

Decedents' Estates
Fall 2010
Professor Fredrick E. Vars
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Course and Objectives

This course explores the basic law surrounding the disposition of property at death. A primary goal is to provide students with a general understanding of relevant legal rules for the purpose of the bar examination and occasional counseling of clients on estate planning issues. The course is also designed to provide a foundation for students who are interested in further study of estate planning and will and trust drafting. At the conclusion of the course, students should be able to: (1) demonstrate knowledge of the basic rules regarding wills and trusts; (2) identify significant legal issues in estate planning scenarios; (3) apply an understanding of the law of wills and trusts to new situations; and (4) analyze critically the policies and rules relating to wealth transfer at death.

Administrative Items

Classes: Class will be held in Room 187 on Mondays, Tuesdays, and Thursdays from 2:00 p.m. to 3:15 p.m.

Office Hours: Room 334, 3:15 to 4:15 p.m. Tuesdays and Thursdays, as well as by appointment. Also feel free to drop by whenever my door is open.

Class Performance: Regular, punctual class attendance and participation are course requirements along with the final examination. I may raise or lower grades somewhat based on classroom performance.

Please record your presence on distributed attendance sheets. I will comply with the law school's policy on attendance. Accordingly, if you miss more than 9 classes for any reason, you will have to explain all your absences to Dean Marsh and may receive no credit or a failing grade for the course.

Final Examination: There will be a three-hour in-class, closed-book final examination. Statutory text will be provided if appreciation of details is required, but proficiency with basic principles, statutes, and cases will be expected. On the essay portion of the exam (around 2/3 of the total), I will be looking for students to recognize significant legal issues, state the relevant rule or standard, and apply the law to the facts, with well-reasoned analysis and citation to authority (descriptions of cases can substitute for case names).

Text and Other Materials: The required texts are Jesse Dukeminier et al., *Wills, Trusts, and Estates* (8th ed. 2009) and a packet of supplemental materials on TWEN. Be sure you're purchasing or borrowing the EIGHTH edition. I estimate we'll be covering 24 new cases that do not appear in the seventh edition.

You may also find helpful Robert L. Mennell and Sherri L. Burr, *Wills and Trusts in a Nutshell* or Roger W. Andersen, *Understanding Trusts and Estates*.

Recording Devices: The use of recording devices is prohibited without my prior permission.

Accommodations: Students with disabilities or special needs are encouraged to contact Jenelle Marsh, Senior Assistant Dean for Students/Academic Services, at 205-348-5750 (jmarsh@law.ua.edu) so that any individual needs for support services can be evaluated and accommodated in a timely manner. Please let me know if I can be of assistance as well.

Course Outline

- I. Overview
- II. Health Care Decision Making & Disposition of the Body
- III. Introduction to Transfer of Wealth at Death
- IV. Intestacy: An Estate Plan by Default
- V. Wills: Capacity and Contests
- VI. Wills: Formalities and Forms
- VII. Construction of Wills
- VIII. Nonprobate Transfers and Planning for Incapacity
- IX. Protections of the Spouse and Children
- X. Trusts: Introduction and Creation
- XI. Rights to Distribution from the Trust
- XII. Trust Administration: Fiduciary Duties

TENTATIVE Reading Assignments

Introduction

- (1) Overview (no reading for first day of class)
- (2) Health Care Decision Making & Disposition of the Body (read casebook pages 457-468, plus Ala. Code § 22-8A-4 & *Cottingham v. McKee* in the supplemental materials on TWEN)
- (3) Introduction to Transfer of Wealth at Death Day One (casebook pages 1-10 and 27-38 and skim 16-27)
- (4) Introduction to Transfer of Wealth at Death Day Two (casebook 38-49, 58-70 plus *Robinson v. Benton*)

Intestacy: An Estate Plan By Default

- (5) Intestacy Day One (casebook pages 71-86 plus Ala. Code §§ 43-7-2, 43-8-40, -41, -42, -43, -44, -230). In addition, I strongly urge each of you to complete the first half of the intestacy worksheet located in the supplemental materials folder. This will ensure you're digesting the material and will hopefully facilitate class.
- (6) Intestacy Day Two. Casebook pages 87-97 plus *House v. Campbell* & Ala. Code §§ 43-8-45, -46. Please complete the second half of the intestacy worksheet.
- (7) Transfers to Children Day One. Casebook pages 97-117 plus Ala. Code §§ 43-8-48, 26-10A-29, and *Ellis v. West* in the supplemental materials
- (8) Transfers to Children Day Two. Casebook pages 117-126, 130-136 plus *Khabbaz v. Comm'r* & Ala. Code § 43-8-49 in the supplemental materials
- (9) Bars to Succession. Casebook pages 136-140, 145-157, plus Ala. Code §§ 43-8-253, 43-8-294 in the supplemental materials.

Wills: Capacity and Contests

- (10) Mental Capacity. Casebook pages 159-180.
- (11) Undue Influence. Casebook pages 180-191, 193-202.
- (12) Fraud, Duress, etc. Casebook pages 207-221, plus *Ex parte Batchelor* in the supplemental materials.

Wills: Formalities and Forms

- (13) Formalities-Execution. Casebook pages 223-242 plus Ala. Code §§ 43-8-131, -135 and *Jack v. Doran's* in the supplemental materials.
- (14) Will Formalities & Curative Doctrines. Casebook pages 246-267, plus Ala. Code § 43-8-132 & *Rucker v. Morgan* in the supplemental materials
- (15) Holographic Wills. Casebook pages 268-285.
- (16) Will Revocation. Casebook pages 286-307 plus Ala. Code §§ 43-8-136 to -138 (and maybe *Maxwell v. Dawkins*) in the supplemental materials.
- (17) Will Components. Casebook pages 307-325 plus Ala. Code §§ 43-8-139, -141 in the supplemental materials
- (18) Contracts Relating to Wills and Will Construction. Casebook pages 325-342 plus Ala. Code § 43-8-250 and *Humphries v. Whiteley* in supplemental materials.

Construction of Wills

- (19) Will Reformation. Casebook pages 342-357 and *Martindale v. Bridgforth* in supplemental materials.
- (20) Lapse. Casebook pages 358-379 plus Ala. Code §§ 43-8-224, -225 in the supplemental materials.
- (21) Change in Property. Casebook pages 380-392 plus Ala. Code § 43-8-226, -227, -231.

Nonprobate Transfers and Planning for Incapacity

- (22) Nonprobate Transfers Day One. Casebook pages 393-412.
- (23) Nonprobate Transfers Day Two. Casebook pages 413-432.
- (24) Nonprobate Transfers Day Three. Casebook pages 432-456.

Rights of Surviving Spouse and Children

- (25) Spouse and Child Protection and Elective Share. Casebook pages 469-471, 476-480, 484-502.
- (26) Elective Share and Omitted Spouse and Issue. Casebook pages 502-508, 515-521, 527-539 and Ala. Code §§ 43-8-70, -72, -74, -90, and -91 in the supplemental materials.

Trusts: Introduction and Creation

- (27) Trusts Intro and Res. Casebook pages 541-555, 557-563, and 569-572.
- (28) Beneficiaries and Writing. Casebook pages 578-596.
- (29) Distributions and Creditors. Casebook pages 597-624.
- (30) Trust Modification and Termination. Casebook pages 641-666.

Trust Administration: Fiduciary Duties

- (31) Trust Administration. Casebook pages 667-688.
- (32) Trust Administration. Casebook pages 688-712, plus selection from *First Alabama Bank v. Spragins* in supplemental materials.
- (33) Trust Administration. Casebook pages 717-731, plus Ala. Code § 19-3B-703(e) in supplemental materials.
- (34) Trust Administration. Casebook pages 731-750 plus Day 34 supplemental reading in supplemental materials.

Review

- (35) Guest Speaker, Professor Hugh Lee. Casebook 203-207, 242-246.
- (36) Wills-Attestation Requirement. On Westlaw: James Lindgren, "Abolishing the Attestation Requirement for Wills," 68 N.C. L. Rev. 541 (1990).
- (37) Review.