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Who Said Learning Trusts & Estates Can't Be Fun?

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WHO SAID LEARNING TRUSTS & ESTATES CAN'T BE FUN?

GERRY W. BEYER*

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INTRODUCTION

*The Zombie Apocalypse may only be fiction but the grim reality is that everyone becomes metabolically challenged. How will you help your clients prepare for the inevitable? Estate Planning is the ONLY legal practice area applicable to every human being!! Learn about what happens if you do not plan for your property including digital assets, pets, and weapons, write your own will, participate in a will execution ceremony, and dialog with distinguished judges and expert lawyers who practice in this area.*¹

—Description of Estate Planning Orientation Track

From even before their first day of law school, Texas Tech University School of Law students have the opportunity to appreciate the importance of the estate planning area and to understand that it can be both an enjoyable and rewarding area of law in which to practice. During orientation, which takes place the week before classes start, new students participate in full-day programs centered on a particular area of practice either of their own choosing or assigned by the administration. For the 2013 entering class, I was in charge of two full-day Estate Planning Tracks with a total of approximately thirty-five entering students.²

As their legal education continues, students have additional exposure, some mandatory and some optional, to estate planning topics. In my first year required Property course, I spend several days reviewing the basic principles of intestate succession and wills.³ Texas Tech then requires all students to complete a four-credit introductory course entitled Wills and Trusts as a condition of graduation during their second or third year.⁴ Students desiring a

1. Gerry W. Beyer, *Estate Planning Orientation Track—Fall 2013*, PROFESSORBAYER.COM 1, http://www.professorbeyer.com/Law_Students_Generally/Estate_Planning_Orientation_Track_Schedule.pdf (last visited Jan. 5, 2014).

2. *Id.*

3. See Gerry W. Beyer, *Property Class Information and Syllabus Spring 2013*, PROFESSORBAYER.COM 3, http://www.professorbeyer.com/Property_Spring_2013/Syllabus_Spring_2013_Property.pdf (last visited Jan. 5, 2014).

4. *Texas Tech University School of Law: 2013–2014 Catalog*, LAW.TTU.EDU 6, http://www.depts.ttu.edu/officialpublications/LawSchool/%20LawSchoolCatalog_web.pdf (last visited Jan. 5, 2014).

more sophisticated treatment may take courses such as Estate Planning, Texas Estate Administration, Guardianship, Estate and Gift Tax, Elder Law, and Marital Property.⁵ Students may also compete for a coveted position as an editor for the *Estate Planning and Community Property Law Journal* that Texas Tech publishes.⁶

This Article will now reveal my basic teaching philosophy and the general pedagogical techniques I employ to make Trusts and Estates topics both fun and relevant. I will then share with you the specific tools I use when teaching the introductory course as well as the advanced courses such as Estate Planning and Texas Estate Administration. It is my hope that you may be able to gain insight from my approach to enhance your own teaching and the experience you provide to your students.

I. TEACHING PHILOSOPHY

My teaching philosophy is multi-faceted. My primary goals are to provide students with the ethical, professional, and practical tools to become valuable members of the legal community and contributing members of society. My secondary goals are to help the students acquire strong values and gain the life skills necessary to follow their hearts and be happy, not only in their professional lives, but in their personal lives as well.

I endeavor to accomplish these goals by making the classroom atmosphere exciting, invigorating, and enjoyable. As much as possible, I want my students to look forward to attending class—even to talk about death at eight o'clock in the morning, the time at which my class is often scheduled. My teaching methods vary based on the class size, the composition of the class, and the subject being taught; however, my underlying methods do not change. I strive to help each student develop problem solving and critical thinking skills in a challenging classroom environment, which later translates to the real world. I employ numerous teaching classroom techniques, including the Socratic method, traditional lectures, discussion, and working through problems based on the types of cases they will encounter once they enter practice. In all instances, I encourage class interaction and questions.

Getting to know the students on a personal level is important in critiquing each student's strengths and weaknesses. I hold twenty to thirty office hours per week and encourage students to stop by my office to discuss concerns they have about class material, their future careers, or personal challenges. I attend as many student functions as possible and Margaret (my wife) and I often host student functions at our home. In these non-classroom environments, I gain

5. *Id.* at 6–7.

6. See *Texas Tech Estate Planning & Community Property Law Journal*, ESTATELAWJOURNAL.ORG, <http://www.estatelawjournal.org/site/> (last visited Jan. 5, 2014).

valuable information. For example, does the student lack self-confidence, does the student understand that life is simply a journey and law school is part of it, or does the student have special talents such as research abilities, writing and scholarship aptitudes, or advocacy skills that need encouragement? Hopefully with these additional insights, I can mentor my students to explore life's many possibilities and in some small way help them achieve their life's dream. I strive to give the students opportunities, teach them how to make their own, and hopefully the desire to take advantage of them.

II. GENERAL TECHNIQUES

A. *The Classroom—Generally*

I conduct classes using a variety of methods based upon the subject matter being covered as well as the size of the class. In a “perfect” world, I would consistently use a balanced combination of the Socratic method, lecture, and discussion. However, with classes often exceeding 140 students in the introductory course, it is challenging to use all three methods to their utmost advantage.

Personally, I try to inject some humor into my presentations and allow my own character traits to show. I have found that professors who use their own special talents and personalities are more effective because students can relate better to a “real” person than to a mere “teacher” or “professor.”

B. *Experiential Component*

To the extent possible, I add an experiential component to my classes. As large firms are focusing more on their bottom line and cutting back on their hiring, and given the bleak job prospects for graduating law students, there is an “increasing need for law schools to provide students with opportunities to engage in skills-related or experiential learning courses.”⁷ Additionally, the American Bar Association enacted Standard 302(a)(4) in its accreditation process, which places more emphasis on experiential learning.⁸ Interpretation 302-2 provides a non-exclusive list of programs that fulfills Standard 302(a)(4): “[t]rial and appellate advocacy, alternative methods of dispute

7. Gerry W. Beyer & Mary F. Radford, *Experiential Learning in Trusts and Estates Courses*, SSRN 1 (June 24, 2011), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1871968.

8. *Id.* “Standard 302(a)(4) requires law schools to provide each student with ‘professional skills generally regarded as necessary for effective and responsible participation in the legal profession.’” *Id.*; *ABA Standards for Approval of Law Schools 2013–2014*, ABA 21, http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2013_2014_standards_chapter3.authcheckdam.pdf (last visited Jan. 5, 2014).

resolution, counseling, interviewing, negotiating, problem solving, factual investigation, organization and management of legal work, and drafting.”⁹

C. Multiple Examinations

In classes where a student’s grade is based primarily on testing performance, I administer a mid-term exam in addition to the final exam at the end of the semester. After I grade the exams, I am available to review the test results with students on an individual basis. This approach helps me identify those students who are having difficulty with the course early enough to provide counseling along with a stern warning about their poor odds of passing the bar at a time when the student has the opportunity to take corrective action. It also allows me to encourage students who are doing well and help them live up to their potential.

D. Type of Examination Questions

I divide my exams between objective and essay questions to take into account the different test-taking abilities of my students. With objective questions, I can be certain to test a wide range of topics so a student does not study a topic that does not appear on the exam. Students are often “upset” when an exam for an entire course covers only material from a few weeks of the course. In fact, I typically draft objective questions after each day’s class so that the questions closely reflect class discussion. My objective questions include multiple-choice, true-false, and short answer (e.g., what is a particular heir’s intestate share or how much does a named beneficiary receive). I manually score the answers; they are not computer graded. Students may “explain” their answers and it is important to react to each student’s test-taking style and aptitude.

My essay questions are of the “typical” law school character. I include issues ranging from one that I expect even students who fail the course to answer correctly to those which even the top student will miss with most issues falling somewhere between the two extremes. In courses that are tested on the bar examination, I try to format at least one of the essay questions to be “bar-like” so students will have experience with the type of questions they must handle effectively to receive their law licenses.

E. Materials to Use During Examination

I appreciate that in practice students will have materials such as the applicable statutes readily available to them. However, before any student can

9. *Id.* at 22.

practice law, the student must pass the state's bar examination.¹⁰ Every bar examination is completely closed book.¹¹ Because intestacy, wills, and trusts are covered by almost all states' bar examinations,¹² I do not permit students to bring any materials into the examinations; my exams are totally closed book, closed code, and closed notes. It is my hope that by doing so, my students will be better prepared to take the bar exam and that bar study will go easier when they are studying these topics.

F. Review Sessions

I conduct out-of-class review sessions for the basic Trusts and Estates course. Each review session is approximately two hours in length. During each session, I provide a synthesis of the material and work through a variety of sample exam questions, both from my prior exams and from bar exams.¹³ I make audio and/or video recordings of these sessions for students who cannot attend and I make them available on my website or on a website maintained by the school at which I am teaching.

G. Internet Site

I maintain my own personal internet site on which I post a variety of course materials and recent developments applicable to the courses I teach. For example, I keep the home page updated with the classes that I am currently teaching, quick links to popular topics, recent cases, and recent postings from my *Wills, Trusts, and Estates Prof Blog*.¹⁴ In addition to my home page, I have a section for Legal Updates, Book Updates, Law Students, Articles, an About page, Contact information, and even a "fun" page.¹⁵ The Legal Updates page includes current news about Texas cases, Texas legislation, and the Texas Estates Code.¹⁶ The Book Updates section includes new material for the most

10. See, e.g., *Rule II: General Eligibility Requirements for Admission to the Texas Bar*, TEXAS BOARD OF LAW EXAMINERS, <http://www.ble.state.tx.us/Rules/NewRules/ruleii.htm> (last visited Jan. 5, 2014).

11. See, e.g., *2014 Multistate Bar Examination Information Booklet*, NATIONAL CONFERENCE OF BAR EXAMINERS 2, http://www.ncbex.org/assets/media_files/Information-Booklets/MBEIB2014.pdf (last visited Jan. 5, 2014).

12. See, e.g., *MEE FAQs*, NATIONAL CONFERENCE OF BAR EXAMINERS, <http://www.ncbex.org/about-ncbe-exams/mee/mee-faqs/> (last visited Jan. 5, 2014) (listing states that have adopted the Multistate Essay Examination).

13. See, e.g., Gerry W. Beyer, *Practice Questions*, PROFESSORBAYER.COM, http://www.professorbeyer.com/WT_Fall_2013/Practice_Questions/Practice_Questions.html (last visited Jan. 5, 2014).

14. See Gerry W. Beyer, *Home*, PROFESSORBAYER.COM, <http://professorbeyer.com/index.html> (last visited Jan. 5, 2014).

15. *Id.*

16. Gerry W. Beyer, *Legal Updates*, PROFESSORBAYER.COM, http://professorbeyer.com/Legal_Updates.html (last visited Jan. 5, 2014).

current editions of my estate planning books.¹⁷ My Articles section incorporates the SSRN listing of my published articles and works in progress.¹⁸ If visitors to my internet site are curious about my background, that information is accessible under the About section.¹⁹ Additionally, I have a Contact section that lists my contact information for those who would like to interact with me.²⁰ Last, but certainly not least, I have a Just For Fun section to keep things in perspective.²¹

I think the most important section is the Law Students section where I post pertinent class information that is useful not only for my current students, but also for students attending other law schools around the nation.²² Students in my classes visit the Law Students section the most because of the PowerPoint presentations and sample exam questions which I post and which are useful for students in their studies.²³

H. *Email Communications*

I maintain extensive communications with my students by email. Several times per week, I send material about the course, recent legal developments, announcements, and other matters to each of my students. Students are also encouraged to submit questions by email. This method of communication is especially helpful for students whose schedules do not permit stopping by during office hours.

I. *Blog*

I am the editor of the *Wills, Trusts, and Estates Prof Blog*.²⁴ This blog, part of the Law Professors Blog Network, serves as a central site to locate and explore comprehensive materials to enhance the teaching of courses that address intestate succession, wills, trusts, estate administration, nonprobate

17. Gerry W. Beyer, *Book Updates*, PROFESSORBAYER.COM, http://professorbeyer.com/Book_Updates.html (last visited Jan. 5, 2014).

18. Gerry W. Beyer, *Articles*, PROFESSORBAYER.COM, <http://professorbeyer.com/Articles/Articles.html> (last visited Jan. 5, 2014).

19. Gerry W. Beyer, *About*, PROFESSORBAYER.COM, <http://professorbeyer.com/Beyer/About.html> (last visited Jan. 5, 2014).

20. Gerry W. Beyer, *Contact*, PROFESSORBAYER.COM, <http://professorbeyer.com/Contact.html> (last visited Jan. 5, 2014).

21. Gerry W. Beyer, *Just for Fun!*, PROFESSORBAYER.COM, http://professorbeyer.com/Fun/Just_For_Fun.html (last visited Jan. 5, 2014).

22. Gerry W. Beyer, *Resources for Law Students*, PROFESSORBAYER.COM, http://professorbeyer.com/Law_Students.html (last visited Jan. 5, 2014).

23. *Id.*

24. *Wills, Trusts & Estates Prof Blog*, WILLS, TRUSTS & ESTATES PROF BLOG, http://lawprofessors.typepad.com/trusts_estates_prof/ (last visited Jan. 5, 2014).

assets, planning for disability, and other matters pertaining to estate planning.²⁵ A wide range of materials is presented including reference, practical, academic, scholarly, pedestrian, historical, and current.²⁶ I encourage students to read the blog and to submit suggestions or draft entries to me. This allows students to see the current issues and importance of this area of the law. Additionally, by encouraging students to submit suggestions, I also gain a better understanding of my students and their interests, and if possible, I try to incorporate those interests in class discussion to engage my students.

III. CLASS-SPECIFIC TECHNIQUES

A. *Trusts and Estates*

1. Expected Learning Outcomes

Upon completion of this course, students will have acquired knowledge of how property passes when a person dies intestate or with a will. In addition, the student will learn how to create, administer, and enforce trusts. The specific tasks the student will be able to complete include the following:

- How to distribute property when a person dies intestate and the impact of facts relating to family circumstances and actions taken by a potential heir
- Determine whether a will is valid
- Understand the differences between the various types of wills
- Appreciate the impact of changes that occur to property after will execution
- Determine the effect of changes that occur to a potential beneficiary after will execution
- Interpret and construe wills using appropriate statutory and judicial rules
- Recognize situations which may increase the likelihood of a will contest
- Ascertain whether a will may be successfully contested and if so, on what ground or grounds
- Protect a will from contest
- Recognize other issues that may arise in a will context
- Understand why a person would elect to create a trust
- Know the elements of a valid trust and the different types of trusts
- Determine whether a valid trust was created
- Ascertain the roles played by the settlor, trustee, and beneficiary in a trust context
- Know how to limit the interest the settlor grants to the beneficiary

25. *See id.*

26. *See id.*

- Understand the trustee's fiduciary duties such as the standard of care and duty of loyalty
- Determine the liability of a trustee in contract and tort contexts
- Allocate receipts and expenditures between principal and income
- Appreciate how a trustee must account to the beneficiaries
- Explain how a trust may be altered by the court or the parties
- Enforce trusts and obtain remedies
- Understand the workings of trust bank accounts, resulting trusts, and constructive trusts

2. "Local" Law School

When I teach Trusts and Estates at a law school where a high percentage of students take the local bar examination, I teach the course with a heavy focus on local law, stressing both statutory and judicial state law. Because I often teach at schools in Texas where most students take the Texas bar, I have developed Texas-specific casebooks, such as *Texas Wills and Estates: Cases and Materials*,²⁷ *Texas Trust Law: Cases and Materials*,²⁸ *Texas Estate Administration: Cases and Materials*,²⁹ and *Texas Estate Planning Statutes With Commentary*,³⁰ to emphasize the estate-related laws of Texas. When I serve as a visiting professor at an out-of-state school where most students take that state's local bar exam, I use the statutory and case law of that state as much as possible.

Students who intend to practice in a different state have two options. They may take the course from another professor who does not stress local law or remain in my class, realizing that even if they take the class from a professor who teaches generic law, they would still not be learning the law of the state in which they intend to practice.

Using local law enhances the students' interest in the class because they know that they will actually be using what they learned at their law school clerkships, while studying for the bar, and in practice. Additionally, there is significant educational value in seeing how the law of one state fits together in a (hopefully) cohesive manner.

3. "National" Law School

When I am teaching the basic course at a school where students disperse and take the bar examinations of a variety of states, I still attempt to focus the students' attention on the law of the state in which they intend to practice.

27. GERRY W. BEYER, *TEXAS WILLS AND ESTATES: CASES AND MATERIALS* (6th ed. 2008).

28. GERRY W. BEYER, *TEXAS TRUST LAW: CASES AND MATERIALS* (2d ed. 2009).

29. GERRY W. BEYER, *TEXAS ESTATE ADMINISTRATION: CASES AND MATERIALS* (2008).

30. GERRY W. BEYER, *TEXAS ESTATE PLANNING STATUTES WITH COMMENTARY* (2013–2015 ed. 2013).

Instead of a traditional casebook, I use a generic text, such as *Wills, Trusts, and Estates: Examples and Explanations*,³¹ that uses a problem-heavy pedagogy. Each student indicates the state in which he or she intends to practice and the student then resolves the problems based on the applicable local law. This methodology not only teaches the student about the laws of the state in which he or she intends to practice, but it also puts into perspective the different variations of each state's estate and trust laws for other students.

B. Estate Planning

1. Expected Learning Outcomes

The purpose of Estate Planning is to help students acquire the skills necessary to prepare legally effective and intent-fulfilling estate plans by identifying and implementing the appropriate legal techniques.³² The specific tasks the student will be able to complete include the following:

- Search for employment in the estate planning area
- Obtain estate planning clients
- Interview clients who need estate planning services
- Set fees for estate planning services
- Assist clients in selecting fiduciaries
- Recognize professional responsibility issues that may arise in an estate planning practice
- Avoid malpractice
- Understand the role of legal assistants in the estate planning process
- Draft legally effective and intent fulfilling estate planning documents including:
 - Wills
 - Trusts
 - Durable powers of attorney
 - Self-designations of guardians
 - Medical powers of attorney
 - Declarations for mental health treatment
 - Directives to physicians (living wills)
 - Anatomical gifts
 - Disposition of body documents

31. GERRY W. BEYER, *WILLS, TRUSTS, AND ESTATES: EXAMPLES AND EXPLANATIONS* (5th ed. 2012).

32. Planning for clients with taxable estates or complex businesses is outside the scope of this course. These topics are covered in other courses such as Estate and Gift Taxation and advanced courses in the business area.

- Recognize common errors in drafting estate planning documents
- Supervise the execution, witnessing, and acknowledgment of estate planning documents
- Understand and be able to advise clients on the use of techniques including:
 - Disability income insurance
 - Long-term care insurance
 - Life insurance
 - Medicaid
 - Inter vivos gifts
 - Powers of appointment
 - Joint tenancies
 - Multiple-party accounts
 - Pay on death property
 - Annuities
 - Retirement plans
- Recognize situations where a will contest is likely and then to take steps to minimize the likelihood of the contest
- Recognize when clients have special circumstances for which additional planning may be needed

2. Experiential Component

To enhance the experience of the students in my Estate Planning courses, students interview and prepare estate-planning documents for real clients rather than from a hypothetical set of facts presented in writing or by role-playing. Students are able to improve their interviewing and communication proficiency as well as their document drafting skills. For example, students are asked to draft an engagement letter, a will, a disability plan for property and health care, and a death plan, all with keeping their client's wants and needs in mind. At the end of the semester, each student turns in a final draft of the estate plan.

3. Assignments

In addition to preparing the client documents, most assignments are accompanied by a detailed set of questions and problems relating to those specific documents. To complete these assignments successfully, the student must read the applicable statutes and cases with the utmost precision. Students may select any state to use as the basis for completing the assignments. I recommend that the students select the state in which they intend to practice. Not only do these assignments help the student to gain a deeper understanding of the material, it makes certain that they are not merely "blindly" copying forms and filling them in for the drafting portion of the course.

C. Estate Administration

I teach estate administration based on local law because the differences in procedures vary significantly among the states. As I usually teach this course based on Texas law, this section is based on my Texas-specific course.

1. Expected Learning Outcomes

Upon completion of Estate Administration, a student will be able to determine the proper method of handling a decedent's estate under Texas law and to take the appropriate steps to administer the estate from beginning to end. The specific tasks the student will be able to complete include the following:

- Determine which court has jurisdiction to administer the estate
- Determine which court has venue to administer the estate
- Ascertain the applicable statute of limitations
- Locate a decedent's will
- Prepare and file an application to open an estate administration
- Determine the proper citation to give to interested parties
- Understand how a court conducts and rules on the application
- Know when and how to probate a will as a muniment of title
- Qualify a person as a personal representative
- Obtain letters of administration or letters testamentary
- Provide notice to creditors and beneficiaries
- Prepare the inventory, appraisal, and list of claims
- Conduct a dependent administration including:
 - Setting aside exempt property and the family allowance
 - Selling and renting estate property
 - Prioritizing and paying creditors' claims
 - Determining personal representative compensation
 - Obtaining the appointment of a successor personal representative
 - Preparing annual and final accountings
 - Distributing estate property and closing the administration
- Conduct an independent administration
- Administer an estate using short-form methods
- Know when and how to use the determination of heirship procedure
- Administer community property
- Use emergency intervention procedures
- Probate foreign wills

2. Experiential Components

a. Attend and Report on Court Hearings

Each student must attend two court proceedings involving the probate of a decedent's estate. They must be *different* types of proceedings (e.g., students

may attend the probate of a will as a muniment of title and the probate of a will coupled with the opening of an estate administration).

- For each hearing, they must prepare a report in the following form:
- Type of proceeding
- Date of hearing
- Court
- Name of presiding judge
- Style of case
- Names of attorneys
- Detailed description of what they observed
- Analysis (the most important part of the report)—the analysis should address issues such as the things observed that were done correctly, conduct that needs improvement and why, suggestions and recommendations, and anything else the student would like to report

The student may use his or her discretion regarding the length of each report. One page per report is obviously too short and only in very interesting or complicated situations would more than five pages be appropriate.

b. Document Preparation

Students prepare documents associated with estate administration based on a detailed set of facts that I provide. Examples of the types of documents include:

- Application for funeral and burial expenses
- Application to probate the will as a muniment of title
- Civil Case Information Sheet
- Order admitting the will to probate as a muniment of title
- Application for letters testamentary and to probate the will
- Notice to secured creditor
- Notice to unsecured creditor
- Notice to beneficiaries
- Inventory, appraisal, and list of claims with order
- Letter to beneficiaries
- Application for letters of administration.

D. Estate Planning Journal

Established in 2007, the Estate Planning and Community Property Law Journal (EPJ) publishes scholarly articles by national and international experts and outstanding student comments in estate planning, community property, and other related legal topics.³³ This journal is the only journal in the nation

33. *Estate Planning & Community Property Law Journal*, [ESTATELAWJOURNAL.ORG](http://www.estatelawjournal.org), <http://www.estatelawjournal.org/site/about-us/> (last visited Jan. 5, 2014).

committed to community property law and the second in the nation devoted to estate planning.³⁴

Additionally, the EPJ hosts a seminar each year that attracts numerous professors, practitioners, and other experts in the field of estates and trusts.³⁵ The seminars address current and future issues in the estate-planning arena. Our annual seminar has grown tremendously over the years. Originally, the seminar's speakers consisted of a small group of local west Texas practitioners and Texas Tech professors. Now, nationally recognized practitioners and academics fly to Lubbock from across the country to present presentations on ground breaking topics in estate planning and community property.

As the EPJ's faculty advisor, I mostly work with the Editor-in-Chief regarding general journal matters and the Executive Symposium Editor on the seminar. Additionally, I assist the Executive Articles Editor in locating authors and evaluating professional articles, and I mentor the staff editors in selecting and writing their comments.

CONCLUSION

Although there are many effective teaching methods, I try to employ methods that will not only teach students the black letter law, but also teach them life lessons. By keeping my teaching philosophies at the forefront of every class that I teach, I hope to equip my students with the necessary tools to become ethical, effective, and contributing professionals of the legal community. Additionally, my teaching method allows a mutually beneficial relationship between my students and me. It allows me to get to know my students on a more personal level (thus fulfilling my secondary goals), which in turn allows me to employ ways to engage my students in my classes (fulfilling my primary goals), thereby making Trusts and Estates fun and relevant.

34. *Id.*

35. *Id.*