

## **WTE Night**

### **Week 1 (1/13)**

#### Assignment 1

##### Introduction:

Read pgs. 1-8, Prepare: *Estate of Feinberg*

#### Inheritance by Slayers

Read pgs. 16-22, Prepare: *Ford v Ford*

Read O.C.G.A. § 53-1-5 (Georgia Statutes Supplement on Twen)

#### Probate & Non-Probate Transfers:

Read pgs. 45-51 (end of case), Prepare: *Gruen v Gruen*

Read O.C.G.A. § 7-1-813 (Georgia Statutes Supplement on Twen)

Read O.C.G.A. § 44-6-190 (Georgia Statutes Supplement on Twen)

Read pgs. 52-57 (end of case), Prepare: *Franklin v Anna National Bank*

Prepare in Depth: Hypothetical 1 posted on Twen

#### Intestate Succession: Introduction and Representative Statutes

Read O.C.G.A. § 53-2-1 (Georgia Statutes Supplement on Twen)

Read pgs. 65-72, 76-80, Prepare: *Estate of Goick*

Read O.C.G.A. § 53-4-49 (Georgia Statutes Supplement on Twen)

Prepare in Depth: Hypothetical 2 posted on Twen

**\*\*\*\*\* SYLLABUS BELOW \*\*\*\*\***

# WILLS, TRUSTS & ESTATES

PROF. BECKETT G. CANTLEY

SPRING, 2015

NIGHT CLASS

## SYLLABUS

**NOTE: THIS SYLLABUS WILL BE UPDATED FROM TIME TO TIME DURING THE SEMESTER. EACH NEW VERSION WILL BE POSTED TO TWEN, SO CHECK TWEN REGULARLY. FAILURE TO CHECK TWEN WILL NOT BE AN EXCUSE FOR BEING UPREPARED IN CLASS.**

### Course Description

Examination of wills, testamentary and intestate disposition, administration of estates, private and charitable trusts, duties of trustees, and estate planning.

### Course Overview

This course is designed to familiarize students with the basic concepts of gratuitous property transfers both inter vivos and at death. The course incorporates family law concepts to explain statutory choices for encouraging certain behaviors and relationships and discouraging others. In addition to cases and statutes, the use of problems both in-class exercises and out-of-class hypotheticals, will help students understand the policy decisions made by jurisdictions to facilitate these property transfers. Another concept running through most of the materials is the non-legal practical situation of facing mortality and assuring a smooth transition of property during a time of grief and mourning. As such, the course builds on students' common sense knowledge of family and friendly relationships by complementing and improving students' exposure to substantive areas of law including property, community property, and family law.

### Course Goals

The objective of the course is to have students become familiar with and understand the legal terms and the basic legal concepts used in transfer of wealth between individuals, and have students consider the policy behind these rules and their applications, and the ethical issues involved in interpreting them and advising taxpayers.

### Student Learning Outcomes

Evaluation for this course will entail an assessment of the following expected student learning outcomes:

1. Students should become familiar with the statutory schemes for intestacy or a "default will," that provide for any family structure (traditional or "modern") in order to achieve ease of probate administration.

2. Students should be able to identify the use of and limits on control over testamentary disposition to alter the intestate default positions.

3. Students should learn the statutory formalities for a will “ritual,” including different forms of wills as well as provisions for additions, changes, modifications and revocations, and problems associated with the formalities necessary to accomplish those concepts.

4. Students should be able to explain the construction of wills as to meaning, mistake and ambiguities. Construction also deals with statutory defaults once again for changes in property and beneficiaries between the time of will execution and death.

5. Students should be able to demonstrate the use of a trust to transfer interest and title to property and the relationships, including the responsibilities and duties of a settlor, trustee and beneficiary.

6. Students should know how the modification and termination of trusts both as to instrument provisions and statutory requirements, and the inter-relation of trusts and wills.

7. Students should understand the fiduciary administration of estates and trusts, including parallel statutory requirements for personal representatives and trustees and ramifications for breach of duties attendant upon such fiduciaries.

### **Required Book**

*Sterk, Leslie, and Dobris' Estates and Trusts Cases and Materials, 4th Edition*

### **Class Preparation, Attendance, & Other Class Rules**

Students should be prepared to discuss statutes and problems without the use of notes during class. Subject to the law school policies, students may bring drinks. Students can take notes on their laptops, but if they are caught texting, surfing on Facebook, or talking in class, they will be asked to leave the class immediately and eventually it will result in points off their grades. Students should respect the Professor and class enough to follow this rule.

### **Mid-Term, Final Exam & Final Grade**

The final examination will be the primary determinant of any student’s grade. Each grade will be calculated 100% by the grade on the final examination, unless one or more of the following adjustments is applied. A student may receive a downward adjustment of ½ of 1 grade level if (a) the student’s classroom participation is unsatisfactory (a student is unprepared when called upon for a problem) or (b) a student receives a score on his or her Midterm Exam of 25% or less of all possible points. A student receives an upward adjustment of ½ of 1 grade level if he or she receives a score on the student’s Midterm Exam of 75% or more of all possible points.

## **Class Time & Office Hours**

Class meets on **Tuesdays from 6:15 to 9:30 p.m.** My office-hours are on **Mondays (4:30pm-6pm)** and **Tuesdays (4:30pm-6pm)**, although students should feel free to drop by my office anytime in the afternoons since I am often there. My office is on the 8<sup>th</sup> floor of the 1422 building. If any student is having trouble with the class work, they are highly encouraged to come talk to me and be very honest about his or her difficulties. If I don't know a student is having trouble, I cannot help the student.

## **Weekly Assignments**

### **Week 1 (1/13)**

Assignment 1

Introduction:

Read pgs. 1-8, Prepare: *Estate of Feinberg*

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Prepare in Depth: Hypothetical 1 posted on Twen

Intestate Succession: Introduction and Representative Statutes

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Read pgs. 65-72, 76-80, Prepare: *Estate of Goick*

Read O.C.G.A. § 53-4-49 (Georgia Statutes Supplement on Twen)

Prepare in Depth: Hypothetical 2 posted on Twen

### **Week 2 (1/20)**

Assignment 2

The Share of Lineal Descendants:

Read pgs. 85-91, Prepare: Problem on pgs. 90-91 (Situations 1-4)

Prepare in Depth: Hypothetical 3 posted on Twen

The Share of Ancestors and Collateral Heirs:

Read pgs. 93-100, Prepare: Prob. pg. 94, *Estate of Locke*, Problems 1-5 pg. 99

Read pgs. 107-113 (end of case), Prepare: *Estate of Donnelly*

Read O.C.G.A. § 19-8-19 (Georgia Statutes Supplement on Twen)

Read pgs. 130-133, 135-139 (end of case), Prepare: *In Re Estate of Burden*

Read O.C.G.A. § 53-2-3 (Georgia Statutes Supplement on Twen)

Simultaneous Death, Disclaimer, Advancements:

Read pgs. 147-151, Prepare: *Estate of Villwock*,  
Read O.C.G.A. § 53-1-20 (Georgia Statutes Supplement on Twen)  
Read O.C.G.A. § 53-10-2 (Georgia Statutes Supplement on Twen)  
Read pgs. 154-158, Prepare: *Estate of Baird*  
Prepare in Depth: Hypothetical 4 posted on Twen

### Week 3 (1/27)

#### Assignment 3

An Introduction to the Elective Share (GA Year's Support)  
Read OCGA 53-3-1 through 3, 5; 53-4-1 (Georgia Statutes Supplement on Twen)  
Read pgs. 167-174  
Prepare: *Sullivan v Burkin*

#### Waiver

Read pgs. 196-197  
Prepare: *Geddings v Geddings*  
Prepare in Depth: Hypothetical 5 posted on Twen

#### Other Protections for the Surviving Spouse

##### Homestead Allowance, Exempt Property, & Family Allowance

Read pgs. 203-204  
Protection Against Inadvertent Disinheritance: The Problem of the Pre-Marital Will  
Read pgs. 206-210 (end of case), Prepare: *Prestie v Prestie*  
Read pgs. 213-217 (end of case), Prepare: *Estate of Glomset*  
Review Prior Hypotheticals posted on Twen

### Week 4 (2/3)

#### Assignment 4

##### Execution of Wills

Will Formalities: What Are They & Why Have Them?  
Read OCGA 53-4-20; 53-4-10; & 53-4-22 & 23 (Georgia Statutes Supplement on Twen)  
Read pgs. 227-223  
Prepare: *Morris v West*

##### The Signature Requirement/Witnesses/The Execution Ceremony/Holographic Wills

Read pgs. 235- 238 (up to NY EPTL)  
Read pgs. 240-246, 250, *Estate of Hall*  
Prepare in Depth: Hypothetical 6 posted on Twen

#### What Constitutes the Will?

##### Introduction

Read pgs. 260-262

##### Integration & Incorporation by Reference

Read pgs. 262-268 (end of case), Prepare: *Estate of Norton*  
Read pgs. 269-273 (end of case), Prepare: *Clark v Greenhalge*

Facts of Independent Significance

Read pgs. 276-281 (end of case), Prepare: *In re Tipler's Will*

Abatement

Read OCGA 53-4-59 & 53-4-63 (Georgia Statutes Supplement on Twen)

Read pgs. 283-287 (end of case), Prepare: *In re Estate of Potter*

Ademption

Read OCGA 53-4-66 (Georgia Statutes Supplement on Twen)

Read pgs. 293-299, Prepare: *McGee v McGee*

Prepare in Depth: Hypothetical 7 posted on Twen

### **Week 5 (2/10)**

Will Project

### **Week 6 (2/17)**

Assignment 5

Lapse

Read OCGA 53-4-64 and 65 (Georgia Statutes Supplement on Twen)

Read pgs. 306-308 (stop at statutes), 311-315 (end of case)

Prepare: *Estate of Rehwinkel*

Read pgs. 320-322, Prepare: *Estate of Rehwinkel; Morse v. Sharkey*

Mistake

Read pgs. 353-354 (skip problems), 355-358

Prepare: *Knupp v District of Columbia*

Revocation

Read OCGA 53-4-40 through 43 (Georgia Statutes Supplement on Twen)

Read pgs. 359-367, Prepare: *Gushwa v. Hunt*

Read OCGA 53-4-44 through 48 (Georgia Statutes Supplement on Twen)

Read pgs. 369-374, Prepare: *Ward-Allen v. Gaskins*

Read pgs. 382-383, 384-386, Prepare: *Oliva-Foster v. Oliva*

Prepare in Depth: Hypothetical 8 posted on Twen

### **Week 7 (2/24)**

Assignment 6

Contract to Make a Will

Read pgs. 389-395

Read OCGA 53-4-30 (Georgia Statutes Supplement on Twen)

Prepare: *Garret v. Read*

Read pg. 397-403

Read OCGA 53-4-31 through 33 (Georgia Statutes Supplement on Twen)

Prepare: *Shimp v. Huff*

### Capacity

Read pgs. 413-423

Prepare: *Barnes v. Marshall*; *Wilson v. Lane*

Read pgs. 428-438

Prepare: *Dougherty v. Rubenstein*, *Gonsalves v. Superior Court*

Read OCGA 53-4-10 and 11 (Georgia Statutes Supplement on Twen)

### Undue Influence

Read pgs. 442-454, 458-465

Prepare: *Haynes v. First National State Bank*; *Will of Moses*

Read OCGA 53-2-12 (Georgia Statutes Supplement on Twen)

Prepare in Depth: Hypothetical 9 posted on Twen

### **Week 8 (3/3)**

Class Participation Mid-Term

### **Week 9 (3/10)**

Assignment 7

Planning for a Will Contest

Read pgs. 482-483 (end before questions), 484-486 (end before questions)

### Gay & Lesbian Testators

Read pgs. 491-501

Prepare: *Will of Kaufmann*

### Intro to Trusts

Read pgs. 519-526, 532-539

Prepare: *Spicer v. Wright*; *Levin v. Fisch*;

Read pgs. 540-543

Prepare: *Goodman v. Goodman*

Read OCGA 53-12-20 through 25; 53-12-130 and 132; 53-12-201; 53-12-245 (Georgia Statutes Supplement on Twen)

Prepare in Depth: Hypothetical 10 posted on Twen

### Support and Discretionary Trusts

Read pgs. 548-549, 550-563

Prepare: *Wells v. Sanford*; *Marsman v. Nasca*

Prepare: *Dunkley v. People's Bank and Trust* (note case)

### **Week 10 (3/24)**

Assignment 8

Revocable Living Trusts

Read pgs. 570-571, 576-580, 582-587, 588-592, & 593-598

Prepare: *Clymer v. Mayo*; *Heaps v. Heaps*

Prepare: *Committee on Professional Ethics v. Baker*

### The Duties of Care & Loyalty

Read OCGA 53-12-247 (Georgia Statutes Supplement on Twen)

Read pgs. 1041-1042, 1044-1051 (skip questions)

Read OCGA 53-12-241; 53-12-345 (Georgia Statutes Supplement on Twen)

Read pgs. 1061-1064, 1065-1075 (skip questions)

Prepare: *Matter of Kinzler*; *Matter of Estate of Rothko*

Prepare: *Shriners Hospitals for Crippled Children v. Gardiner*; *In re Estate of Janes*

Prepare in Depth: Hypothetical 11 posted on Twen

### **Week 11 (3/31)**

#### Assignment 9

#### Creditor's Rights in Trusts

Read pgs. 600-605, Prepare: *Wilcox v. Gentry*

Read pgs. 607-612, Prepare: *Scheffel v. Kreuger*

Read OCGA 53-12-80

#### Planning for Incapacity

Read pgs. 639-640, 641-646, 647-653

Prepare: *Estate of Gist*; *Cohen v. Comm'r of the Division of Medical Assistance*

Prepare in Depth: Hypothetical 12 posted on Twen

#### Modification & Termination

Read pgs. 671-674, 675-683, & 688-694

Prepare: *Conn. General Life Ins. Co. v. First Nat'l Bank*; *Adams v. Link*

Prepare: *American Nat'l Bank of Cheyenne v. Miller*; *Walker v. Walker*

Read OCGA 53-12-64

Prepare in Depth: Hypothetical 13 posted on Twen

### **Week 12 (4/7)**

#### Assignment 10

#### Powers of Appointment

#### Terminology & Classification

Read pgs. 737-741

Problems 1 & 2, on pgs. 742-743

#### Creation & Exercise

Read pgs. 743-745, 747-750

Prepare: *Estate of Hamilton*

#### Scope of the Power

Read pgs. 755-760, 763, 764-770 (skip questions)

Prepare: *Will of Carroll*; *Benjamin v. Morgan Guaranty Trust Co.*; *Seidel v. Werner*

#### Coordinating Probate/Non-Probate Assets

Read pgs. 984-987, 988-992, 994-998, 999-1002

Prepare: *Araiza v. Younkin*; *Nunnenman v. Estate of Grubbs*; *Kennedy v. Plan Administrator for DuPont Savings and Investment Plan*; *Lincoln Life and Annuity Co. v. Caswell* (Case Summary)

**Week 13 (4/14)**

Catch Up or Practice Exam

**Week 14 (4/21)**

Review