



NATIONAL PARALEGAL COLLEGE

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Wills Trusts & Estates

PLG-106-1608

Syllabus and Course Guide

The NPC Wills Trusts & Estates course meets 15 times over the course of the 8-week term in the NPC Interactive classroom. Each session consists of approximately 60 minutes of online lecture by the course instructor.

There will be two alternative lectures for this course. These will take place at the following times:

- 3:00 PM Eastern/ 12:00 Noon Pacific (Howard Leib)
- 8:00 PM Eastern/ 5:00 PM Pacific (Erin Steffin)

You may come to either of these classes based on your own schedule and convenience. Attendance at either of the two classes will satisfy the weekly interaction requirement. You may switch back and forth between lecturers. Both classes will be recorded. There is no need to attend or listen to more than one section on a given day, as they will cover the same material.

All class sessions are recorded and may be viewed by students at any time.

To successfully complete the course, each student must satisfactorily complete:

- 5 written assignments
- 3 examinations

Unless an extension has been taken pursuant to the NPC Extensions Policy (see the end of this syllabus), all assignments and exams must be submitted by the course deadline which appears later in this syllabus. No extensions may be taken or granted unless the student has submitted one or more assignments or exams in advance of the original deadline. In addition, extensions are subject to grade penalties and are limited to no more than 30 days from the date of the original deadline.

Please note that students are strongly encouraged to do their work as the course progresses rather than waiting for the days or weeks before the deadline to do all of their work. It is also critically important that students realize that:

1. A grade of “Incomplete” is the same as an “F” and is a failing grade.
2. A grade of “Incomplete” will result in a reduction in the student’s grade point average.
3. Student may have to pay to re-take or replace a course for which a grade of Incomplete is assigned.
4. Two consecutive Incompletes may subject the student to dismissal from the college under NPC’s chronic incomplete policy.
5. Students with a GPA of under 2.0 are not eligible to receive federal financial aid and cannot graduate until their GPA is at or above 2.0.

If a student is having trouble completing the course, the student is strongly encouraged to contact his or her student mentor or teacher as early as possible.

Please note also that:

- A student who receives an incomplete on his or her first course may be dismissed from NPC.
- A student who fails to complete at least one weekly interaction during the first 14 days of the course will automatically be withdrawn from the course per NPC policy. The student may re-join the class by prompt notification to NPC and by prompt completion of an interaction shortly thereafter.

INSTRUCTORS:

Lecturers: Howard Leib (howardleib@aol.com)
 Erin Steffin (erin@nationalparalegal.edu)

Grader: Brett Bauman (brett@nationalparalegal.edu)

COURSE DESCRIPTION:

This course will familiarize our students with a practical understanding of the laws of estate planning. Students learn how the federal estate tax system works and what to consider when doing estate planning.

Topics include: federal estate and gift taxation; various estate planning techniques; proper use of trusts; life insurance as an estate planning tool; gifts; charitable transfers; intra family business and property transfers; and planning for incapacity.

Students will learn the appropriate procedures relevant to drafting and interpreting will and trust documents, and will become familiar with the initial planning and preparation necessary for a comprehensive estate plan. Also discussed are techniques for drafting estate planning documents, estate administration, probate practice, the closing of an

estate, relevant gift tax laws, and the role of the probate courts in estate planning. Additionally, basic inheritance issues are explored.

COURSE OBJECTIVES:

At the completion of this course, the student will be able to:

- Describe the rules of intestacy, and apply those rules to a fact pattern.
- Describe the basic structure of the federal and state gift and estate tax system.
- Assist in the preparation of an estate plan for a hypothetical client.
- Assist in the drafting a will, including various testamentary trusts that may be appropriate for a hypothetical client's situation.
- Draft various provisions in wills and explain their significance.
- Determine which beneficiaries are entitled to what assets, based on looking at the provision of a will.
- Explain the purpose and effect of credit shelter trusts, qualified terminable interests in property, qualified domestic trusts, individual single beneficiary trusts, etc.
- Describe and apply various rules regarding will execution.
- Assist in the preparation and filing of a probate proceeding.
- Describe the various steps to complete the probate process.
- Assist in the drafting of a variety of trusts.
- Explain the forms and functions of various types of trusts both revocable and irrevocable, irrevocable life insurance trusts, etc.
- Explain the benefits of charitable trusts.
- Determine whether a charitable trust is a good idea for a particular hypothetical client.
- Describe the features of the various types of charitable trusts, and when their usage is appropriate.
- Describe and apply the basic rules that govern trust administration, including the rights and responsibilities of the trustee.

READING ASSIGNMENTS:

All reading assignments refer to the NPC courseware, including the interactions attached to each subchapter. Cases and/or statutes that are specifically mentioned in the syllabus are required reading. The texts of these cases and/or statutes may be accessed directly from the courseware. In addition to the assigned courseware and cases, students should familiarize themselves with the various legal documents listed for each lecture. These documents can be found on the “Documents and Slides” page on the NPC student website. Some, but not all, of these documents will be discussed in class. Reading assignments for each class should be completed prior to the class.

In addition to the courseware’s electronic form, you may also order a book version of the courseware that includes:

- 1) The courseware**
- 2) All lectures slides**

You may order this book at: www.freewebstore.org/npc-courseware-books

School Virtual Library

All NPC students are encouraged to take advantage of the NPC virtual library, which can be accessed from the “course materials” page on the student menu or directly through this link: <http://nationalparalegal.edu/Students/VirtualLibrary.aspx>.

The NPC virtual library gives students access to Lexis Advance, which is one of the premier online legal databases in the world. It is expected that most legal research can and should be done through Lexis Advance. Online tutorials in the use of Lexis Advance is available on the lower right portion of the default login screen for Lexis Advance.

NPC also subscribes to the Library Information Resources Network (LIRN), which allows our students access to scores of databases containing hundreds of thousands of academic articles and publications. For research that is not legal in nature (for example, for business and general education courses), it is anticipated that students will use LIRN to access reliable academic sources for research papers. Online training in the use of LIRN resources is available here: <http://www.lirn.net/training/>.

NPC students also have access to Computer Assisted Legal Instruction (CALI) lessons. Unless assigned in the course syllabus, these are optional, but can be very helpful.

WRITTEN ASSIGNMENTS:

At the outset of the course, five assignments will be posted on the “Assignments and Exams” page. The 5 assignments will cumulatively count for 40% of the student’s grade for the course.

Please compose your answers to assignments on your own computer, remembering to save your work frequently. Once your assignment is complete, please submit by uploading it pursuant to the directions on the “Assignments and Exams” page within the NPC student site. Assignments may be submitted as PDF files, Microsoft Word documents, Open Office documents or PowerPoint presentations.

Each submitted assignment will be graded on the following scale:

4 - Excellent

3 - Good

2 – Satisfactory

1 – Poor

0 – Not acceptable (must resubmit)

(Half-points may also be awarded in assignment grading.)

Please see the “Assignment Grading Rubric” (the next page of this syllabus) for more detailed information about how assignments are graded and the key elements of assignments that instructors look for when grading assignments.

In addition to a grade, students will receive written feedback from the instructor on their assignments, where appropriate.

To the extent possible, it is recommended that students complete the assignments as the course proceeds rather than waiting until after the course ends.

Assignment Grading Rubric

Factor	4 (Excellent)	3 (Good)	2 (Satisfactory)	1 (Poor)	0 (no credit)
Thoroughness	Answers all questions in the exercise completely and in the appropriate order.	Answers all questions in the exercise but not completely and/or not in the appropriate order.	Answers most of the questions in the exercise but not completely and/or not in the appropriate order.	Does not answer many of the questions in the exercise but does make some reasonable effort to do so.	Makes little or no reasonable effort to answer the questions posed in the assignment.
Demonstrates Understanding of the Assignment and has come to an appropriate conclusion	Response demonstrates a thorough understanding of the exercise and the student has justified and enunciated an appropriate conclusion.	Response demonstrates an understanding of the exercise and comes to a conclusion.	Response demonstrates some understanding of the exercise. The conclusion that the student comes to may not be appropriately justified by the rest of the essay.	Response demonstrates some understanding of the exercise but shows a high level of confusion on the part of the student. The student's conclusion, if any, is not supported by the rest of the essay.	Response demonstrates a very poor understanding of the subject matter presented by the assignment.
Documentation/ Legal research (note: For assignments, sources should be those obtained through legal research; for exam essays, legal principles learned in class or the courseware is sufficient.)	Student has cited at least two excellent sources and has applied them appropriately. Appropriate sources are documented and well cited and well integrated.	Student has cited one excellent source or two or more good sources but has missed at least one excellent source. Sources are integrated well in the assignment.	Student has cited appropriate sources but has missed the best available OR student has cited good sources but has done a poor job of integrating them.	Student has cited poor or inappropriate authorities or has failed to establish the relevance of the sources that he or she has cited.	Student has not cited any legal authorities or has cited authorities that are irrelevant.
Organization	Essay is organized very well; the reader can clearly understand where the essay is going at all points and a cohesive easy-to-follow argument is made in the essay. Separate paragraphs are used for separate ideas.	Essay is well organized. The essay is coherent, though may not flow freely. Different components of the essay are broken up appropriately.	Essay shows some level of organization, but is difficult to follow. The essay is not as focused as it should be. Essay may go back and forth between points without using new paragraphs.	Essay is poorly organized and is very difficult to follow. The student did not appropriately separate thoughts and did not properly organize the essay.	Student's essay is in chaos. There is no reasonable attempt to organize the essay coherently.
Critical Thinking and Analysis	Shows excellent critical thinking and analysis. The student is able to apply the cited law to the facts of the given case in a clear and convincing manner.	Shows good critical thinking and analysis. The student's points are well argued and well supported.	Shows adequate critical thinking and analysis. The student's points are supported by logic, but are not exceptionally convincing.	Shows minimal critical thinking and analysis. The student's arguments are weak and unconvincing.	Shows no effort at critical thinking or analysis. The student's points make no sense.

Credit may also be taken off for poor spelling or grammar.

EXAMINATIONS:

Examinations will be posted on the NPC website when indicated on the syllabus of the course. The examinations consist entirely of “short essay” questions. The 3 examinations will cumulatively count for 60% of the student’s course grade.

Examinations are non-cumulative; they cover only the material that has been covered since the previous examination. The instructor will provide specific information regarding the content of each examination as the examination time approaches.

All examinations are timed. A student may begin the examination any time after it is posted to the NPC website. Once begun, the examination must be completed within 4 hours.

Examinations will be graded on a conventional 0-100 scale. The number of points each question is worth is equal to 100 divided by the number of questions on the examination.

For each examination question, full credit will be awarded if the student:

- 1) Correctly identifies the legal issue(s) presented by the question
- 2) Applies the correct law to the legal issue(s) presented (note: full credit may also be awarded if the student’s answer comes to an “incorrect” conclusion if the student bases his or her analysis on correct law and supports his or her position in a convincing manner)
- 3) Presents his or her answer in a clear and understandable manner

The amount of partial credit to be awarded, if any, for an answer that is not complete and correct is at the discretion of the instructor. Instructors are instructed to award partial credit that is proportional to the level of knowledge and legal skill displayed by the student in answering the question.

Please note that, even if not directly stated in the question, you must give reasons for your answers to open ended questions. One word answers such as “yes” or “no” or answers that merely restate the question without explaining the answer given will not be credited.

The following factors are generally NOT taken into account in grading examinations:

Legal research; Although research is a key component of assignments, examinations are graded on the student’s knowledge of the legal concepts taught and do not require independent research.

Grammar and spelling (unless they impact the ability of the graded to understand the student’s answer); Although these are essential skills for a paralegal, examinations test legal knowledge and ability to apply the skills learned, not necessarily the ability to write professional legal memoranda (assignments test this skill). In addition, because exams are taken under time constraints, we would rather see the students spend their time spotting legal issues and applying applicable law than on proofreading answers for typos and grammar mistakes.

For more information on assignments and examinations, please see the *NPC Student Handbook*.

To the extent possible, it is recommended that students complete the exams as the course proceeds rather than waiting until after the course ends.

Early Assignment Submission Incentive Policy

NPC encourages students to submit their assignments as early as possible. In order to facilitate early submissions, students are advised that in exchange for submitting assignments in the first six weeks of the course, they will be awarded the opportunity to re-do or fix up an assignment after it is graded in order to increase the grade.

The following limitations apply:

1. When resubmitting an assignment, a student will only be able to increase their grade to a maximum of 3 or by one full point, whichever is greater. For example, if a student submits an assignment within the first six weeks of the course and receives a 1.5 or a 2.0, the student may make corrections suggested by the instructor and can potentially raise the grade to a maximum of 3. A student who initially receives a grade of 2.5 may raise the grade as high as 3.5 with a resubmission.
2. A student may exercise this option up to two (2) times per course.
3. Students are not guaranteed the maximum increase if their corrections do not merit such a change. A grader has the discretion to award a smaller or no increase if the student does not follow the graders' feedback.

To resubmit an assignment under this policy, please contact the course grader.

NPC PLAGIARISM POLICY

All work done by NPC students on assignments, examinations and research projects is expected to be their own work. Quoting other sources as part of analyzing a subject is desirable and necessary in many cases. However, when other sources are quoted or used, they must be properly attributed to the original sources. This applies to direct quotes of sources and to paraphrasing other sources or using ideas obtained from other sources even if the exact text is not used.

Plagiarism means using the materials of others without appropriately citing the source and is an academic offence.

Under the NPC plagiarism policy, a student may not, as part of any assignment or exam submission:

- 1) Quote any text from any other source without:
 - a) putting quotation marks around the quoted material;
AND
 - b) appropriately citing the source of the quote.
- 2) Pass off the work of another as his or her own, even if the student does not directly quote from the other source.

Please note that the NPC plagiarism policy does not mean that you cannot quote language from the courseware, textbook or slides as part of an answer to a question on an exam. These are resources that are meant to be used on an exam when applied in an appropriate manner. However, quoting any source without attribution is plagiarism.

For more information regarding the NPC Plagiarism Policy, penalties and due process rights where plagiarism is alleged, please see the NPC Plagiarism Policy at:

<http://nationalparalegal.edu/pages/PlagiarismPolicy.pdf>

NPC STUDENT MENTOR

Each NPC student is assigned a student mentor upon enrollment. Your student mentor is a resource that can and should be drawn on if you need academic assistance. This includes advice on studying, help with assignments, general academic questions, etc. You should have received an email from your student mentor upon enrollment. If you have not received such an email or do not know who your student mentor is, please contact Connie Erpelding at connie@nationalparalegal.edu or 800-371-6105 x 115.

WEEKLY INTERACTION REQUIREMENT

To ensure that all students are involved and participating in the course as the course moves forward, each student enrolled in this course must, at least once during each week, either:

- 1) Attend a live lecture and take and pass a short quiz given during class (where applicable)
OR
- 2) Submit at least one assignment
OR
- 3) Take at least one examination
OR
- 4) Answer a weekly “interaction” question or questions that will be posted on the “Assignments and Exams” page.

The weekly “interaction” question(s) will be straightforward and will cover material covered in class each week. Answers to these questions should be short (typically 1-3 sentences) and to the point.

The student’s response (which is necessary only if the student does not attend a live lecture or take an exam or submit an assignment in the given week) will be graded on a pass/fail basis. The interaction questions will be posted no later than Monday of each week and must be answered on or before the following Sunday.

Any student who does not fulfill this requirement during a given week will receive a reduction in his or her over-all grade of 2 percentage points (10 raw points).

Please also note that a student who does not fulfill an interaction during the first two weeks of a course will be automatically withdrawn from that course, as it will be assumed that the student who does not interact during the first two weeks has no intention of attending the course. The student may re-join the class by prompt notification to NPC and by prompt completion of an interaction shortly thereafter.

If an emergency prevents attendance in this period, please email Susan Israel (susan@nationalparalegal.edu) or Stephen Haas (shaas@nationalparalegal.edu) as soon as possible.

Fulfilling the weekly interaction requirement is particularly important for students receiving financial aid. Federal regulations require the school to withdraw students from financial aid who go 14 consecutive days without fulfilling an interaction requirement and to return any outstanding financial aid money to the government unless the student interacts with the school prior to the time that the withdrawal is completed. If you are unable to fulfill a weekly interaction requirement, it is critical that you stay in contact with the school so that other arrangements can be made.

COURSE GRADES

The following formula will be used to calculate final grades

$$\text{Cumulative exam scores} + (\text{assignment points} \times 10) = \text{raw score}$$

Because exams are worth up to 100 points and assignments up to 4 points each, the maximum raw score is 500. 10 raw points (2% of the raw point total) are deducted for each missed weekly interaction. Extra credit may be available for certain in class activities as may be announced by the instructor.

The following conversion chart is then applied based on the total raw points you have earned:

>474	=	A+
445-474	=	A
420-444	=	A-
395-419	=	B+
365-394	=	B
340-364	=	B-
315-339	=	C+
285-314	=	C
260-284	=	C-
230-259	=	D
<230	=	F

OPTIONAL STUDY SESSIONS

In addition to the 15 classes listed below, instructors and/or graders will run 1 or 2 additional study sessions to discuss assignments and/or the course materials. Attendance and participation in at these sessions is optional and they will be recorded for those who cannot make it to the live sessions.

Please keep an eye on the course message boards for details as to when these will be held.

All examinations and assignments are due no later than Sunday, October 23, 2016 at 11:59 PM EASTERN TIME; That's EASTERN time. That means 8:59 PM Pacific time, 9:59 PM Mountain time, 10:59 PM Central time, etc.

Please see the end of this syllabus for a note on NPC course extensions policy!

Lecture and reading assignments schedule

Class 1

Tuesday, August 2, 2016

This class will begin with an overview of estate planning, including a discussion of the right to transfer property at death. Next, we will review what happens to a person's assets when he or she dies without a will. Specifically, we will cover how intestate succession rules determine who inherits what, giving consideration to how the state handles step-siblings, non-marital and adopted children and when the state is entitled to receive someone's assets. Further, we will examine specific protections against disinheritance by discussing certain safeguards available for spouses and children, contrasted with what circumstances make someone ineligible to inherit from an estate.

Courseware Reading

Chapter 1: Introduction to Estate Planning

- A. Overview of Estate Planning
- B. Intestate Succession Rules
- C. Protection against Disinheritance
- D. Qualifications on the Right to Inherit

Cases and Statutes:

N. Y. Esate Powers & Trust Law § 4-1.1

This New York statute provides a typical example of a rule of intestate succession. Notice how the statute differentiates between different levels of "consanguinity" and think about what policy considerations go into making such a determination.

UPC § 2-302

This UPC statute provides a rule for the protection of children not provided for in their parents' wills. Note, however, that this is a rule of construction of the parents' intent. The UPC and all states allow parents to disinherit their children if they so choose. This is as opposed to a spouse. The UPC and all states provide that a spouse cannot be disinherited (except by a pre-nuptial agreement) and is entitled to an "elective share" if not provided for in the will. Can you think of a good reason for the difference between the treatment of spouses and the treatment of children?

Documents for Review:

- Property Distribution hypothetical

Assignment # 1 can be completed at this point.

Class 2

Thursday, August 4, 2016

This class will be devoted to certain elder law issues, such as planning for incapacity and Medicaid planning. We will discuss various important healthcare related documents, such as the healthcare proxy and living will. We will look at the role of these documents and the right of a person to refuse medical treatment and the difficulties that can arise when a person's intentions are unclear (such as in the famous Terri Schaivo case). In addition, we will discuss the power of attorney (including durable, non-durable and springing powers) that delegate the ability to make financial decisions to an agent.

Courseware Reading

Chapter 1: Introduction to Estate Planning

E. Planning for Incapacity

Cases and Statutes:

Cruzan v. Director, Missouri Department of Health

This landmark U.S. Supreme Court case held that a person has the right, under the constitutional right to privacy, to refuse medical treatment, even if that refusal will cause the person to die. Note that this does not mean that a person has the right to assisted suicide. We will use Cruzan as a starting point to discuss the considerations people should take into account when planning for incapacity. Also, we will look at the role of Cruzan in "living wills" and "healthcare proxies."

Documents for Review:

- Living Will
- Health Care Proxy
- Power of Attorney

Assignment # 2 can be completed at this point.

Class 3

Tuesday, August 9, 2016

This class will consist of a Lexis tutorial/ assignment walkthrough. The instructor will use a research assignment from a past or current course to demonstrate the manner in which an assignment should be researched and composed.

The instructor will walk the students through the various Lexis databases and explain to students how to most efficiently use the Lexis system to complete research assignments. Various general aspects of navigating Lexis, including Shepardizing, seeking and finding appropriate search databases, getting a document by citation, etc., may be explored.

The Instructor will also discuss how to most effectively plan, outline, organize and draft research assignments. Model answers and/or past student submissions may be used to illustrate what a “4” assignment looks like and how to compose one.

Class 4

Thursday, August 11, 2016

This class will begin our discussion of wealth transfer taxes. Initially, we will discuss the different types of taxes an estate might be subject to, namely gift, estate and generation-skipping transfer taxes. This class will be devoted towards discussing the federal gift and estate tax systems and how those systems impact one another. Next, we will take an in depth view of gift taxes and how they operate. We will also begin our discussion of estate taxes and how they are assessed.

Courseware Reading:

Chapter 2: Federal Wealth Transfer Taxes

- A. Introduction to Gift, Estate and Generation-Skipping Transfer Taxes
- B. Gift Tax
- C. Estate tax

Cases and Statutes:

I.R.C. § 2523. Gift to spouse

I.R.C. § 2522. Charitable and similar gifts

These statutes deal with the federal gift tax exemptions and deductions. These are critical because many estate planning techniques are based upon taking advantage of the marital and charitable deductions to the gift and estate tax.

Documents for Review:

- Federal Gift Tax Return

This class will be devoted to discussing the estate tax and its ramifications. We will cover which assets are included in the decedent's estate and discuss how estate tax liability is determined. In addition, we will discuss the various estate tax exemptions that exist and various techniques that can be used to minimize estate tax liability. We will also discuss the role of the Generation Skipping Transfer Tax (GST Tax) in estate planning. Included in this discussion will be a review of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) and how it affects estate taxes.

Courseware Reading:

Chapter 2: Federal Wealth Transfer Taxes

- C. Estate Tax
- D. The Gross Estate
- E. Generation-Skipping Transfer (GST) Tax
- F. Disclaimers
- G. Impact of the 2001 Act (EGTRRA)

Cases and StatutesI.R.C. § 2033

This statute deals with the gross estate and describes how to determine what the value of the gross estate is for estate tax purposes.

I.R.C. § 2056

This statute discussed the all-important marital deduction. Most of the testamentary trusts and estate tax planning provisions that we will discuss are based on the marital deduction, including: the credit shelter trust, the QTIP and the QDOT.

Documents for Review:

- Qualified Domestic Trust Provision (QDOT)
- Marital Trust Provision (QTIP)
- Will with Credit Shelter Trust

Class 6

Thursday, August 18, 2016

This class will be devoted to discussing the preparation and filing of federal and state estate tax returns. We will look at the returns and the schedules and we will discuss how to calculate the rate of estate tax due on the federal and state level.

Courseware Reading:

NONE

Cases and Statutes:

NONE

Documents for Review:

- Federal estate Tax Return
- State Estate Tax Return

Examination # 1 will be posted at this point.

Assignment # 3 can be completed at this point.

In this class we will begin our discussion of wills. Initially, we will give an overview of wills, including the binding nature of the instrument and consider how different types of property, such as personal and real property, are disposed of by will. In contrast, we will itemize which items of property are not disposed of by a will. Next, we will provide coverage of the statutory requirements for executing a valid written will, including testamentary capacity, signature requirements, the role of witnesses and how fraud, undue influence and mistakes could impact the validity of a will.

Courseware Reading:

Chapter 3: Execution, Validity and Components of Wills

- A. Historical Overview of Wills
- B. Items Not Disposed of by a Will (Non-probate Property)
- C. Statutory Requirements for a Valid Written Will

Cases and Statutes:

Matter of Totten

This case established the “in trust for” bank account, often referred to as the “Totten” trust, after this case. This fully revocable bank account is not really a trust at all. Thus, remember that the term “Totten Trust” is somewhat misleading. Nevertheless, these remain a popular tool for avoiding probate for gifts given at one’s death.

Cal. Prob. Code § 6110

This is an example of a statute that lays out the signature and witness requirements for a will. This is a provision that is fairly representative of nationwide standards, as this rule does not vary much from state to state.

In re Proley’s Estate

In this famous Pennsylvania Supreme Court case, the Court set out to determine what constitutes a signature. That may seem like an insignificant detail, but in reality, the Court is determining how you go about determining testator intent to make a will. Specifically, think about this question when reading the case: if it’s obvious that the testator wanted to go through with the will, but messed up certain procedural requirements, should the will be enforced anyway? What policy reasons go into each side of the argument?

Class 8

Thursday, August 25, 2016

We will start this class by continuing our discussion of the process of ensuring that a Will is valid. Special consideration will be given to the attorney-draftsman as beneficiary or fiduciary and how to safeguard the will once it is completed. The next area for discussion will be the components of wills, namely integration, incorporation by reference, the doctrine of independent significance and testamentary gifts to trust. Lastly, we will finish with an examination of contracts to make wills, which are formed primarily between spouses.

Courseware Reading:

Chapter 3: Execution, Validity and Components of Wills

- D. Other Types of Wills
- E. Components of Wills
- F. Contracts to Make Wills

Cases and Statutes:

NONE

Documents for Review:

- Sample Will

Assignment # 4 can be completed at this point.

Class 9

Tuesday, August 30, 2016

In this class we will continue our discussion of wills, focusing on their construction (interpretation). First, we will discuss when extrinsic evidence may be introduced to explain ambiguities. Also, we will cover conditional wills and explain the various types of testamentary bequests, which can be specific, demonstrative, general or part of the residual estate. Next, we will tackle what happens when an asset listed in the will no longer exists (ademption) and when there are insufficient assets to cover all the expenses and/or bequests (abatement).

Courseware Reading:

Chapter 4: Construction of Wills

- A. Admissibility of Extrinsic Evidence
- B. Conditional Wills
- C. Types of Testamentary Bequests
- D. Ademption and Abatement

Cases and Statutes:

In Re Barry's Estate

In this case, the Oklahoma Supreme Court dealt with the question of whether the normal rules of ademption apply to something in the testator's that is destroyed, but was insured. Normally, when a gift no longer exists in the testator's property, the gift "adeems." What about, though, if there is insurance money on that item that is coming to the testator's estate? Does the beneficiary get the insurance money or does the gift adeem? When reading this case, think about what a testator generally would intend when giving a specific bequest. In light of that, does the court's decisions necessarily abide by this intent?

We will start this class with a discussion of the lapse and anti-lapse statutes that cover what happens when a beneficiary is no longer around to receive a bequest. Additionally, beneficiary designations change for various reasons, so we will explore class gifts, pretermitted children, intentional omission and how changes in marital status affect who may inherit. Lastly, we will cover the numerous ways to revoke a will, revive it via republication and modify it using codicils.

Courseware Reading:

Chapter 4: Construction of Wills

- E. Lapse and Anti-Lapse Statutes
- F. Changes in Beneficiaries
- G. Revocation
- H. Republication and Codicils

Cases and Statutes:

N.Y. Est. Powers & Trusts Law § 3-3.3

Although they are quite complex, the anti-lapse statutes provide an important exception to the normal rule that if the beneficiary to a will dies before the testator, his or her gift “lapses.” This is based on the idea that a testator does not mind if a gift earmarked for a sibling goes to a niece or nephew instead. What do you think of this assumption? Does it represent the way people generally think in real life?

Documents for Review:

- Will with Credit Shelter Trust

This class will focus on the process of probating a will, including review of what happens if there is a will contest. We will start with a discussion of which court has jurisdiction over administering an estate and the required time period for closing the estate. Next, we will discuss the Uniform Probate Code, which has been adopted by some jurisdictions, to be coupled with states' statutory requirements. Specifically, in discussing the probate process, we will study the role of the personal representative, from appointment to a discussion of his or her authority, responsibilities and liabilities. Next, we will scrutinize the steps involved in managing the decedent's estate, including inventory and appraisal, collection and preservation of assets, sale of property, dealing with creditors' claims and final distribution of the decedent's assets. Lastly, for decedents with smaller estates, we will examine informal administration procedures.

Courseware Reading:

Chapter 5: Estate Administration

- A. Probate and Uniform Probate Code
- B. Will Contests
- C. Personal Representatives
- D. Management of the Estate
- E. Distribution and Informal Administration

Cases and Statutes:In re Honigman's Will

This case with a strange and interesting fact pattern, decided by New York's highest court, deals with the question of what constitutes insane enough to be considered incapable of executing a valid will. Are insane delusions enough to render a testator incompetent? After reading this case, I guess it depends just how insane the delusions are.

Core v. Core's Administrators

This case is important because it presents a look at what constitutes fraud and/or undue influence. We will look at this case and others in our analysis of just how much influence one may have on a testator while still producing a valid will.

Documents for Review:

- California Probate Petition
- Disclaimer of Interest in a Trust
- Probate Petition
- Release and Discharge of Fiduciary

Examination # 2 will be posted at this point.

This class will begin our discussion of trusts. We will look at trusts as an estate planning tool and a tool for various other elder law objectives. Specifically, we will start with a review of the elements necessary to create a trust, highlighting intent, the concept of trust property, the parties to the trust and typical terms used. We will survey the various methods for creating trusts, but we will focus primarily on the inter-vivos (“living”) trust and its role in estate planning, both as a means for avoiding probate and as a means for minimizing estate taxes.

Courseware Reading:

Chapter 6: Private Trust Creation, Modification and Termination

- A. Elements and Limits on Creation and Duration of Interests
- B. Prohibited Trust Purposes
- C. Methods of Trust Creation
- D. Contract Law Considerations

Cases and Statutes:

In re Dorrance’s Will

This case, involving the heirs to the Campbell’s Soup fortune, dealt with the issue of whether two of more states could collect inheritance tax from the same person. When reading this case, think about this: Is there something fundamentally unfair about Pennsylvania and New Jersey both getting bits at this large apple, or did the court convince you that it was justified?

Documents for Review:

Sample Revocable Trust

Family Trust

Simple Irrevocable Trust

Tonight, we will continue our discussion of trusts. We will consider how trusts and wills work together in carrying out a testator's wishes. We will look at various forms of testamentary trusts (trusts created by wills) and the purposes that they serve. In addition, we will discuss will provisions that "pour over" assets into trusts created during the settlor's lifetime. Finally, we will discuss the revocation, alteration and modification of all types of trusts.

Courseware Reading:

Chapter 6: Private Trust Creation, Modification and Termination

- E. Trusts and the Statute of Wills—Creation of Testamentary Trusts
- F. Types of Trusts
- G. Power to Revoke, Modify or Terminate Trusts

Cases and Statutes:

Internal Revenue Code § 2042

This statute describes how life insurance proceeds are affected by the gift tax. This is the basis for the important Irrevocable Life Insurance Trust that is used as an estate planning tool. We will discuss the "ILIT," its form and function.

Documents for Review:

- Irrevocable Life Insurance Trust
- Annual Demand Power Provision ("Crummey Provision")
- Annual Withdrawal Power Notification
- Supplemental Needs Trust

This class will continue our discussion of trusts, focusing instead on charitable trusts. We will begin with a discussion of the underlying principle behind a charitable trust, public benefit, and explore the different types of permissible charitable purposes, such as relief of poverty, education, religion and health. Next, we will delve into the limitations on charitable trusts, discussing mortmain acts and the applicability of the rule against perpetuities. In addition, we will examine how to modify a trust via the Cy Pres Doctrine. We will end with a discussion of various charitable trusts, such as charitable lead, remainder and annuity trusts and unitrusts.

Courseware Reading:

Chapter 7: Charitable Trusts

- A. Public Benefit
- B. Charitable Purpose
- C. Limitations on Charitable Trusts
- D. Modification of Charitable Trusts—The Cy Pres Doctrine
- E. Order of Beneficiaries
- F. Payment Method

Cases and Statutes:In re Estate of Breeden

The case deals with the question of whether a trust that supports a political cause can be considered a charitable trust. Given the tax advantages of such trusts and the amount of political activism that goes on in the U.S., this is a critical question. The California court certainly analyzes the issue in a skillful manner. Do you agree with its conclusion, or should politics not be synonymous with charity?

Internal Revenue Code § 664

This is a long and complex statute, but it describes the important “charitable remainder trust” that is used so often as a method for giving charity, but retaining the benefit of the money during one’s lifetime. There’s no need to read every word of the whole statute (don’t even try); but skimming it will help you get an idea as to how the remainder trust operates.

Assignment # 5 can be completed at this point.

This final class will focus on how to administer a trust once it has been created. Specifically, we will start with an examination of which jurisdiction has authority over the administration of the trust. Next, we will examine the appointment and qualification of a trustee as fiduciary and then move on to talk about the responsibilities and authority of a trustee who is charged with maintaining the trust. Furthermore, we will look at the specific functions undertaken by the trustee, including his or her duties, powers, compensation and potential liabilities.

Courseware Reading:

Chapter 8: Trust Administration

- A. Jurisdiction over Administration
- B. Appointment and Qualification of Trustee as Fiduciary
- C. General Responsibilities and Authority of Trustees
- D. Powers of the Trustee
- E. Duties of the Trustee
- F. Trustee's Compensation and Right of Indemnity
- G. Liabilities

Cases and Statutes:Perfect Union Lodge No. 10 v. Interfirst Bank

This case deals with two important issues regarding trust law. First, the court deals with the issue of grantor's intent. How can a court determine whether an ambiguous will provision intends to create a trust or to make an outright gift? We will analyze this issue when it comes to a will provision and when it comes to other types of property transfers. In addition, the court deals with the jurisdictional issue of when probate courts may hear matters relating to trust assets and when those issues must be left to the regular civil court system.

Allard v. Pacific National Bank

Covered mainly in Business Law, the subject of the "fiduciary duty" is important to trusts as well. This case discusses the fiduciary duties owed by a trustee to the trust beneficiaries. How careful does the trustee have to be to uphold this duty? Must the trustee keep the beneficiaries informed of the trust's status at all times? How diligent does the trustee have to be in making sure that the trust makes only sound financial deals? These are some of the important questions this case discusses.

Examination # 3 will be posted at this point.

All examinations and assignments are due no later than Sunday, October 23, 2016 at 11:59 PM EASTERN TIME; that's EASTERN time. That means 8:59 PM Pacific time, 9:59 PM Mountain time, 10:59 PM Central time, etc.

Please see the NPC EXTENSIONS POLICY below for details on extensions to complete your work.

NPC EXTENSIONS POLICY

1) Extensions that conform to the rules below may be requested from the “Assignments and Exams” page on the NPC student website.

2) No extensions are possible unless the student has first submitted at least one assignment or examination by the course deadline.

3) The maximum possible extension allowed under the NPC system are as follows:

- **A student who has submitted one assignment or exam may take an extension of up to seven (7) days.**
- **A student who has submitted two assignments or exams (or any combination) may take an extension of up to seven (7) additional days (14 days total).**
- **A student who has submitted three assignments or exams (or any combination) may take an extension of up to seven (7) additional days (21 days total).**
- **A student who has submitted four assignments or exams (or any combination) may take an extension of up to seven (7) additional days (28 days total).**
- **A student who has submitted five assignments or exams (or any combination) may take an extension of up to two (2) additional days (30 days total).**
- **No extensions of more than thirty (30) days beyond the deadline are possible for any reason at all.**

4) Requested extensions are granted automatically. It is not necessary to give any reason for the request. However, for each day of extension you request, you will be penalized 3 raw points (of 500 that determine your final grade). This accounts for 0.6% of your course grade, per day of extension. This is necessary to compensate for the advantage that

students who take more time to do their work enjoy over those who complete their work on time. This also means that a short extension (e.g., a day or two) is unlikely to affect your grade, but a long extension (e.g., two weeks) is guaranteed to affect your grade.

5) The penalty referenced in Paragraph 4 may be waived by the dean in extreme cases only. Extreme cases include circumstances beyond the control of the student that caused the student to be unable to complete work for *a significant period of time*. Circumstances such as being busy at work or at home, vacations, family occasions or power or internet outages lasting a few days, are foreseeable life circumstances. Extensions may be taken for these reasons (or, for that matter, for any reason at all), but the grade penalty will not be waived for anything short of a true, unforeseeable emergency. However, please note that the course deadline cannot be extended more than 30 days for any reason at all.