UPDATED October 17, 2013

Classroom: Hazel 225
Meeting Times: Mons., Weds. 12:30 p.m. – 1:45 p.m.
Exam: Sat. Dec. 7, at noon

Office hours and whereabouts

My office is on the fourth floor, in the faculty suite, Room 420. My phone number is (703) 993-8247. My email address is eclaeys@gmu.edu. The course also has a TWEN site, and I am reachable on the discussion board of that site.

This semester, I will hold office hours Mon. and Wed. mornings, 9 – 10 a.m. These are “walk-by” hours, meaning that I do not have any other appointments during them and you are free to come in to my office without appointment. However, I am happy to schedule appointments if you have a conflict during office hours or if you prefer for other reasons.

Cancellations and make-up classes

At this time, I do not anticipate canceling any classes. If I need to cancel class suddenly due to illness or some emergency, I will have my secretary post notices in the atrium and on the door of Hazel 225, and I will send an email to the class.

Class reading

On most class days, the reading will run 15-20 pages per 75-minute session. On several occasions, however, the reading will go as high as 30 pages.

To help you read ahead, this syllabus forecasts the reading I anticipate covering for the entirety of the course. However, this forecast is not a promise but a projection. I reserve the right to change the projected reading schedule depending on how fast or slow we are going. If you read more than a class ahead, you assume the risk of reading material I decide to leave on the cutting room floor.

Class expectations

I expect you to be prepared for class. For any case excerpted at any length longer than a page, I expect you to understand the facts, the lawsuit, the theories of the case adopted in the majority and any separate opinions. The casebook excerpts and analyzes provisions of the Uniform Probate Code, Uniform Trust Code, and other similar model codes; I expect you to read these
excerpts, understand them, and understand how they relate to trust or estate judge-made common law.

When I or the casebook presents a “squib” case—that is, a case consolidated into a paragraph or so, I expect you to know the facts, the holding, the rationale, and the contribution to the general line of doctrine covered in class.

I expect you to attend class on a regular basis, and the ABA makes it a general condition of accreditation that students not miss more than 2 weeks of class. I keep attendance by having you sign in each day.

If you miss more than 6 class hours (the equivalent of 4 classes), I will not seat you for the examination and I will give you a “forced withdraw” grade for the course.

With two exceptions, this is a “strict liability” policy: I do not waive this requirement because you are sick, have a job interview, personal emergency, &c. Except as specified below, you do not need to let me know in advance that you will be absent (and I prefer not to be notified), but by the same token I will not excuse absences in general.

Exception 1: I do not enforce the attendance policy when I need to reschedule class because I am canceling class due to non-GMU commitments.

Exception 2: I also do not enforce the attendance policy if the GMU Provost’s office designates the day a day of observance for a religion and you certify to me that you are a member of that religion. Consistent with the GMU Provost’s Guidelines: “It is the obligation of students to provide faculty, within the first two weeks of the semester, with the dates of major religious holidays on which they will be absent, and the dates for which they are requesting an excused absence for participation in any university-sponsored activity scheduled prior to the start of the semester, and as soon as possible otherwise.”

Otherwise, I expect you to self-regulate interviews, personal emergencies, illnesses, religious observances and other such commitments, so that you do not miss more than 4 classes or 6 class hours’ worth of time.

I expect you to prepare for class. I call on students during class, to discuss material that a lawyer should have been able to digest from the reading without much assistance. If I call on you and you are unprepared, that counts as an absence for 45 minutes (i.e., ½ of one of your 4 class absences, or 1/8 of the total time you may be absent without going over the maximum time limit). If you are unprepared and wish to avoid getting called on, please notify me before the beginning of class and I will mark you for a 22-minute absence (1/4 of a class, or 1/16 of the total time allowable).

During class, I expect you to be generally respectful to me and your classmates. Imagine the standards of comportment you would use if you were a lawyer, sitting in front of a judge,
watching as the judge engages another lawyer in the proceeding. Please treat me and any of your colleagues with whom I am conversing with the same professional courtesy.

Recording classes

I reserve all property rights in my class lectures, presentations, and discussions. As a general rule, I prefer that classes not be recorded. However, I will grant permission in specific cases when a student can demonstrate a special need. For example, as noted above, if you are missing class to observe a religious holiday I will allow you to make arrangements to have a classmate record class. If you think you have such a need, please ask and we can discuss. If you prefer to ask anonymously, please contact Annamaria Nields, Associate Dean of Students, and she can ask me on your behalf.

Grading

The grade for this class will be based solely on a 3 hour examination, open book.

Course materials

The assigned casebook is


On at least a couple of class days, I’ll assign supplemental reading. These readings will be available electronically on the course TWEN site.

Course reading

1. Monday, August 19

Chapter 1.A. Freedom of Disposition.


and Langbein, ‘The Twentieth-Century Revolution’.
2. Wednesday, August 21

Chapter 1.B. The Mechanics of Succession


Chapter 1.C. Professional Responsibility


I am going to take for granted that you’ve read pp. 41-51, on probate. I’ll give you a chance to ask questions about that material, but I hope not to lecture on it extensively. Expect we’ll spend 20’ each on the probate problem p. 50 n.1, Simpson, and A v. B.

3. Monday, August 26

Chapter 2.A, -.B. Intestacy and its Basic Structure

Pp. 63-75. Stop before the beginning of section 2.B.1.c, on simultaneous death.

P. 80 n.2.

Pp. 81-87. I will give a brief overview of this material and give you a chance to ask questions. Otherwise, we’ll spend as much class time as possible doing the problems p. 84 n.2 and p. 87.

4. Wednesday, August 28


p. 91. Be prepared to do and discuss in class the negative will problems.

Chapter 2.C. Intestacy and Transfers to Children

5. Wednesday, September 4

Chapter 2.C. Intestacy and Transfers to Children (cont’d)


6. Monday, September 9

Chapter 2.D. Bars to Succession

Riggs v. Palmer, 22 N.E. 188 (N.Y. 1889). To be posted on TWEN.


7. Wednesday, September 11

Chapter 3.A.1 Execution of Wills: Attestation


Read also pp. 196-97 (section 3.A.2, on notarization)

8. Monday, September 16

Chapter 3.A.1.f to -.h. Execution of Wills: Exceptions from Strict Compliance


Assume I’ll lecture about Pavlinko’s Estate and Snide, and that we’ll focus in class on UPC § 2-503, Estate of Hall, and Probate of Macool.

9. Wednesday, September 18

Chapter 3.A.2. Holographic Wills

10. Monday, September 23

Chapter 3.B.  Revocation

Pp. 215-20, 225-34.

Problem p. 217.  Thompson, Harrison, LaCroix.

11. Wednesday, September 25

Chapter 3.C.  Components of a Will


Chapter 3.D.  Contracts Relating to Wills

Read p. 256-57. Read also 263 n.5.

12. Monday, September 30

Chapter IV.A.  Will Capacity

Capacity


Insane Delusion


Chapter IV.B: Undue Influence

13. Wednesday, October 2

Chapter IV.B. Undue Influence (cont’d)

Pp. 290-96. Presumptions in Undue Influence cases, and Reid.

Chapter IV.C. Duress


Chapter IV.D. Fraud.


Chapter IV.E. Tortious Interference

Read the first paragraph of section IV.E on p.320, and section IV.E.3 on p.326.

14. Monday, October 7

Chapter 5.A. Wills: Construction: Mistaken/Ambiguous Language


15. Wednesday, October 9


Pp. 343-49. UPC § 2-805. In re Estate of Herceg. Stop reading on 349 at the end of n.3.

Chapter 5.B. Wills: Construction: Predeceasing Beneficiaries


16. Tuesday, October 15

Chapter 5.B. Wills: Construction: Predeceasing Beneficiaries: Class Gifts

Pp. 367-73. Rest. (3d) Property §§ 13.1 to -.2; Dawson

Chapter 5.C. Wills: Construction: Post-Execution Changes in Property

Pp. 373-84. In re Estate of Anton

17. Wednesday, October 16

Chapter 7.B. Will Substitutes: The Revocable Trust


18. Monday, October 21

Chapter 7.B. Will Substitutes: The Revocable Trust (cont’d)


P. 457, the para. after the header for sec. 4, and the quote from Rest. (3d) Prop. § 7.2 cmt. a.


19. Wednesday, October 23.

Chapter 7.C. Other Will Substitutes

Pp. 469-70. Life insurance and its varieties.


Pp. 489-95. Pay-on-Death contracts. UPC § 6-101. (continue to next page)
Chapter 7.D.  Incapacity: Property management


Chapter 8.A. Limits on Freedom of Disposition: Protection of the Surviving Spouse

21. Wednesday, October 30

Chapter 8.A. Limits on Freedom of Disposition: Protection of the Surviving Spouse (cont’d)
Pp. 545-47. Community property.

22. Monday, November 3

Chapter 8.B. Intentional Omission of a Child

Chapter 8.C. Protection Against Unintentional Omission
Pp. 562-77. UPC § 2-301; *Prestie*; UPC § 2-302; *Gray*; Anna Nicole Smith squib; *In re Estate of Jackson*.

23. Wednesday, November 6

Chapter 6. Trusts

Chapter 6.A. An overview of trusts.
Pp. 385-400. I’ll lecture briefly about this material and take questions. Much of this assignment defines terms that you’ll need to know for subsequent assignments.

Chapter 6.B. Trust creation: Intent, and the *res*
24. Monday, November 11

Chapter 6.B (cont’d): Trust creation: The beneficiaries, and writtenness


25. Wednesday, November 13

Chapter 9.A & -.B. Trusts: Overview of fiduciary duties, and the duty of loyalty

Pp. 579-88. Overview of the fiduciary concept. Expect that I’ll lecture and take questions on this material.

Section 9.B. The Duty of Loyalty


26. Monday, November 18

Chapter 9.C. Trusts: The duty of prudence


Pp. 646-49. Duty of prudence as applied to custody and administration.

27. Wednesday, November 20

Chapter 10.A. Trusts: Alienation: Restraints on the power of the beneficiary to alienate the beneficial interest.


Chapter 10.B. Trusts: Modification and Termination: Consent of Beneficiaries


28. Thursday, November 21

Chapter 10.B. Trusts: Modification and Termination: Deviation and Changed Circumstances