

ESTATES SYLLABUS

Fall 2017

Professor Gary T. Brooks

COURSE OVERVIEW

This course is designed to teach the fundamentals of the transmission of property through intestacy, wills, non-probate devices, and trusts. This is a doctrinal, survey course, and the focus is on learning the statutory and judicially created rules as well as the policies and theoretical principles that support those rules. There will also be some discussion of ethical principles, client motivations, and general estate planning techniques.

The applicable statutory provisions are the Uniform Probate Code (UPC) and the Uniform Trust Code (UTC). References will also be made to the Vermont statutes as an example of a specific state statutory regime. The relevant statutory provisions are collected in the Statutory Supplement and are also posted on TWEN.

COURSE OBJECTIVES

The primary objective of the course is for students to learn the fundamental principles governing the transmission of property. Upon completion of the course, students should be able to analyze a factual situation, determine the relevant law, and explain, either orally or in writing, how the law applies to a specific set of facts. Students should also be able to explain the theories, rationales, and policies for the legal principles covered in the course.

Doctrine

1. Students should gain a basic understanding of the probate process and the types of assets that are governed by the probate process. Students should be able to distinguish between probate and non-probate assets.
2. Students should understand the intestacy process, including how and when it occurs and the policies underlying intestate provisions in general. Students should be able to explain the intestacy provisions applicable to surviving spouses, descendants, and collateral kindred, including systems of representation. Students should be able to apply those provisions to hypothetical situations and be able to explain the policies underlying specific provisions.
3. Students should understand the basic doctrines governing the execution and revocation of wills, mental capacity and undue influence, and construction and interpretation of wills as well as the policies underlying these rules. Students should be able to explain the statutory and common law doctrines governing the execution and revocation of wills, capacity and undue influence, and construction and interpretation of wills and apply those doctrines to hypothetical situations.
4. Students should understand the basic doctrines that protect family members from disinheritance and be able to explain how those doctrines apply to hypothetical situations. They should also be able to explain the policies underlying these provisions.

5. Students should understand the basic doctrines governing the creation, modification, interpretation, and termination of trusts and be able to explain how those doctrines apply to hypothetical situations. They should also be able to explain the policies underlying these provisions.
6. Students should gain a basic understanding of doctrines applying to class gifts, powers of appointment, and future interests and be able to explain how those doctrines apply to hypothetical situations. They should also be able to explain the policies underlying these provisions.

Skills

1. Students will enhance their skills in reading and analyzing statutes as well as reading and analyzing cases.
2. Students will enhance their skills in identifying relevant issues, determining what legal principles are relevant, and in applying the law to particular hypotheticals.
3. Students will gain a basic understanding of client behavior and ethical principles governing representation of clients in the estate planning context.
4. Students will enhance their oral communication skills through class participation and their written communication skills through written essays and a final examination.

REQUIRED TEXTS AND MATERIALS

1. Jesse Dukeminier and Robert Sitkoff, *WILLS, TRUSTS & ESTATES*, (9th ed. 2013)
2. Stephanie Willbanks, *ESTATES STATUTORY SUPPLEMENT: 2017*
The Statutory Supplement contains provisions of the Uniform Probate Code, the Uniform Trust Code, the Vermont statutes, and the Internal Revenue Code.

You are required to have the applicable statutory provisions readily available during class discussions and you will, most likely, want to refer to the statutory provisions during the final examination. Although the statutory provisions are posted on TWEN, you will not have access to TWEN or your computer files during the final examination.

3. **ASSIGNMENTS**
The assignments and other relevant course materials are posted on TWEN and are not included in the Statutory Supplement. You are responsible for reviewing the assigned problems prior to class discussion.

PREREQUISITE

Students must have satisfactorily completed, *i.e.*, received a passing grade in, Property prior to enrolling in this class.

AUDIT POLICY

To audit this class, you must register as an auditor during the registration period or during the add/drop process. You must also notify the Professor and obtain the Professor's signature on the required audit form from the Registrar's Office. Auditing the class does not count as one of the two required bar courses.

Auditing students are expected to attend and participate in class on the same basis as other students. If you pass or are unprepared when called on twice in two weeks or three times in the semester, you will be dropped from the course. The absence policy is the same as that for students taking the class for credit (see below). Auditing students are not required to submit a reflective essay or take the final examination.

CLASS PREPARATION

Students must be prepared for class, be prompt in attendance, and be professional in all interactions. There is a significant amount of material in this course, which can be mastered through careful reading of the materials. You should spend approximately three hours of preparation for every hour of class. If you do not understand concepts, cases, statutes, or class discussion, contact the Professor.

EMAIL

The VLS email system is an official method of communication at VLS and for this course. It is the primary way that I communicate with you. You are expected to check your VLS email on a regular basis. I also expect that all emails will be professionally written.

GRADING POLICY

The grade in this course will be based 20 percent on class performance and 80 percent on the final examination.

Class Performance will count for 20 percent of the final grade and will be based on attendance, participation, and professionalism.

Attendance (Required)

Class attendance is required. See, Vermont Law School Academic Regulation II.A.1.a. Absences will affect your grade. Unexcused absence from four (4) classes will result in a written warning. Unexcused absence from one additional class will result in a grade of F.Wd. This statement constitutes the notice required by Academic Regulation II.A.1.d.

Absences resulting from religious observance, serious illness, and personal emergency are excused if notice is given to the Professor or through the Registrar within a reasonable time of the absence. Informing the Professor or Registrar of anticipated absences does not convert those absences into "excused" absences. Excused absences will not affect your grade unless they are excessive and except that you are not present and cannot contribute to class discussion.

Certain absences, although not excused, will **not** affect your class participation if such absences are not excessive. This decision is entirely within the discretion of the Professor, but will ordinarily be granted for job interviews as well as unavoidable

academic conflicts, such as participation on a competition team, a court appearance, or attendance at academic conferences. Notifying the Professor by e-mail of the reason for your absence is sufficient if it is done either in advance or within a reasonable time (one or two days) after the absence.

Unexcused absences will affect your class participation grade even if they do not exceed four regularly scheduled classes. Being late for class or departures during class will also negatively affect the Professionalism component of your grade.

Because of previous travel commitments of the professor, there will be make-up classes for the classes otherwise scheduled for September 6 and 11. The first of these make-up classes will tentatively be held on Tuesday, October 10 from 12:45 to 2 pm. The second will tentatively be held on Tuesday, November 14 from 12:45 to 2:00 pm.

Participation and Professionalism (Required)

Class Preparation and Classroom Discussion

You are expected to be prepared for and participate in class when called on. If you are not prepared, please pass. Passing can have a detrimental effect on your grade. Class participation is measured primarily by its meaningfulness and utility to the classroom discussion. While frequency of participation matters, the substance matters more.

If you use a computer to take notes, do not write down everything that is said. This prevents you from listening and understanding. The final exam is based on what happens in class, so it is important to pay attention and contribute to class discussion.

You are not expected to fully understand the material prior to coming to class. If you have thoroughly prepared for class, you should participate. Others are also uncertain. You are expected to ask question when you do not understand. You can ask questions during class, after class, during office hours or appointments, and by email.

Responsibility

Class begins promptly at 8:30 a.m. You are expected to be on time for class, except for unavoidable delays due to weather. Expect inclement weather and plan accordingly. If you determine that it is unsafe for you to attend class, please notify the Professor by email. If you arrive late, however, it is better to attend class than not. It is very disruptive for students to come and go during class. Being late or leaving class may have an adverse effect on your grade.

You are responsible for enrolling in Estates Fall 2017 on TWEN and for obtaining relevant materials, including the assignments, from TWEN.

You are expected to read your VLS email on a regular basis. Most of the emails about this course will be sent from TWEN so you are also expected to read whatever email you used when registering for TWEN. Messages will update assignments, notify you of postings on TWEN, and the like.

Students should use the course web site (TWEN) to obtain assignments, and obtain review materials. There are also discussion forums for student conversation.

Respect and Civility

You are expected to show respect for the Professor and your classmates. Please arrive on time and do not leave during class except for emergencies. Please turn off your cell phone and similar devices. Please refrain from checking email, playing games, updating Facebook, shopping, and other computer activities that distract your classmates.

Please raise your hand to be called on. Please do not engage in side conversations or make comments about the contributions of your classmates. Please respect the differing contributions of other students. If you are a frequent contributor to class discussion, you might not always be called on to speak

Final Examination: The final examination counts for 80 percent of the final grade. It will be an in-class, modified open-book, four-hour examination. You may bring into the examination only your textbook, the supplement, class handouts, material from the course web page, and any materials substantially prepared by you for this course. The exam may include essay questions, short answer questions, and/or multiple choice questions.

You are required to use a laptop computer with ExamSoft for this examination. No exceptions will be made except for accommodated students or a computer malfunction during the examination. A proctor must certify that your computer did in fact malfunction during the examination.

OFFICE HOURS

Office hours are by appointment, which you can make by sending me an email or calling me at extension 1290. You can also make an appointment by contacting Lori Campbell at lcampbell@vermontlaw.edu or 831-1221.

My office is #118 Waterman Hall. It is located on the first floor at the very far end of the hallway.

You can also send questions to me by e-mail at: gbrooks@vermontlaw.edu. I read my e-mail daily from Monday through Friday and will try to respond to questions within 24-36 hours unless I am off campus. I do not usually respond to e-mail over the weekend. If the question/answer would be of interest or assistance to the class, I will post the answer on the relevant discussion forum.

Please send only one question per email message. If you have multiple questions, send multiple messages. Some questions are not easily answered by email so I may suggest that you see me in person. You may also post questions in the discussion forums on the course web site. These forums are primarily for student discussion, and I do not check them on a regular basis. I do not always respond to student postings.

ASSIGNMENTS

The Assignments are posted on the course web site on TWEN. You are responsible for preparing each Assignment prior to class.

The assignments reflect subject matter, not class days. The schedule will be announced in class from time to time and will appear and be updated as needed TWEN. Generally, class will proceed through the assignments listed in this Syllabus. Some assignments will take more than

one day. Some could take less. We may not discuss all the issues raised in each assignment in class. In addition, we may, upon occasion, discuss issues and problems not included in this syllabus. Any changes in the problems within an assignment will be posted on the course web page and announced in class.

COPYRIGHT

All materials in this course are subject to copyrights held by Professor Willbanks or the professor. Copyrighted materials are only for the use of the individual student enrolled in this course and may not be reproduced or distributed without the express written consent of the professor or other copyright holder. Class may not be recorded without the prior express approval of the professor.

ASSIGNMENTS

This is not a schedule of classes. Some assignments will take less than one day; some may take more than one day. The assignments may be revised during the course. All revisions will be posted on the course web page and announced in class. The learning objectives are available only on TWEN.

ASSIGNMENT #1: INTRODUCTION TO INHERITANCE AND ATTORNEY LIABILITY

Course Syllabus posted on TWEN (under Syllabus)
Text: pages 1 to 20, and 51 to 57

Suggested Reading

Course Overview posted on TWEN (under both Syllabus and Review Suggestions)

ASSIGNMENT #2: INTRODUCTION TO THE PROBATE PROCESS AND NONPROBATE TRANSFERS

Text: pages 41 to 51, 435 to 440, 469-470, 489 to 495
Model Rules 1.6 and 1.7 (see Assignment on TWEN
and posted on TWEN under Statutes)
[UPC §§3-801, 3-803, 3-805, 6-101¹](#)

ASSIGNMENT #3: INTESTACY: RIGHTS OF SPOUSES, CHILDREN, AND COLLATERAL KINDRED

Text: pages 63 to 72 and 80 to 98
[UPC §§1-201, 2-101, 2-102, 2-103, 2-104, 2-105, 2-106, 2-107, 2-113](#)

¹ All assigned statutes are in the casebook and/or the Statutory Supplement. The Statutory Supplement is on TWEN under Statutes. UPC §6-101 is not in the current statutory supplement. It can be found in the text at page 489.

ASSIGNMENT #4: MISCELLANEOUS ISSUES RELATING TO INTESTACY

Text: pages 96 to 123, 126 to 129, and 140 to 145
[UPC §§2-109, 2-114 to 2-122, 2-1105, and 2-1106](#)

ASSIGNMENT #5: WILLS: EXECUTION

Text: pages 147 to 215
Blanchard v. Blanchard (see Assignment on TWEN)
In re Moon's Will (see Assignment on TWEN)
[UPC §§2-502 to 2-505](#)

ASSIGNMENT #6: WILLS: MENTAL CAPACITY AND UNDUE INFLUENCE

Text: pages 265 to 313
In re Estate of Raedel (see Assignment on TWEN)
[UPC §§2-501, 2-517](#)

ASSIGNMENT #7: WILLS: REVOCATION

Text: pages 215 to 241
[UPC §§2-507 to 2-509, 2-802, 2-804](#)

ASSIGNMENT #8: WILLS: COMPONENTS AND CONTRACTS

Text: pages 136 (note 1), 241 to 263
In re Estate of Gorton (see Assignment on TWEN)
[UPC §§2-510, 2-512, 2-513, 2-514](#)

ASSIGNMENT #9: WILLS: EXTRINSIC EVIDENCE

Text: pages 327 to 351
[UPC §§2-805, 2-806](#)

ASSIGNMENT #10: WILLS: DEATH OF A WILL BENEFICIARY AND CHANGES IN PROPERTY

Text: pages 351 to 384
[UPC §§ 2-605 \(1969\) \(in the text at page 357\), 2-606, 2-607, 2-609, 3-902](#)

ASSIGNMENT #11: TRUSTS: CREATION

Text: pages 385 to 408, 413 to 434
[UTC §§401, 402, 404, 407](#)

ASSIGNMENT #12: REVOCABLE TRUSTS

Text pages 445 to 469
[UTC §§601, 602, 603](#)
[UPC §§2-511](#)

ASSIGNMENT #13: PROTECTION OF THE FAMILY

Text: pages 511 to 545, 552 to 557, 562 to 577
Elective Share Outline (in Assignment on TWEN
and posted on TWEN under Review Suggestions)
[UPC §§2-202 to 2-212, 2-301, 2-302, 2-402 to 2-405](#)

ASSIGNMENT #14: FIDUCIARY DUTIES

Text: pages 579 to 585, 588 to 593, 601 (note 3) to 611, 621 to 626, 646 to 663, 667 to
669, 672 to 678
[UTC §§801, 802, 803, 804, 807, 809, 810, 813, 815, 816, 815](#)

ASSIGNMENT #15: TRUSTS: RIGHTS TO DISTRIBUTIONS, CREDITORS RIGHTS, MODIFICATION, AND TERMINATION

Text: pages 687-706, 717-742
[UTC §§405, 409, 410, 411, 412, 413, 414, 415, 416, 501, 502, 503, 504, 505, 506](#)

ASSIGNMENT #16: CHARITABLE TRUSTS

Text: pages 743-766
[UTC §§405, 409, 413, 414](#)

ASSIGNMENT #17: POWERS OF APPOINTMENT

Text: pages 795-832
Note on Powers of Appointment and the Internal Revenue Code (on TWEN)
[UPC §§ 2-608, 2-704](#)

ASSIGNMENT #18: CONSTRUCTION OF TRUST INSTRUMENTS

Text: pages 833-859

Note on the federal estate tax (see Assignment on TWEN)

[UPC §2-707](#)

[IRC §2033](#)

ASSIGNMENT #19: CLASS GIFTS

Text: pages 860-875

[UPC §§2-705, 2-708, 2-809](#)

ASSIGNMENT #20: THE RULE AGAINST PERPETUITIES

Text: pages 877-895, 906-911

ASSIGNMENT #21: EXAM INSTRUCTIONS AND REVIEW

Materials will be posted on TWEN