Professor Wright

Fall 2020

T, Th 1:25-2:40; We 1:05-2:20

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**TRUSTS AND ESTATES – (4 Credits)**

**SYLLABUS**

  This is a class on decedent's estates and trusts and an introduction to estate planning.  It is not a class on fiduciary duties, future interests, estate tax, or property, even though we will be touching on many issues that are covered more thoroughly in those classes.  It should be emphasized that this is only an introduction to estate planning.  For those interested in practicing in this area, it will be necessary to take a number of these other courses or become fluent in those specific areas.

This class will focus principally on transfers of property through the law of intestate succession, wills, and will substitutes.  In particular, we will study the requisite formalities for creation of a valid will, for revocation of a will, and such specific doctrines as lapse of gifts, class gifts, and homestead and family allowances, to name a few.  We will also examine basic *inter vivos* and testamentary trusts, including discretionary, revocable, spendthrift, and charitable trusts. We will cover powers of appointment, joint tenancies, POD accounts, and other will substitutes.

**Required Texts**:

Danaya C. Wright, ***The Law of Succession: Wills, Trusts, and Estates***, 2d ed. (Foundation Press, 2021). This book is not yet in print, so you will receive draft chapters electronically

You will also need to have available every day a booklet of the relevant Florida Statutes which I will also make available to you electronically before the first day of class.

**Requirements**:

You will be expected to brief every case in preparation for class and answer all assigned problems.  I expect every member of the class to be able to engage in thoughtful, considered discussion of the cases and the issues for each day.  This is not a first year course but I will call on people randomly to discuss the cases.  If you aren’t called on, I expect you to contribute to the discussion at your own discretion.

**Covid Conditions** have made teaching this class a completely new experience for which I am a bit nervous. Because about a quarter of the class will be learning remotely, you will need to take it upon yourself to participate as much as you can. I have never planned nor taught a class online, and certainly not one with both online and in person participants. Normally I would teach the class through a combination of discussion and lecture. I would explain a concept, then I would do a problem or two on the board, we would analyze a statute together, and then we would discuss the implications of the rules. When it came to cases, people would volunteer to give me a 1-sentence summary of each case and we would talk about how that court dealt with the issues at hand. We won’t be able to do that as easily this semester. My tentative plan is that I will do a brief lecture/introduction to an issue, then I will randomly assign you to breakout rooms where you (both online and in person students) will together work out the answer to various problems, then the answers will magically be posted on the board (I haven’t practiced the technology for this yet), we can discuss, and then we will look at the statutes and I will try to have them posted on the whiteboard for discussion. This means that you all will need to have your casebook immediately available, your statutes immediately available, and zoom open at all times so I can post polls and assign you to breakout rooms. You all are much better at technology than I am, so I’m hoping this will work. Because classes will be recorded, I believe everyone will have a chance to go back and review any classes. I am open to suggestions about how to make the technology work for all of us! And things may change as the semester progresses, so none of this is etched in stone.

**Attendance** is required.  I reserve the right to dismiss from class any student who misses more than 10% of regularly scheduled classes.  I will take attendance although I don’t really want to know why you are absent each day. Just assume that you need to attend a majority of class so as not to be excluded from taking the final exam.

**Accommodations**: Students requesting classroom or examination accommodations must first register with the Dean of Students’ Office, which will provide documentation to you and me about the type of accommodation to be provided.

**Honor Code**: As you no doubt realize, you are bound by the College of Law Honor Code and Conduct Code while in this class.  Outside of class, I believe you should cooperate with each other as much as possible.  You should form a study group and take practice exams together.  In class, you may share notes, books, and outlines and feel free to come to a colleague’s aid if he/she is stumbling over a question.  But ultimately you will need to master this material if you are to competently represent a client.  I encourage you to ask questions during office hours and get involved in the issues we will discuss.  I ask that you not interrupt your classmates, disparage their questions or answers, or imply (either inside or outside of class) that their questions are not worthy of our attention.  I also ask that if you are not going to pay attention in class that you not distract your classmates, but rather sit quietly and do other work.

**Final Examination**: The final exam will be open book and open notes; you may bring in any written text you desire.  The exam will consist entirely of short answer questions, some of which will require a calculator.  Some questions will require only a yes or no answer. Others will require a dollar value, or a percentage of an estate. Most, however, will require 2 or 3 sentences of explanation about how a doctrine might apply in a given circumstance. The plan at this time is for the final exam to be given on Canvas, but things may change.

**Grading information and grading scale:**The Levin College of Law’s mean and mandatory distributions are posted on the College’s website and this class adheres to that posted grading policy. The following chart describes the specific letter grade/grade point equivalent in place:

Letter Grade Point Equivalent

A (Excellent) 4.0

A- 3.67

B+ 3.33

B 3.0

B- 2.67

C+ 2.33

C (Satisfactory) 2.0

C- 1.67

D+ 1.33

D (Poor) 1.0

D- 0.67

E (Failure) 0.0

The law school grading policy is available at: <http://www.law.ufl.edu/student-affairs/current-students/academic-policies#9>.

**Workload**: You should plan to spend at least two hours preparing for every hour in class. You should focus your time on reading the book, the statutes, and then answering all questions in the squib cases, writing a one-sentence summary for every case, and doing as many of the problems as you can.

**Learning Outcomes**: This is an introductory class that will introduce you to the vast majority of rules and doctrines that apply in the context of the succession of property at death. Since we all will die, we all will pass our property in some form or another to our successors. This is a huge area of law with many different kinds of rules and doctrines. At the end of the course, you should be able to draft a basic will, understand what issues your client will face, and know the law of Florida. The main skill we will focus on is identifying the relevant rules that govern a particular transaction, the gaps in those rules that are subject to common law doctrines, the appropriate interpretation of statutes, and the ways in which these diverse rules affect a client’s testamentary plan. This class is organized to focus primarily on planning for a client’s death and the succession of her property. This means we will examine the many traps and how to avoid them so that your client’s plan progresses as intended. At the end of the course we will look at some doctrines that arise in the context of litigation so that you will be able to avoid those traps when you plan, and so you are competent if litigation ensues. There is a lot of material that we will cover in this class, but noted below are the priorities that we will address in each class.

**Office**: Holland 352

**Office Hours**:

After class on Tuesdays and Thursdays via zoom. All office hours are to be virtual via zoom.

If these times are not convenient then send me and email and we can arrange a time.

EMail: [wrightdc@law.ufl.edu](mailto:wrightdc@law.ufl.edu)

Zoom: https://ufl.zoom.us/j/4521739206

**Reading Assignments**: Below is a list of the anticipated class periods to be spent on each subject and the assigned sections, problems, and Florida Code provisions.  Although we will progress through the material in the following order, minor changes may need to be made throughout the semester to accommodate unforeseen delays.  Please try to stay comfortably ahead in the readings.  Also, there is a lot of reading each day because we are covering the material more quickly than in a first year class.  Thus, class discussion will focus more on certain items, and less on others, in the following order:

1. Legal rules
2. Fla. statutes
3. UPC provisions
4. cases and case rules
5. problems
6. notes and questions
7. law review commentaries
8. lawyer ethics and drafting hints.

The last three you may skim accordingly.  Please read them but don’t feel that you need to focus heavily on them in your preparation.  We will work problems in class to the extent we have time.

**Squib Cases:** You will notice that this casebook is noticeably different from other casebooks you may be using. The main difference is that rather than a single case on which we might spend half an hour, there are five or more very short cases that make a single point. To prepare for these cases you do not need to brief every one. Instead, what I want you to do is prepare a single sentence that highlights the relevant facts, issue, and resolution of the case. For instance, I might ask: “What is the *Burke* case about?” (p. 178-179). A good answer would be something like this: “In *Burke*, the testator could not physically see the witnesses sign, but she knew they were signing, there was no evidence of fraud, and her intent was clear enough for the court to apply the conscious presence test rather than the line-of-sight test.” Then I want you to answer the queries that follow the squib case. Finally, I want you to be able to address whether the outcome in the case makes sense in light of the rules and priorities of succession law that we have been discussing. In *Burke*, there aren’t any questions about the signing and witnessing of the will, but there might be legitimate questions about the testator’s mental competence. What do you think is the right outcome?

General Pace of Readings

Chapter 1 – ½ week

Chapter 2 – 1 week

Chapter 3 – 1 week

Chapter 4 – 4 weeks

Chapter 5 – 1 ½ weeks

Chapter 6 – 1 week

Chapter 7 – 1 week

Chapter 8 – 1 ½ weeks

Chapter 9 – omit

Chapter 10 – 1 week

Chapter 11 – 1 week

Chapter 12 – omit

Normally I can provide exact page numbers, but because this is the draft of my new book, I don’t yet know the exact page numbers. Thus, I will assign the material by sections, which should be fairly straightforward. Also, the semesters are only 13 weeks and I have over 13 weeks’ worth of material here. We will adjust as I see how we are able to progress given this new mode of operation.

**Class Subject & Assignments:** We will proceed through the book in order, from page 1 to the end. I hope we can finish the book, but there may be sections that we will skip in the interests of time. Here are the first two reading assignments. I will distribute a detailed daily list of reading assignments with the statute packet.

1.  Introduction and Donative Freedom

Read the Introduction and Chapter 1 § A

Fla. Stat. 731.201, 731.011

2.   Gifts and Limit on Donative Freedom, Family Protections, Administration

Read the rest of Chapter 1 (§§ B,C,D &E) and Chapter 2 § A

Fl. Stat. 731.102, 731.103, 732.901, 733.101 to 733.109, 733.201 to 733.6171, 735.201 to 735.2063, 735.301, 735.302. (you can skim these administration statutes – just get the basic details)