

Professor Mary Sue Donsky (msdonsky@citytech.cuny.edu)  
LAW 2301  
Spring 2013

## ESTATES, TRUSTS AND WILLS

### **Course Description (from the NYCCT catalog)**

*3 cl hrs, 3 cr*

A basic overview of estate terminology, the jurisdiction of Surrogate's Court and estate administration procedures. The fundamental law of wills, trusts and estates, as well as the preparation of the basic legal documents in each of these areas.

*Prerequisite: LAW 1201/LS 201*

### **Text:**

Wills - Structure, Design and Settlement under NYS Law, by Hegler and Loughrey  
(Looseleaf Law Publications, Inc)

### **Course Objectives and Assessment:**

Upon successful completion of this class, a student will:

#### DISCIPLINE-SPECIFIC STUDENT LEARNING OUTCOMES:

1. Be able to apply the New York laws of intestacy to decedents' estates.  
\*Assessment via preparation of intestacy charts exercises.
2. Know the substantive New York laws on wills and be able to participate in a will execution ceremony with understanding of the legal requirements.  
\*Assessment via Will Execution videotape exercise.
3. Be able to analyze and draft will clauses.  
\*Assessment via Estate Plans of the Rich and Famous exercise and Will Drafting exercises.
4. Know the substantive New York laws on trusts and be able to analyze trust clauses.  
\*Assessment via Estate Plans of the Rich and Famous exercise
5. Be able to prepare the documents necessary to initiate probate and administration proceedings in New York Surrogate's Courts.  
\*Assessment via Document Preparation exercises.

#### GENERAL EDUCATION STUDENT OUTCOMES:

1. "use the arts as a forum for the study of values, ethical principles and the physical world"

2. "communicate in diverse settings and groups, using written (both reading and writing), oral (both speaking and listening) and visual means"
3. "demonstrate expanded cultural awareness and sensitivity"
4. "discern multiple perspectives"
5. "gather, interpret, evaluate and apply information discerningly from a variety of sources"
6. "work with teams, including those of diverse composition, build consensus"

Assessment of General Education Student Learning Outcomes will be via Dearly Departed memo rubric, Blog Contribution rubric and Cooperative Learning rubric

\*Additional assessment will be made via quizzes, a midterm and a final examination.

### **Grading:**

Your grade in this course will be calculated as follows:

Homework/Quizzes = 30%

Midterm Examination = 30%

Final Examination = 40%

**Please note that I do not offer make-up quizzes in this course.** If you miss a quiz, you will receive a zero for that quiz. If you take every quiz, I will drop the lowest quiz grade in calculating your final grade for the course. You **MUST** turn in every single homework assignment on time to succeed in this course! There are serious penalties for late assignments.

You will have an opportunity to earn a modest amount of extra credit by touring the Metropolitan Museum of Art with me on a Saturday afternoon at the end of April.

### **Mandatory Academic Integrity Policy Statement:**

Students and all others who work with information, ideas, texts, images, music, inventions, and other intellectual property owe their audience and sources accuracy and honesty in using, crediting, and citing sources. As a community of intellectual and professional workers, the College recognizes its responsibility for providing instruction in information literacy and academic integrity, offering models of good practice, and responding vigilantly and appropriately to infractions of academic integrity. Accordingly, academic dishonesty is prohibited in The City University of New York and at New York City College of Technology and is punishable by

penalties, including failing grades, suspension, and expulsion. The complete text of the College policy on Academic Integrity may be found in the catalog.

### **Attendance Policy**

PLEASE NOTE THAT I **STRICTLY** ENFORCE OUR DEPARTMENT'S ATTENDANCE POLICY. IT IS YOUR RESPONSIBILITY TO NOTIFY ME IF YOU COME TO CLASS LATE. IF YOU DO NOT NOTIFY ME, YOU WILL BE MARKED ABSENT! **IF YOU MISS A CLASS, IT IS YOUR RESPONSIBILITY TO GET THE NOTES AND ASSIGNMENTS YOU MISSED.**

### **Office Hours:**

I encourage you to speak to me concerning any questions, comments or concerns you might have. My official office hours are on Mondays from 4:00 PM until 5:55 PM and Wednesdays from 5:05 PM until 5:55 PM. I am usually in my office (in N622) at most other times as well and *you are welcome* to come see me whenever I am there. **You do not need an appointment!** If you need to call me, our Department's telephone number is (718)260-5124. Of course, you can always email me via Blackboard as well! On weekdays I will try my best to return your email very promptly. **PLEASE DO NOT EMAIL ANY HOMEWORK TO ME WITHOUT PRIOR APPROVAL. I delete all unsolicited work emailed to me and you will not receive credit for submitting it.**

**Further "Donsky Rules" on leaving an on-going class and other matters Of classroom etiquette will be discussed on the first day of class.**

### **WEEKLY OUTLINE\***

\*Note that this outline is only an approximation and the due dates of homework and quizzes may change depending on many factors. If you miss a class, you **MUST** check with a classmate to see what is happening at the next class.

**Week One: January 30– Homework: The Dearly Departed Memo**

*Collaborative Work: Background Knowledge Probe*

Introduction

- What you can expect to learn in this course
- Sources of will law - the ETPL/SCPA and the UPC
- Vocabulary

## Week Two: February 6 - Homework : Intestacy Charts Assigned

### *Collaborative Work: If You Wrote the Laws of Intestacy*

#### Intestate Succession

- EPTL Section 4-1.1(a)
- Methods of Distribution – By Representation, Per Stirpes

#### Special Situations in Intestate Succession

- Relatives of the half-blood EPTL Section 4-1.1(b)
- Posthumous children EPTL Section 4-1.1(c)
- Adopted children EPTL Section 4-1.1(d), DRL Section 117
- Step-children
- Non-marital children EPTL Section 4-1.2

## Week Three: February 13 – Homework – Study for Quiz One

### *Collaborative Work – Hamlet according to New York Intestacy Laws*

#### Disqualified Distributees

- Certain parents EPTL Section 4-1.4

- Certain spouses EPTL Section 5-1.2
- Certain killers EPTL 4-1.6
- Certain aliens SCPA 2218

#### Wills, an Introduction

- Advantages and Disadvantages
- Testamentary Substitutes
  - Inter vivos gifts
  - Life insurance
  - Joint ownership with right of survivorship
  - Inter vivos trusts

**Week Four : February 27 – Quiz One (Note that we do not have class on Wednesday February 20 – Monday classes will meet then instead)**

#### Collaborative Work – Will Execution Analysis

#### Wills – Substantive Law, Part One

- Holographic and Nuncupative wills EPTL Section 3-2.2
- Testamentary Capacity EPTL Section 3-1.1
- Testamentary Dispositions EPTL Section 3-1.3
  - Devises
  - Bequests/Legacies

- Due execution EPTL Section 3-2.1
  - Signing ceremony
  - Attestation clauses
  - Self-proving affidavits
  - Interested witnesses EPTL Section 3-3.2
- Changes in circumstance
  - Subsequent marriage
  - Subsequent divorce EPTL Section 5-1.4
  - Afterborn/Pretermitted children EPTL Section 5-3.2

### Week Five: March 6

#### *Collaborative Work – If You Wrote the Elective Share Law*

#### Wills, Substantive Law Part Two

- Revocation of wills EPTL Section 3-4.1
  - By Writing
  - By Physical Act
- Lost wills SCPA Section 1407
- The Elective Share EPTL Section 5-1.1A
  - the theory behind
  - the amount

- the Net Estate
- Prenuptial Agreements
- Exempt Personal Property EPTL Section 5-3.1

Week Six: March 13 – Quiz Two Homework: Estate Plans of the Rich and Famous Assigned

*Collaborative Work – Art Across the Curriculum “Gravegoods, Reliquaries, Grave Markers, Ancestor Figures and other Art that Honors Decedents”*

Wills, Substantive Law Part Three

- Renunciations/Disclaimers EPTL Section 2-1.11
- The Mortmain Statute
- Community Property
- Testamentary Dispositions
  - Specific dispositions
  - Demonstrative dispositions
  - General dispositions
  - Residuary Dispositions
  - Ademption EPTL Section 3-4.3
  - Abatement EPTL Section 13-1.3
  - Lapse EPTL Section 3-3.3

Week Seven : March 20 – Homework: Study for the Midterm Examination

*Collaborative Work – Initial Interview Simulation*

Practical Matters

Legal Ethics

- Conflicts of Interest
- Confidentiality
- UPL

The Initial Interview

- Family data
- Family advisors
- Assets/ Liabilities
- tax matters
- liquidity

Will Clauses

Will Drafting

Week Eight: April 3 – Midterm Examination (Note, this is our first day back after spring break) Estate Plans of the Rich and Famous assigned

## Week Nine – April 10 Homework – Blog Preparation Assignment

Estate Plans of the Rich and Famous

## Week Ten – April 17 Homework – Study for Quiz Three

### *Collaborative Work – You Create a Private Trusts/You Create a Charitable Trust*

Trusts, Part One

The Requirements for a New York trust

- Grantor/Settlor
- Delivery
- Res
- Trustee
- Intent
- Beneficiaries
- Lawful Purpose
- Types of trusts
  - Inter vivos
    - Testamentary
      - Revocable/Irrevocable
      - Pourovers
    - Totten
    - Charitable

- the Cy Pres doctrine
- the Rule Against Perpetuities
- Beneficiaries Interests
  - Mandatory right to income
  - Discretionary right to income
  - Remaindermen
  - Spendthrift Protection

### Week Eleven: April 24 – Quiz Three

#### Trusts, Part Three

- Trust Administration
  - Fiduciary Powers Act EPTL Section 11-1.1
  - Fiduciary Duties
    - Surcharge actions
  - The Uniform Principal and Income Act EPTL Section
  - Trustee's Commissions

### Week Twelve: May 1 Homework: Court Documents

#### *Collaborative Work – Preparation of Petition for Probate*

#### Probate

- Surrogate's Court Jurisdiction - Domicile
- The Probate Petition and other Court Documents
- Letters Testamentary
- Executors
- Will Contests

Improper execution, Lack of testamentary capacity,  
Undue Influence, Fraud

### Week Thirteen: May 8 Homework – Study for “Potential Quiz Four (?)”

#### Administration Proceedings

- The Petition for Letters of Administration
- Administrators and the Public Administrator
- Estate Administration
  - Inventories, Valuations, Tax Waivers, Creditor's  
Claims, Accountings
- Small Estate Proceedings

### Week Fourteen: May 15 Homework - study for Final Examination

#### Possible Quiz Four (?)

The Federal Estate Tax - an overview

- Transfer taxes in general
- Estates liable
- Tax forms
- Valuation issues
- Deductions
  - the Marital deduction and QTIPS
- New York's estate tax

Review for Final Examination

Week Fifteen: May 22 - Final Examination