

## ESTATES & TRUSTS

Spring 2020

SYLLABUS

Law 609, Section 1

**Professor John Plecnik**  
**Cleveland-Marshall College of Law**

### **REQUIRED TEXT:**

Dukeminier, Sitkoff, & Lindgren, WILLS, TRUSTS, AND ESTATES (8th ed. 2009)

### **CLASS MEETINGS:**

Monday & Wednesday, 9:00 a.m. to 10:40 a.m., Room LB 11

### **OFFICE HOURS:**

Monday & Wednesday, 10:45 a.m. to 12:00 p.m.

Office: Room LB 222

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I am in class on Mondays and Wednesdays from 9:00 a.m. to 10:40 a.m. and from 4:30 p.m. to 5:45 p.m. Outside of class, I should be in my office most of the day on the majority of Mondays and Wednesdays. You need **not** make an appointment to see me. Just stop by.

**Come see me!** I have substantial office hours in order to provide ample opportunity for you to come see me when you have questions about the class material. If necessary, I will make special arrangements to meet with students outside the hours posted above. In addition, feel free to call or e-mail me with your questions

### **COURSE OVERVIEW & OBJECTIVES:**

Estates & Trusts is a four-credit course designed to survey the law relating to the disposition of property upon death through probate, non-probate, and intestate transfers. Such transfers can be made by will, by contract, by the creation of trusts, and by intestate succession. Alternatively, one may transfer property while still alive through gifts. Implicit in these topics is an introduction to estate administration, fiduciary duties related to estates and trusts, and the durational considerations related to the post-mortem transmission of wealth. Although this course will focus on the law of decedent's estates,

we will encounter concepts related to the basic courses in Property, Torts, and Contracts. In addition, we will apply concepts of statutory interpretation, drafting, and textual interpretation which you are acquainted with from other courses. We will also encounter questions relating to fiduciary duty and professional responsibility. Finally, as this is a course in the transfer of wealth, we will, from time to time, point out the socioeconomic and distributive justice issues related to transfer choices.

This course is only intended to be a basic introduction to the doctrines and policies of the law of estates and trusts. More advanced issues relating to wealth transfers are covered in other courses. For example, a detailed examination of estate and gift taxation is reserved for the Wealth Transfer Tax course.

### **CLASS ATTENDANCE & PREPARATION:**

The accreditation rules of the American Bar Association provide that law schools must announce and adhere to attendance requirements, which are examined for compliance during the septennial accreditation visits. I require that students miss no more than 2 weeks of a 14-week semester. Thus, for this class, students may miss no more than 4 classes without consequence. I consider “attendance” to encompass “adequate preparation” as well as physical presence. Thus, a failure to prepare adequately can constitute an absence.

Absence (or its equivalent—a failure to prepare) for more than 2 weeks of classes may result in a lower final grade (including the grade of “F” in egregious instances) or administrative withdrawal from the course **in my sole discretion**, depending on my evaluation of the equities of the situation that caused the excessive absences or lack of preparation.

The 2-week period is intended to account for the range of true emergencies that might arise, including personal and family illnesses, child-care problems, moot court and law review deadlines, outside work responsibilities, and employer interviews. Because such things inevitably arise unexpectedly, I highly encourage you to save what many students come to think of as “free days” for these purposes. You need not report to me the reason for an absence; the function of the two-week period is to allow you to miss class, when necessary, without the need for me to evaluate the merits of the reason for your absence. I assume good faith on the part of students and that, when you are not in class, you have a good reason for the absence, such as illness or job interviews. You need not use the free days to observe religious holidays; such absences will constitute additional excused days if you give me notice in writing before the holiday. Please see me if absences or instances of lack of preparation begin to mount and put you at risk.

I will take attendance at the beginning of each class. **Please be in your seat ready to begin class promptly.** Attendance will be taken by roll call or by circulating the class roster for your signature. If you fail to reply during the roll call or if you fail to sign the attendance roster within the first fifteen minutes of the class, as applicable, you will be

counted as absent. You will not be permitted to reply or sign the roster after class has been completed. Replying or signing the roster for another student is an Honor Code violation.

### **CANCELLED CLASSES:**

I will make every effort to adhere to the scheduled class times. In the event I have to cancel a class, I will notify you by email.

### **TAPE RECORDING OF CLASSES:**

Tape recording of classes is **not** permitted unless advance permission is obtained from me. Permission will be given only in the case in which a student knows in advance that he or she will miss a class and arranges for a colleague to tape it.

### **EXAMINATION & GRADING:**

There will be one final examination at the end of the course. **The examination will be in-class, closed book, and 3 hours in length.** We will discuss the examination in more detail later in the semester.

The examination grade normally will count for 100% of your final grade. Class participation, however, can move your grade to a higher grade category. As noted above, absences (including a failure to prepare) beyond the 2-week period may lower your final grade.

### **PRACTICE EXAMINATION:**

You will have a practice examination approximately midway through the fall semester. Although I will grade the practice examination as if it was a real examination, your score will not count towards your final grade. The purpose of the practice examination is to give you practice and provide you with feedback regarding your knowledge and exam-writing skills during the course of the semester in a pressure free context.

One of the most important skills in the practice of law (and one of the most important skills that you must demonstrate on an examination) is the ability to **apply law to fact and come to conclusions.** Taking copious notes or drafting a 200-page outline does not help to develop the skill of being able to confront a set of facts, apply the law to those facts, and properly advise a client or persuade a court in a well-written analysis. The practice examination is your chance to test-drive this critical skill and get feedback on your performance.

## **DISABILITY ISSUES:**

If you have a disability for which you are or may be requesting an accommodation, please contact the law school administration.

## **READING ASSIGNMENTS:\***

### **Chapter 1. Introduction**

1. 1-38 The Power to Transmit Property at Death
2. 38-49 Transfer of the Decedent's Estate
3. 58-70 Professional Responsibility

### **Chapter 2. Intestacy: An Estate Plan by Default**

4. 71-97 The Basic Scheme
5. 97-140 Transfers to Children
6. 145-157 Bars to Succession

### **Chapter 4. Wills: Formalities and Forms**

7. 223-246 Execution of Wills
8. 246-267 Curing Defects in Execution
9. 268-286 Holographic Wills
10. 286-307 Revocation of Wills
11. 307-334 Components of a Will

### **Chapter 3. Wills: Capacity and Contests**

12. 159-180 Mental Capacity
13. 180-207 Undue Influence
14. 207-221 Fraud, Duress, and Tortious Interference with an Expectancy

### **Chapter 5. Construction of Wills**

15. 335-357 Mistakes in Wills and the Power to Reform Wills
16. 358-379 Antilapse Statutes and Class Gifts
17. 380-392 Changes in Property after Execution of the Will

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\* Rather than assign material for specific days, this schedule is built around topics to be covered. This will provide flexibility in the schedule since some topics will take more time to cover than others. It is my intention, however, to average about one chapter (as edited) per week. I will announce the next reading assignment at the end of each class. Lastly, I reserve the right to amend this schedule and assign supplemental readings as the class goes forward.

<b>Chapter 6.</b>	<b>Nonprobate Transfers and Planning for Incapacity</b>
18. 393-412	Introduction to Will Substitutes
19. 413-423	Will Substitutes and the Subsidiary Law of Wills
20. 436-448	Pour-Over Wills and Revocable Trusts
21. 448-468	Planning for Incapacity
<b>Chapter 7.</b>	<b>Restrictions on the Power of Disposition</b>
22. 469-508	Rights of the Surviving Spouse
23. 518-521 527-539	Rights of Descendants Omitted from the Will
<b>Chapter 8.</b>	<b>Trusts: Introduction and Creation</b>
24. 541-557	Introduction to Trusts
25. 557-596	Creation of a Trust
<b>Chapter 9.</b>	<b>Rights to Distributions from the Trust Fund</b>
26. 597-627 638-641	Rights of the Beneficiaries and Creditors
27. 641-660	Modification and Termination of Trusts
<b>Chapter 10.</b>	<b>Trust Administration: The Fiduciary Obligation</b>
28. 667-688	Duty of Loyalty
29. 688-725	Duty of Prudence
30. 725-745	Rules Relating to Trust Property
<b>Chapter 11.</b>	<b>Charitable Trusts</b>
31. 751-776	Introduction to Charitable Trusts
32. 776-802	Supervision of Charitable Trusts
<b>Chapter 12.</b>	<b>Powers of Appointment: Building Flexibility into Trusts</b>
33. 803-836	Basic Doctrines
<b>Chapter 14.</b>	<b>The Rule Against Perpetuities and Trust Duration</b>
34. 885-917	R.A.P. and Perpetuities Reform