

Professor Wright
Fall 2024
M, T, W 3:30-4:45 in Holland 285B
My office: Holland 352
wrightdc@law.ufl.edu
352-273-0946

TRUSTS AND ESTATES – (Holland 285B) 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.

Some of you are taking this class because you think you might want to practice in this area – yay! Others are taking this class because it is on the bar – also yay! Others may be taking this class because it is the only one that fits into your schedules – yay too! You will find it to be really fun. However, it is an area of law that is full of very many very technical picayune rules, many of which sound simple in theory but become very complicated in practice. For example, the law says that a child can inherit from a parent. The movie star Jack Nicholson was raised by a single mother along with his older sister. After his mother died and he inherited from her, he learned that his sister was actually his mother and his mother was his grandmother. Under that scenario he was not entitled to inherit. What should the law do? It probably wasn't an issue for him because there was only himself and his mother/sister. But what if we have foster children, adopted children, multi-generational biological children all competing? In another case a grandfather adopted his grandchild as his son in order to make him eligible for benefits. When grandpa died does the grandchild take as a child or a grandchild? Knowing the rules cold is important, and then beginning to think creatively about how they would apply in the crazy world of real-life families are the skills we will be focusing upon.

Required Texts: Wright, Higdon, and Crawford: *Wills, Trusts, and Estates: An Integrated Approach*, (Foundation Press, 2021). This book is relatively new, which means it will be costly. I recommend renting it or, if you buy it, buying directly from West Academic

(<https://www.westacademic.com/Wills-Trusts-and-Estates-An-Integrated-Approach-9781642421118>) which will give you a 15% discount if you use the code WAUF when you are checking out.

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. And just to be clear, briefing each case in this class will only mean writing 1 sentence for each.

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. This class will follow the College's policies on absences for religious holidays and illness. If you are likely to go over your 10% cap of absences, please consult the College policy [here](#) and act accordingly.

Preferred Names and Pronouns: It is important to the learning environment that everyone feel welcome and safe in this class, and that all are comfortable participating in class discussions and communicating with me on any issues related to the class. If your preferred name is not the name listed on the official UF roll, please let me know as soon as possible by e-mail or otherwise. Please let me know how you would like to be addressed in class, if your name and pronouns are not reflected by your UF-rostered name. I welcome you to the class and look forward to a rewarding learning adventure together.

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 (and pass the bar!). 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.

Weekly Assessments: I have discovered after many years of teaching this class that many students fall behind as the semester progresses and are unable to catch up during study week. I

often get final exams that are half unfinished. So this year we will have numerous low-stakes “quizzes” all semester. This will require that you keep up with the work through the semester, but I think you will find that doing a little bit more every week will enable you to understand the material much better and will relieve the pressure at the end of the semester as the exam will not require much studying.

As we finish each chapter, there will be some kind of small assessment – a few multiple choice questions or perhaps a problem to work out or maybe a 1 sentence short answer question or two. If the whole class does well on a particular subject, I won’t include it on the final, thus hopefully making the final shorter and less comprehensive.

Midterm: There will be 1 midterm exam that will take about an hour, that will be held in class, covering the elective share.

Final Examination: The final exam will be a closed book exam but everyone can bring in 1 page of notes.

Grade Computation: Your final grade will be determined based on the following percentages:

Weekly Assessments:	40%
Mid-Term:	15%
Final Exam:	40%
Participation	5%

Make-up Assessments/Midterm/Final: If you are not in class and miss a chapter assessment, you may not make it up. I will drop the 2 lowest assessments. If you miss more than two, you will receive a 0 for those. If you miss the mid-term or need to make it up for any reason, please contact me in advance. Any issues with the final exam will be scheduled with the office of student affairs.

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: <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-student-handbook-and-academic-policies/>. Please be aware that any grade below a B places you at risk of failing the bar exam. This is not meant to scare or intimidate you, but to help you recognize which subjects may require additional bar preparation. More importantly, however, it is meant to give you a sense of how well you are mastering the very specialized skill of legal analysis that we are endeavoring to teach here. Although some of you will receive grades below a B, please use that information to guide your further course choices and to motivate you to take advantage of the many special courses and opportunities we offer to students to improve your analytical skills. And if you get a grade below a B, please come see me next semester to discuss specific challenges you may have.

Evaluations: Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Click [here](#) for guidance on how to give feedback in a professional and respectful manner. Students will be notified when the evaluation period opens and may complete evaluations through the email they receive from GatorEvals, in their Canvas course menu under GatorEvals, or via <https://ufl.bluer.com/ufl/>. Summaries of course evaluation results are available to students [here](#). Believe me that I take comments very seriously and strive to make my classes accessible and enjoyable while also being rigorous and demanding.

Recordings: This class will not be recorded but you may make an audio recording of the lecture portions for your own personal educational use or in connection with a legal complaint. You may not share those recordings with others or publish them on any media and you must be cognizant that you do not have the right to record your fellow students. Students may not circulate or post photos or videos of classroom discussions at all. Students failing to follow this rule will be referred to the College of Law Honor Code Council and the University's Office of Student Conduct and Conflict Resolution

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:

Before class on Mondays and Tuesdays from 1:15-2:15.

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

Email: wrightdc@law.ufl.edu

Health and Wellness: Please do not hesitate to reach out to the office of student affairs, or to me, if you are experiencing any barriers to performing well in this class and to maintaining robust physical and mental well-being. Law school can be quite challenging, and there are many resources if you find that you are feeling stressed or unable to complete the class, for whatever reasons. It is always better to anticipate and prepare for the unknown than to let yourself get behind and suddenly feel desperate. Please reach out to someone if matters start to get out of hand.

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 (sometimes as many as 40 pages!) 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 illustrate a single point of law . To prepare for these cases I want you to write 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. 269). 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 cases. 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 many 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

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 and I will distribute an adjusted syllabus if we find we have to modify the pace. Here are the reading assignments. Please realize that they may have to be adjusted as we go.

1. Introduction and Donative Freedom

Read the Introduction, pp. vii-xxiv and pp. 1-21

Fla. Stat. 731.201, 731.011

2. Gifts, Limit on Donative Freedom and Family Protections

Read pp. 21-61

Fl. Stat. 731.102, 731.103, 732.901, 733.101 to 733.109, 733.201 to 733.6171,

3. Administration and Homestead

Read pp. 63-98

Fl. Const. Art VII, §6, Art X §4

Fl. Stat. 732.401 to 732.4017, 689.11, 735.201 to 735.2063, 735.301, 735.302. (you can skim these administration statutes – just get the basic details)

4. Family Allowance, Exempt Property, Community Property, Changing Definitions of Family
Read pp. 98-144
Fl. Stat. 732.402 to 732.403, 732.216-.228 (skim)
5. Adoption and the Net Probate Estate
Read pp. 144-168 & 169-180
732.108 and 732.1081
6. Intestacy – Spouse and CPS
Read pp. 180-202
Fl. Stat. 732.101, 732.102
7. Intestacy – Other Heirs, Ancestors, and Advancements
Read pp. 202-233
Fl. Stat. 732.103 to 732.107, 732.109, 733.806
8. Estate Planning – Wills, Forms and Formalities, Holographic Wills
Read pp. 235-264
Fl. Stat. 689.01, 732.501, 732.502, 732.6005
9. Proving a Will, Interested Witnesses, and Integration
Read pp. 264-303
Fl. Stat. 732.503, 732.504, 732.806, 733.207
10. Incorporation, Separate Writing, Facts of Independent Significance, Publication
Read pp. 303-329
Fl. Stat. 732.5105, 732.511, 732.512, 732.515, 732.701
11. Trusts – Origins, the Trust Res, and the Standby Trust
Read pp. 329-361
Fl. Stat. 689.09, 689.05 to 689.07, 736.0101 to 736.0107, 736.0401, 736.0402, 736.0403, 736.0404, 736.0407
12. The Trustee, Fiduciary Obligations, Conflicts, and Ascertainable Beneficiaries
Read pp. 361-387
Fl. Stat. 732.513, 732.514
13. Trust Intent, Revocability, Managing Trust Property, Resulting and Constructive Trusts
Read pp. 387-412
Fl. Stat. 689.075, 736.0408, 736.0409, 736.0601 to 736.0604, 736.1101
14. Powers of Appointment – the Donor and the Donee
Read pp. 412-442
Fl. Stat. 736.04117
15. Exercise of a Power and Objects

- Read pp. 442-461
Fl. Stat. 709.02 to 709.07, 732.607
16. Joint Tenancies
Read pp. 461-481
Fl. Stat. 655.78 to 655.825, 689.111, 689.115, 689.15
17. POD & TOD Accounts, Life Insurance, FliPs
Read pp. 481-518
Fl. Stat. 711.50 to 711.511
18. Lapse
Read pp. 519-553
Fl. Stat. 732.603, 732.604
19. Ademption, Abatement
Read pp. 553-579
Fl. Stat. 732.605, 732.606, 732.609, 733.805, 733.810 to 733.812, 736.1107
20. Exoneration, Apportionment
Read pp. 580-595
Fl. Stat. 733.803, 733.809, 733.817
21. Disclaimer and Simultaneous Death
Read pp. 595-623
Fl. Stat. 732.601, 739.101 to 739.601
22. Planning for Incapacity – the POA, Self-Settled Trusts, Powers, Health Care Planning
Read pp. 625-666 and skim pp. 666-690
Fl. Stat. 709.2101 to 709.2115, 732.804
23. Protecting the Living – the Elective Share
Read pp. 691-722
Fl. Stat. 732.111, 732.201 to 732.2135 (you may skim these later statutes)
24. UPC Elective Share
Read pp. 722-750
25. Community Property, Spousal Trusts, and Pre-Nups
Read pp. 750-772
Fl. Stat. 732.702, 732.805, 736.1501 - .1512
26. Protecting Children, Support and Spendthrift Trusts, Pretermission
Read pp. 773-816
Fl. Stat. 655-77, 732.301, 732.302, 736.0501 to 736.05053, 736.1109

27. Planning for the Future: The FSA, FSD, FSCS, FSEL
Read pp. 817-842
Fl. Stat. 689.02, 689.10, 689.18
28. The Life Estate, Term of Years and Remainders
Read pp. 842-862
Fl. Stat. 689.08, 689.14, 689.17, 689.175
29. Contingent and Vested Remainders
Read pp. 862-892
Fl. Stat. 736.1106
30. Class Gifts
Read pp. 892-913
Fl. Stat. 732.608, 732.611, 736.1102, 736.1103
31. The RAP
Read pp. 913-945 and watch <https://www.youtube.com/watch?v=SAFk5DS2BBw> and https://www.youtube.com/watch?v=2XdmY_3QAe4
Fl. Stat. 689.225
32. Modern Modifications to the RAP and Slayer Statutes
Read pp. 945-958 & pp. 1039-1052
Fl. Stat. 732.802, 736.1104
33. Revocation by Law: Elder Abuse, Divorce, and Revocation by the Testator
Read pp. 1052-1095
Fl. Stat. 732.507, 732.703, 736.1105, 732.505, 732.506, 732.8031
34. Revival, DRR, and Modification
Read pp. 1095-1127
Fl. Stat. 732.508, 732.509, 733.815, 736.0410, 736.04113 to 736.04115, 736.0412 to 736.0417
35. Litigation: Mental Capacity
Read pp. 1129-1153
36. Undue Influence and Mistake
Read pp. 1153-1181
Fl. Stat. 732.615, 732.616, 733.107, 736.0406
37. Ambiguities and Fraud
Read 1181-1206
38. Tortious Interference with Expectancy and In Terrorem Clauses
Read 1207-1234

Fl. Stat. 732.517, 732.518, 736.1108