

ESTATES & TRUSTS

Fall 2023

SYLLABUS

Law 609, Section 1

**Professor John Plecnik
CSU College of Law**

REQUIRED TEXT:

Sitkoff & Dukeminier, WILLS, TRUSTS, AND ESTATES (11th ed. 2022)

CLASS MEETINGS:

Monday & Wednesday, 8:45 a.m. to 10:25 a.m., LB 201

OFFICE HOURS:

Monday & Wednesday, 10:30 a.m. to Noon

Office: LB 229

Phone: Cell (440) 382-9978

E-mail: j.plecnik@csuohio.edu

We have class on Mondays and Wednesdays from 8:45 a.m. to 10:25 a.m. and I also teach from 2:30 p.m. to 4:10 p.m. on those days. 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.

POLICY ON USE OF CHAT GPT & AI LANGUAGE MODELS:

You may not use AI language models, such as Chat GPT and similar products, to write your exam answers or other assignments in this course.

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 arrive on time and ready to begin class promptly.** Attendance will be taken by roll call. If you fail to reply during the roll call within the first fifteen minutes of the class, you will be counted as absent. Replying 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.

RECORDING OF CLASSES:

Any recording of class sessions for this course by students, whether audio, video or otherwise, is strictly prohibited unless prior approval has been obtained from the professor. The photography of examinations and other non-distributed class materials for personal use provided during class, review sessions, office hours or otherwise is strictly prohibited.

EXAMINATION & GRADING:

There will be one final examination at the end of the course. **The examination will be 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 semester with a review session to consider the model answers.

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: Freedom of Disposition

1. 1-40 The Power to Transmit Property at Death
2. 41-53 The Mechanics of Succession
3. 53-64 Professional Responsibility

Chapter 2. Intestacy: An Estate Plan by Default

4. 65-74 An Estate Plan by Default
5. 74-92 The Structure of Intestate Succession
6. 92-129 Transfers to Children
7. 129-142 Bars to Succession

Chapter 3. Wills: Formalities and Forms

8. 143-167 Execution of Wills
9. 167-205 Curing Defects in Execution
10. 205-224 Holographic Wills
11. 224-248 Revocation of Wills
12. 248-269 Components of a Will

Chapter 4. Wills: Capacity and Contests

13. 271-289 Capacity to Make a Will
14. 289-317 Undue Influence
15. 318-332 Duress, Fraud, and Tortious Interference with an Expectancy

Chapter 5. Wills: Construction

16. 333-358 Mistaken or Ambiguous Language in Wills
17. 359-382 Death of Beneficiary Before Death of Testator
18. 382-394 Changes in Property After Execution of Will

* 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.

Chapter 6.	Trusts: Characteristics and Creation
19. 395-411	The Trust in American Law
20. 411-447	Creation of a Trust
Chapter 7.	Nonprobate Transfers and Planning for Incapacity
21. 449-480	The Rise of Nonprobate Succession and Revocable Trusts
22. 480-507	The Other Will Substitutes
23. 507-527	Planning for Incapacity
Chapter 8.	Limits on Freedom of Disposition: Protection of the Spouse and Children
24. 529-576	Protection of the Surviving Spouse
25. 576-597	Intentional Omission of a Child and Protection Against Unintentional Omission
Chapter 9.	Trusts: Fiduciary Administration
26. 599-622	Duty of Loyalty
27. 622-673	Duty of Prudence
28. 673-680	Duty of Impartiality
Chapter 10.	Trusts: Alienation and Modification
29. 701-732	Alienation of the Beneficial Interest
30. 732-758	Modification and Termination
31. 758-765	Trustee Removal
Chapter 11.	Trusts: Charitable Purposes, Cy Pres, and Supervision
32. 767-776	Charitable Purposes
33. 776-790	Cy Pres and Deviation
34. 790-815	Enforcement of Charitable Trusts
Chapter 12.	Trusts: Powers of Appointment
35. 817-830	Purposes, Terminology, and Types of Powers
36. 830-853	Exercise and Failure to Exercise a Power of Appointment

Chapter 13.**Trusts: Construction and Future Interests**

37. 855-865

Future Interests

38. 865-896

Construction of Trust Instruments

Chapter 14.**The Rule Against Perpetuities and Trust Duration**

39. 897-910

The Common Law Rule

40. 910-926

Perpetuities Reform

41. 926-932

Application of the Rule to Class Gifts and Powers of Appointment

42. 932-938

Other Durational Limits