3 & 4


II. Trust Beneficiaries. Pgs. 419-423.

Week of 4/5

Hours 1 & 2

III. Revocable Trust

Hours 3 & 4

IV. Discretionary Distributions to Beneficiaries. Pgs. 612-624.

V. Discretionary and Spendthrift Trusts. Pgs. 695-712.

Week of 4/12

Hours 1 & 2

VI. Modification and Termination. Pgs. 727-742.
FUTURE INTERESTS AND LIMITS ON TRUST DURATION

I. Future Interests

Week of 4/19

Hours 1 & 2, 3 & 4
   b. Class Gifts and the Class-Closing Rule. (HANDOUT Pgs. 662-669).

II. Rule Against Perpetuities

Week of 4/26

Hours 1 & 2 TBA

Hours 3 & 4 TBA