

PROBATE & ESTATE ADMINISTRATION: TAX
CONSIDERATIONS Compressed
Course - Spring 2024
(January 8-12, 2024)

Instructor: Circuit Judge Kenneth L. Gillespie
Probate Division (17th Judicial Circuit)
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Office hours: (1) In-person: Tuesday [1/09/24] and Thursday [1/11/24] 1:15 p.m.-2:15 p.m.
(2) Zoom: By appointment only during compressed week

Course Meeting Times and Location:

Monday, Tuesday, Wednesday, Thursday, and Friday (9:00 a.m.-12:00 p.m.)

Location: TBD

Required Text:

West's Florida Probate Code with Related Law & Rules (Internet).

Reference Material: Below is reference material that will enhance your knowledge, especially if you plan to practice probate and estate administration or if you plan to incorporate it into/make it part of your practice:

Practice Under Florida Probate Code, The Florida Bar Continuing Legal Education, Eleventh Edition.

Selected Tax Notes (Chapter 9): The Florida Probate Bar System. (Professor will provide with approval of author).

Attendance and Participation:

Both the ABA and the University of Florida Law School require attendance. Notably, student attendance is essential to gain a workable knowledge of probate and estate administration given the compressed structure of this course. Participation is encouraged and will consist of 20% of your overall grade, which is based on in-class participation.

Because this is a compressed course, no unexcused absences are permitted; your participation grade will be reduced by 5 points per unexcused hour you are absent from class. Requirements for class attendance, make-up exams, and assignments consistent with the University's policies can be found at:

<https://catalog.ufl.edu/ugrad/current/regulations/info/attendance.aspx>.

If you intend to be absent for observance of a "major" religious holiday, please coordinate with me as early as possible to schedule a make-up assignment. Further, if an unforeseen circumstance arises (sickness, family emergency, etc.), the absence **may** be excused at the professor's discretion after you have provided adequate documentation of the requested information and you have completed a make-up assignment.

Canvas:

Please become familiar with **Canvas**. All class information and announcements will be posted on Canvas. You are encouraged to check canvas regularly for postings and announcements. Should you experience any technical issues with Canvas, please contact UF Help Desk at helpdesk@ufl.edu or (352) 392-HELP. Any requests for make-ups due to technical issues **MUST** be accompanied by the ticket number received from LSS when the problem was reported to LSS. The ticket number will document the time and date of the problem. You **MUST** e-mail your instructor within 24 hours of the technical difficulty if you wish to request a make-up.

Course Description and Preparation Time:

The primary objective of this compressed course is to provide students with a workable knowledge of the fundamental concepts of probate and estate administration, and consideration of tax-related consequences in administering estates. Topics include discussion of selected provisions of the Florida Probate Code (Chapter 733) and the Florida Probate Rules governing the administration of estates and probate procedure. Additionally, students will gain on-hands experience in the preparation of probate documents, e-filing portal procedures, the role and duties of personal representative, estate management, creditor claims, special provisions for distributions, and closing procedures. Finally, this compressed course will conclude with a discussion of the fiduciary responsibility requirements for resolving the final tax of a decedent and decedent's estate with an emphasis on the Individual Income Tax Form 1040, the Estate's Income Tax Form 1041, the Estate and or Gift Tax Returns (Forms 706 or 709), the Joint Tax Return and the applicability of the 645 Election.

ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every "classroom hour" of in-class instruction. This compressed course is "one (1) credit." Students should spend at least two (2) full hours preparing for each hour of class meeting. This is the minimum preparation time needed for students to develop a workable knowledge and mastery of the course concepts and objectives.

Course Expectations and Learning Outcomes:

Upon the successful completion of this course, students should be able to:

- Read and understand the Florida Probate Code and the Florida Probate Rules. – Navigate the e-filing Portal.
- Discuss and explain the difference between probate and estate administration.
- Identify and explain the steps in formal probate procedures and the preparation of documents for administering a decedent’s estate, both testate and intestate.
- Identify and explain the steps in summary probate procedures and the preparation of documents for administering a decedent’s estate, both testate and intestate.
- Understand the roles, duties, and potential liability of the personal representative.
- Understand and manage creditors’ claims.
- Gain a workable knowledge of special provisions relating to distribution – Understand the procedures of closing an estate.
- Identify, determine, and prepare decedent’s income, gift tax and estate tax returns, and to – Access/assess Probate Court Checklists by Circuit/Jurisdiction.

Class Conduct and Recording of Class Discussions

Students are expected to treat colleagues/others with respect at all times. With respect to the recording of class lectures, students are allowed to record video or audio of class lectures. However, the purposes for which these recordings may be used are strictly controlled. The only allowable purposes are (1) for personal educational use, (2) in connection with a complaint to the university, or (3) as evidence in, or in preparation for, a criminal or civil proceeding. All other purposes are prohibited. Specifically, students may not publish recorded lectures without the written consent of the instructor. Notably, students failing to follow these rules will be referred to the College of Law's Honor Code Council and the University’s Office of Student Conduct and Conflict Resolution.

Computation of Course Grade:

20 percent: Participation
80 percent: Final Exam

Final Exam:

The format of the final exam will consist of a comprehensive fact pattern and subparts. Your responses will be in the form of short answers and essays. The exam will be open book. The date and time of the final exam will be announced in the following weeks.

Communication is strictly prohibited and will violate the Honor Code (an exception is permitted when communicating with Student Affairs or UF IT to resolve technical issues, or to report an illness).

Exam delays and accommodations must be arranged through the Student Affairs Office. See <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-lawstudent-handbook-and-academic-policies>; also, see same link below “UF’s Policy

Accommodating Disability.” Additional time will be provided to students whose first language is not English.

Grade Scale and Grading Policies:

<u>Grade</u>	<u>Points</u>
A (Excellent)	4.0
A-	3.67
B+	3.33
B (Good)	3.00
B-	2.67
C+	2.33
C (Satisfactory)	2.00
C-	1.67
D+	1.33
D (Poor)	1.00
D-	0.67
F (Failure)	0.00

The Law School's grading policy applies to this course and is available at <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-studenthandbook-and-academic-policies>. **Note: The mandatory mean grade policy does not apply to LL.M. students.**

UF’s Policy on Accommodating Students with Disabilities:

Students requesting classroom and/or testing accommodations must first register with the Office of Disability Resources. The UF Office of Disability Resources will provide documentation to the student who must then provide this documentation to the Law School Office of Student Affairs when requesting accommodation. Student Affairs will then communicate with the professor as needed to assure the accommodation is provided. Referenced link at <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/currentstudents/uf-law-student-handbook-and-academic-policies>.

Honor Code and Instructor Evaluation:

Students are required to follow the Honor Code. To review its requirements, see <http://www.law.ufl.edu/student-affairs/additional-information/honor-code-andcommittee>. Students who fail to follow UF safety protocols or the prohibition on circulating or

posting class material will be referred to the College of Law's Honor Code Council and the University's Office of Student Conduct and Conflict Resolution.

Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Guidance on how to provide feedback in a professional and respectful manner is available at <https://gatorevals.aa.ufl.edu/students/>. **Student anonymity is preserved during and after the evaluation process.** Students will be notified when the evaluation period opens and can complete evaluations through the email they receive from GatorEvals in their Canvas course menu under GatorEvals or via <https://ufl.bluera.com/ufl/>. Summaries of course evaluation results are available to students at <https://gatorevals.aa.ufl.edu/public-results/>."

OBSERVANCE OF RELIGIOUS HOLIDAYS:

UF Law respects students' [observance of religious holidays](#).

- Students, upon prior notification to their instructors, shall be excused from class or other scheduled academic activity to observe a religious holy day of their faith.
- Students shall be permitted a reasonable amount of time to make up the material or activities covered in their absence.
- Students shall not be penalized due to absence from class or other scheduled academic activity because of religious observances.

TOPICS AND CLASS ASSIGNMENTS:

Class 1: Monday, January 8, 2024

Part I. Overview of Probate and Estate Administration

REQUIRED READING:

Fla. Prob. R. 5.020(a) and (e); Fla.R.Jud.Admin. 2.515(b); Fla. Prob. R. 5.030(a)-(c); Fla. Prob. R. 5.110(a)-(b); Fla. Prob. R. 5.170 (2021); Fla. Prob. R. 5.240(a); Fla. Prob. R. 5.040-5.041; Fla. Prob. R. 5.200; Fla. Prob. R. 5.201; Fla. Prob. R. 5.205; Fla. Prob. R. 5.210; Fla. Prob. R. 5.215; Fla. Prob. R. 5.235; Fla. Prob. R. 5.240; Fla. Prob. R. 5.2405; Fla. Prob. R. 5.241; and Fla. Prob. R. 5.320.

731.102, Fla. Stat. (2021); 731.105, Fla. Stat. (2021); *Skim* 731.201, Fla. Stat. (2021) ("General Definitions"); 731.1035, Fla. Stat.; 731.301(3), Fla. Stat. (2021); 733.6175, Fla. Stat. (2021); 732.501-732.507, Fla. Stat. (2021); 733.201; Fla. Stat. (2021); 733.202, Fla. Stat. (2021); 733.207, Fla. Stat. (2021); 733.208, Fla. Stat. (2021); 733.212 Fla. Stat. (2021); 733.2121, Fla. Stat. (2021)

Consumer Pamphlet: Probate in Florida, The Florida Bar,
<https://www.floridabar.org/public/consumer/pamphlet026/>

Florida Courts: <https://help.flcourts.org/Other-Resources/Probate>

Optional/Additional Readings:

Florida Probate Blog, *The Complete Guide to Florida Probate-2023*:
<https://floridaprobatelawgroup.com/blog/the-complete-guide-to-florida-probate/>.

*Part II: Considerations of Opening Formal vs. Summary Administration
Ancillary Administration*

*Part III: Cooperative Introduction of Initial Estate Administration Forms
Various Probate Circuits' Checklists* (posted on Canvas).

REQUIRED READING:

733.201, Fla. Stat. (2021); 733.207, Fla. Stat. (2021); 734.102, Fla. Stat. (2021);
734.1025, Fla. Stat. (2021); 735.201, Fla. Stat. (2021); 735.203; Fla. Stat. (2021);
735.301, Fla. Stat. (2021); 735.302 Fla. Stat. (2021); 733.208, Fla. Stat. (2021); Fla.
Prob. R. 5.200; Fla. Prob. R. 5.420; Fla. Prob. R. 5.470, Fla. Prob. R. 5.510; Fla. Prob. R.
5.530.

Review Selected *FLSSI Probate Forms* (posted on Canvas with permission of author).

Optional/Additional Readings:

Mary Randolph, *NOLO Steps in the Probate Process: An Overview*,
<https://www.alllaw.com/articles/nolo/wills-trusts/steps-probate.html>

Class 2: Tuesday, January 9, 2024

*Part I. Primary Role and Responsibilities of Personal Representative
Role of Attorney in Probate & Estate Administration*

REQUIRED READING:

About Publication 559, Survivors, Executors and Administrators,
<https://www.irs.gov/forms-pubs/about-publication-559> (posted on Canvas).

Seventeen Judicial Circuit, *Personal Representative's Handbook*, revised 2023 (posted on Canvas).

REQUIRED READING:

733.301, Fla. Stat. (2021); 733.302; Fla. Stat. (2021); 733.303, Fla. Stat. (2021); 733.304, Fla. Stat. (2021); 733.307, Fla. Stat. (2021); 733.308, Fla. Stat. (2021); 733.3101, Fla. Stat. (2021); 733.402; Fla. Stat. (2021); 733.403, Fla. Stat. (2021); 733.404, Fla. Stat. (2021); and 733.405, Fla. Stat. (2021); 733.501, Fla. Stat. (2021); 733.502, Fla. Stat. (2021); 733.503; Fla. Stat. (2021); 733.504, Fla. Stat. (2021); 733.506, Fla. Stat. (2021); 733.5061, Fla. Stat. (2021); 733.508, Fla. Stat. (2021); 733.509, Fla. Stat. (2021); 733.604, Fla. Stat. (2021); 733.608, Fla. Stat. (2021); 733.609; Fla. Stat. (2021); 733.613, Fla. Stat. (2021); 733.616, Fla. Stat. (2021); 733.617, Fla. Stat. (2021); 733.6171, Fla. Stat. (2021); 733.619, Fla. Stat. (2021); Fla. Prob. R. 5.320; Fla. Prob. R. 5.330; Fla. Prob. R. 5.340; Fla. Prob. R. 5.342; Fla. Prob. R. 5.3425; Fla. Prob. R. 5.345; Fla. Prob. R. 5.346; Fla. Prob. R. 5.385; Fla. Prob. R. 5.395; Fla. Prob. R. 5.400; Fla. Prob. R. 5.401; Fla. Prob. R. 5.405; Fla. Prob. R. 5.406; Fla. Prob. R. 5.407; Fla. Prob. R. 5.430; and Fla. Prob. R. 5.440.

Optional/Additional Readings:

Sandra F. Diamond, Esq. & Laird A. Lile, Esq., *Ethics in Estate and Trust Administrations: "The Obvious and Oblivious,"* (posted on Canvas).

Seventeen Judicial Circuit, *Personal Representative's Handbook*, revised 2023 (posted on Canvas).

*Part II. Addressing and Managing Creditors' Claims
Homestead and Exempt Property*

REQUIRED READING:

Art X, § 4, Fla. Const.; 732.102, Fla. Stat. (2021); 732.103, Fla. Stat. (2021); 732.401, Fla. Stat. (2021); 732.4015, Fla. Stat. (2021); 732.402, Fla. Stat. (2021); 732.403, Fla. Stat. (2021); 732.401, Fla. Stat. (2021); 732.514, Fla. Stat. (2021); 733.705; Fla. Stat. (2021); 733.706, Fla. Stat. (2021); 733.707, Fla. Stat. (2021); 733.708, Fla. Stat. (2021); Fla. Prob. R. 5.340; Fla. Prob. R. 5.405; Fla. Prob. R. 5.406; Fla. Prob. R. 5.407; Fla. Prob. R. 5.490; Fla. Prob. R. 5.496; Fla. Prob. R. 5.498; Fla. Prob. R. 5.499.

James R. Wilson and E. Martin McGehee, Probate Claims in Florida, 1 Fla. L. Rev. 1 (2021). Available at: <https://scholarship.law.ufl.edu/flr/vol1/iss1/1/>

Optional/Additional Readings:

Wilson v. Florida Nat. Bank & Trust Co. at Miami, 64 So. 2d 309, 313 (Fla. 1953); Hubert v. Hubert, 662 So.2d 1049 (Fla. 4th DCA 1993); Jones v. Federal Farm Mortg. Corp., 182 So. 226 (Fla. 1938); McKean v. Warburton, 919 So.2d 341 (Fla. 2006); Engelke v. Estate of Engelke, 921 So.2d 693 (Fla. 4th DCA 2006); Elmowitz v. Estate of Zimmerman, 647 So.2d 1064 (Fla. 3d DCA 1994); In re Estate of Donovan, 550 So.2d 37 (Fla. 2nd DCA 1989).

Class 3: Wednesday, January 10, 2024

Part I. Discharge

REQUIRED READING:

733.602(2), Fla. Stat. (2021); 733.612(26), Fla. Stat. (2021); 733.801, Fla. Stat. (2021); 733.802, Fla. Stat. (2021); 733.811, Fla. Stat. (2021); 733.812, Fla. Stat. (2021); 733.901, Fla. Stat. (2021); 733.903, Fla. Stat. (2021); Fla. Prob. R. 5.385; Fla. Prob. R. 5.400; Fla. Prob. R. 5.401.

Part II: Survey of Selected Taxable Considerations in the Administration of Estates

Topic Area A: Determination & Responsibility of Person Preparing Final Forms 1040, 1041, and the 706 (Securing the Tax I.D. Numbers for the Estate, and Revocable Trust/Sub-Trusts).

Topic Area B: Accessing Prior Tax Returns/Exploring Unused Capital and Passive Losses/Carryovers (Generating Capital Gains and Ordinary Income to Avoid Wasting of Losses.).

Topic Area C: Selection of Taxable Year.

Topic Area D: Election to File Joint Return

Topic Area E: Discharge from Personal Liability of Decedent's Income Taxes

REQUIRED READING:

IRC §6903(a); *Treas.Reg.* §301.6903-1(b)(2); *IRC* §6109(a)(1); *Treas.Reg.* §301.6109-1; *Treas.Reg.* §601.503(b)(1); *IRC* §6012(b)(1); *IRC* §6072(a); *Treas.Reg.* §1.6072-1(b); *IRC* §6501(d); *Treas.Reg.* §301.6501(d)-1(a); *Treas.Reg.* §1.6081-4(a); *IRC* §6905(a); *Treas.Reg.* §301.6905-1(a); and *IRC* §6013(a)(2); *Treas.Reg.* §1.6013-1(d)(1).

IRS Forms: Form 56; Form 1127; Form 2848; Form 4768; Form 4810; Form 4868; Form 5495; and Form 8892.

Download I.R.S. Forms 1040, 1041, 706 and 709.

Class 4: Thursday, January 11, 2024

Cont. Part II: Survey of Selected Taxable Considerations in the Administration of Estates

Topic Area A: Topic Area C: Whether Form 706 Will Be Filed (Estate Exceeds Exemptions) or Filed for Portability Purposes.

Topic Area B: Whether a 645 Election Should Be Made

Topic Area C: Administration Expenses & Taking Deductions on the Proper Return

Cursory Review of Decedent's Final Income Tax Return (Form 1040)

Cursory Review of Decedent's Estate Income Tax Return (Form 1041)

REQUIRED READING:

IRC §6018; IRC §6018(a)(1); IRC §6903(a); IRC §6075(a); Treas.Reg. §20.6075-.1.

Class 5: Friday, January 12, 2024

Cont. Part III: Survey of Selected Taxable Considerations in the Administration of Estates

Topic Area A: Disclaimers/Tax Consequences

Topic Area B: Penalties and Extensions

REQUIRED READING:

IRS Publications, *Deceased Persons-Probate, Filing Estate and Individual Returns, Paying Taxes Due*, <https://www.irs.gov/businesses/small-businesses-selfemployed/deceased-taxpayers-probate-filing-state-and-individuals-returns-payingtaxes-due>.

Part 2: An Overview of Estate and Gift Forms

An IRS Examiner's Prospective on Selected Estate Tax Issues

GUEST SPEAKER: Terrence Holly Frazier, Senior Estate Tax Attorney

Estate & Gift Tax Division, Internal Revenue Service
New York, New York