Wills, Trusts & Estates
FALL 2011
Professor Mary Radford

Tuesday, 6:00 pm

Text: **VOLLMAR, HESS & WHITMAN, AN INTRODUCTION TO TRUSTS & ESTATES**

Statutory Supplement (required): Georgia Wills & Trusts Statutes (available in GSU Bookstore)

You may find some or all of the following OPTIONAL resources (which are available in the Law Library) helpful as background material:

Atkinson, Law of Wills (2d ed.)
Reutlinger, Wills, Trusts, and Estates: Essential Terms and Concepts
Bogert, Law of Trusts
Haskell, Preface to the Law of Trusts
Bergin & Haskell, Preface to Estates in Land & Future Interests

Course prerequisites: First-year Required Courses

Attendance, Preparation and Participation Policies: Students are expected to attend each class prepared to discuss the materials and problems assigned. **Attendance is required.** The professor reserves the right to give a failing grade to a student who misses *three or more* classes.

Assignments: If a worksheet is assigned for the class, it would be helpful for you to try to fill it out in advance.

Course Description: This course is a basic survey of the legal framework surrounding the gratuitous transfer of property during life and at death through intestate succession, wills, gifts, trusts, and other non-probate transfers. We will compare relevant Georgia statutes with uniform laws and national trends. In addition to the substantive law covered, this course will focus on teaching students how to read and distinguish among the statutes of various states.

Grading: Students' final grades will be based on a mid-term test **(20%)** and the final examination **(80%)**. The professor may award extra points for outstanding attendance and class participation.

Mid-Term Test: The mid-term test for this course is scheduled for Tuesday, SEPTEMBER 27, 2011. NOTE that this will be an IN-CLASS exam, beginning at 6:00 pm and will test the materials covered in Weeks I-V. This is an OPEN BOOK exam.

Final Exam: The final exam for this course will be a THREE-HOUR EXAM. This is an OPEN-BOOK exam.

No Classes: Please note that there will be no class held on OCTOBER 11, 2011. Arrangements for the make-up class will be announced.

Student Appointments: Professor Radford is generally available to discuss student questions. Please feel free to contact her to make a mutually convenient appointment: 404/413-9188, *mradford@gsu.edu*.

The following course syllabus contains a general plan for the course. Deviations may be necessary.

ASSIGNMENTS

WEEK I
8/16/11

INTRODUCTION
Text, pp. 1-12, 18-35, 37-41
OCGA § 53-1-2
Worksheet #1
T*erminology:* Gratuitous Transfers; Inter-vivos Transfers; Gifts, Trust; Will; Testate; Intestacy; Non-Probate Transfers; Uniform Probate Code; Uniform Trust Code;
Testator; Executor; Administrator; Personal Representative; Probate Court; Beneficiaries; Heirs; Estate Tax; Gift Tax, Exemption Equivalent; Marital Deduction; Annual Exclusion; Charitable Deduction

WEEK II 8/23/11	**NON-PROBATE TRANSFERS** Text, pp. 111-21, 127-37, 152-66 OCGA §§ 7-1-810 through -820 Worksheet #2 *Terminology:* Probate; Will Substitutes; Life Insurance; Revocable Inter Vivos Trust; Power of Attorney; Tenancy in Common; Tenancy by the Entirety; Joint Tenancy with Right of Survivorship; Multiple Party Bank Accounts; Joint Accounts; Agency Accounts; Bank Account Trust; Totten Trusts; Payable-on-Death Account; Transferable-on-Death Designation; Uniform Transfer-on-Death (TOD) Security Registration Act; Privity
WEEK III 8/30/11	**INTESTACY - Part 1** Text: pp. 545-62 OCGA §53-2-1; Old UPC §2-102 (On Wrksht. 3) Worksheets #3 & #4 *Terminology*: Intestate Succession, Descent and Distribution, heir, next of kin, escheat, dower, curtesy, primogeniture, lineal descendants, issue, per capita, per stirpes, by representation, per capita with representation, per capita at each generation
WEEK IV 9/8/11	**INTESTACY - Part 2** Text: pp. 577-88 OCGA § 53-2-1, 53-1-10 through -13 Worksheet #5 *Terminology:* First-line collaterals, Second-line collaterals, ancestors, Parentelic Preference system, Degree of Relationship (degree of kinship; civil law) system; laughing heirs; Advancement, Hotchpot
WEEK V 9/13/11	**INTESTACY - Part 3** Text: pp. 562-77; 584-88 OCGA §§ 53-1-8 & 19-8-19, 53-2-3 through -6, 19-7-21, 53-2-27, Worksheet #6 *Terminology:* Stepchild, foster child, adoption, biological family, half-blood, whole-blood, equitable adoption (adoption by estoppel, virtual adoption), nonmarital child, half-blood sibling, Uniform Parentage Act, posthumous children, children of assisted reproduction, Uniform Status of Children of Assisted Conception Act, Minor

WEEK VI 9/20/11	**WILLS - Part 1** Text: pp. 589-613, 619-43 OCGA §§ 53-4-1 through -3, 53-4-20 through -24 Worksheet #7 *Terminology:* Codicil, Ambulatory, Probate, Propounder, Solemn Form Probate, Common Form Probate, Letters Testamentary, Attestation, Acknowledgment, Publication, Line of Sight Test, Conscious Presence Test, Interested Witness, Purging Statute, Self-Proving Will, Attestation Clause, Conditional Will, Substantial Compliance Doctrine, Holographic Will, Nuncupative Will, Republication, Codicil, Integration, Republication by Codicil**,** Incorporation by Reference, Acts of Independent Significance
WEEK VII 9/27/11	**Mid-Term Test: Tuesday, 9/27/11. The Mid-Term Test will cover the material through Week V. The test will be given during the first half of class. Please prepare the following materials for the second half of class.** **Wills – Part 2** Text, pp. 689-704 O.C.G.A. §§ 53-4-40 through 53-5-44 *Terminology:* Express Revocation, Revocation by Physical Act, Partial Revocation, Revocation by Subsequent Document, Implied Revocation
WEEK VIII 10/4/11	**Wills – Part 3** Text, pp, 704-22, 643-88 OCGA §§ 53-4-45 through -50; 53-1-5, 53-4-10 through -12, 53-4-68, Formal Advisory Opinion 91-1 (Stat. Supp.) *Terminology:* Revocation by Operation of Law, Revival, Republication, Dependent Relative Revocation, Testamentary Capacity, Lucid Interval, Caveat, Insane Delusion, Monomania, Mistake, Undue Influence, No-Contest ("In Terrorem") Clause, Confidential Relationship, Fraud

WEEK IX October 11, 2011 NO CLASS

WEEK X 10/18/11	**WILLS - Part 5** Text, pp. 722-44, 803-49 OCGA §§ 53-4-55 through -57, 53-4-30 through -33 *Terminology:* Joint Will, Mutual Will, Joint & Mutual Will, Construction, Plain Meaning Rule, Personal Usage Exception, Extrinsic Evidence, Patent Ambiguity, Latent Ambiguity, Misdescription, Mistake, Mistake in the Inducement
WEEK XI 10/25/11	**WILLS - Part 6** Text: pp. 850-92 Worksheet #8 OCGA §§ 53-4-64 through -65; 53-10-1 through -6 *Terminology:* Bequest, Legacy, Devise, Lapse, Anti-Lapse Statute, Substitute Gift, Class Gifts, Uniform Simultaneous Death Act, Doctrine of Probable Intent
WEEK XII 11/01/11	**WILLS – Part 7 & FAMILY RIGHTS** Text, pp. 892-912; 745-48, 772-91 OCGA §§ 53-4-66 through -67; 53-3-1 through -9; 53-1-10; 53-4-48 Worksheets #9 & 10 *Terminology:* Ademption by Extinction, Specific Bequest, General Bequest, Demonstrative Legacy, Abatement, Ademption by Satisfaction, Exoneration, Stock Split, Increase; Homestead Allowance, Exempt Property, Family Allowance, Elective Share, Year's Support, Omitted Spouse, Pretermitted Heir
WEEK XIII 11/08/11	**TRUSTS - Part 1** Text: 167-85, 200-35; Review Item VI of Sample Will OCGA §§ 53-12-1 through 53-12-7, 53-12-20 through -28; 53-12-40 through -45; 53-12-91; 53-12-170 through -75 *Terminology:* Private Trust, Charitable Trust, Express Trust, Settlor, Trustor, Grantor, Inter Vivos (Living) Trust, Testamentary Trust, Declaration of Trust, Deed of Trust, Trustee, Res (Corpus, Principal), Income, Fiduciary, Beneficiary, Revocable Trust, Irrevocable Trust, Precatory Language, Expectancy, Unfunded Life Insurance Trust, Uniform Testamentary Additions to Trusts Act, Resulting Trust, Honorary Trust

WEEK XIV
11/15/10

TRUSTS – Part 2

Text: 246-61, 323-33
OCGA §§53-12-100 through -03, 53-12-120, 53-12-130 through -33; 53-12-80 through -83, 53-12-260
Worksheets #11 & 12
Terminology, Implied Trust, Constructive Trust, Resulting Trust, Secret trust, Semi-Secret Trust, Honorary Trust, Mandatory Trust, Discretionary Trust, Spray (Sprinkle) Trust, Income, Principal (Corpus), Spendthrift Trust, Support Trust, Voluntary Alienation, Involuntary Alienation, Asset Protection Trusts

STATE OF GEORGIA

COUNTY OF _____

LAST WILL AND TESTAMENT

I, _____, a domiciliary of _____ County, Georgia, hereby make, publish and declare this my Last Will and Testament, revoking all wills and codicils heretofore made by me.

ITEM I

I am married and have ____ children. My wife's name is _____, and my children's names are _____. This Will is made in contemplation of the future birth of children to me or adoption of children by me and shall not be revoked by such event.

ITEM II

I direct my Executor to pay out of the residue of my estate, as soon after my death as my Executor deems feasible, all of my debts, including charitable pledges, whether or not enforceable; the expenses of my last illness, funeral and burial; debts and claims duly allowed against my estate; expenses of administration of my estate; and all estate, inheritance, succession, transfer, legacy and death taxes assessed or imposed with respect to my estate, or any part thereof, whether or not passing under this Will.

ITEM III

All furniture and furnishings, including appliances, rugs, pictures, objects of art, silverware, china, and linens, all personal effects, including books, clothing and jewelry, and all automobiles and boats owned by me at my death, and all insurance thereon, I bequeath to my wife, if she survives me, and if she predeceases me, then in approximately equal shares, as determined by my Executor, to those of my children who survive me.

ITEM IV

If she survives me, I give to my wife any interest in any residence in which she or we reside at my death, subject to any lien or encumbrance thereon.

ITEM V

I give all of the rest, residue and remainder of my property, real, personal and mixed, of every kind and description, and wherever located, including all benefits payable to my estate as a result of my employment and all lapsed or void legacies or devises, but excluding any property over which I shall have any power of appointment, as follows:

(a) I give all the property passing under this Item outright to my wife, if she survives me.

(b) If my wife predeceases me and I am survived by one or more children, all of whom are age 21 or older, or if I am survived by no children but by other issue of any age then I give the property passing under this Item to my surviving children in equal shares, with the surviving issue of any deceased child to take that child's share, per stirpes.

(c) If my wife predeceases me and I am survived by a child or children, one or more of whom is

under age 21, then I give all the property passing under this Item to my Trustee, in trust, to be managed and distributed in accordance with the provisions of Item VI.

(d) If neither my wife nor any of my issue survive me, all property passing under this Item shall be distributed to those persons who, under the laws of descent and distribution of the State of Georgia in effect at my death, would have been entitled to inherit from me if I had died intestate and without issue.

ITEM VI

(a) The trust created under this Item shall continue in duration until my youngest child shall reach age twenty-one or until I have no more surviving children who are under age twenty-one. At the termination of this trust, the trust property is to be distributed in equal shares among my children who are surviving at that time or, if a child of mine has died prior to that time (whether before or after my own death), to the issue of that child who are surviving at the termination of this trust, per stirpes. If any child of mine has died prior to the termination of this trust (whether before or after my own death) and left no surviving issue, his or her share shall be distributed among my other children who are surviving at the termination of this trust or to their surviving issue, per stirpes.

(b) My Trustee shall hold, invest, and manage any property distributed to this trust for the health, support, welfare, education and maintenance of all of my issue, but it is my intent that my Trustee shall use the trust property in a manner that reflects the manner in which my wife and I would have used our property had we been living, with a primary emphasis on the support of each of our children until the time that they reach the age of 21.

(c) During the period that any child of mine is under age twenty-one, my Trustee shall distribute to such beneficiary or for his or her benefit as much of the income and principal of such trust as my Trustee, in my Trustee's sole discretion, deems advisable to provide for the proper health, maintenance and support of such beneficiary in accordance with his or her accustomed standard of living, to provide for his or her education at any available level, including college and postgraduate schools, to enable such beneficiary to marry and to travel, and to assist such beneficiary in a trade, profession or business and in the purchase of a home. In addition, and keeping in mind the primary purpose of this trust, as described in the preceding sentence, in my Trustee's sole discretion, my Trustee may use as much of the income and principal of such trust as my Trustee, in my Trustee's sole discretion, deems advisable to provide for the proper health, maintenance and support of any child of mine who is age twenty-one or over, or any issue of any child of mine who has died, in accordance with his or her accustomed standard of living, to provide for his or her education at any available level, including college and postgraduate schools, to enable such beneficiary to marry and to travel, and to assist such beneficiary in a trade, profession or business and in the purchase of a home.

ITEM VII

Neither the principal nor income of any trust created herein, nor the interest of any beneficiary therein, shall be liable for the debts of any beneficiary, nor shall the same be subject to anticipation or alienation or to seizure by any creditor of any beneficiary under writ or proceeding at law or in equity. My Trustee shall continue to pay such income or principal directly to or for the support of such beneficiary notwithstanding any action by creditors. If, however, my Trustee is prevented by any proceeding brought by any creditor or by any bankruptcy, receivership or other proceeding, from paying such income or principal directly to or for the support of any such beneficiary, then and thereafter, my Trustee shall hold and accumulate the income or principal of such beneficiary until my Trustee is able to pay the same directly to or for the support of such

beneficiary, until the death of such beneficiary or until the final payment of principal would otherwise become due, whichever first occurs; and on the death of such beneficiary, all income and/or principal so accumulated shall be considered part of the principal of such trust and shall be disposed of as provided for the principal thereof.

ITEM VIII

(a) I appoint my wife, _____, as Executor of this Will. If my wife does not survive me or if, for any reason, my wife is unable or unwilling to serve or continue serving as Executor of this Will, I appoint the following persons and/or institution in the order stated as successor Executor of this Will:

(1) _____; then

(2) _____.

(b) I appoint _____ as Trustee of each and every trust created herein. If does not survive me or, for any reason, is unable or unwilling to serve or continue serving as Trustee, I appoint the following persons and/or institution in the order stated as successor Trustee of each and every trust created herein:

(1) _____; then

(2) _____.

(c) I relieve my Executor and any Trustee from giving bond, making an inventory or appraisal of my estate, and from making returns of her acts and doings to any court or beneficiary. In the administration of my estate, my Executor and any Trustee shall have the authority, without order or report to any court, to exercise all the powers set forth in O.C.G.A. § 53-12-261, which Code section is hereby incorporated into this instrument by reference.

(d) All successor Executors and Trustees shall have all the powers, authorities and duties granted herein as if originally named Executor or Trustee, and no successor Executor or Trustee shall be required to inquire into or audit the acts or actions of the predecessor Executor or Trustee or to make any claim against such predecessor Executor or Trustee.

ITEM IX

I appoint my wife, _____, if she survives me, conservator of each child of mine during his or her minority. If my wife predeceases me, or, if she survives me, but dies during the minority of any child of mine without effectively appointing a successor guardian who is able and willing to so serve, I appoint the following persons in the order stated as guardian and conservator of each child of mine during his or her minority:

(1) _____; then

(2) _____.

No guardian or conservator appointed herein shall be required to file any bond, inventory or report unless the same is mandatory in spite of this waiver, and if any bond is so required, but a surety is not mandatory, no surety shall be required.

ITEM X

(a) References in this Will to “child” or “children” mean lawful blood descendants in the first degree of the parent designated; and references herein to “issue” or “descendants” mean lawful blood descendants in the first, second or any other degree of the ancestor designated; provided always, however, that an adopted child and such adopted child's issue, whether natural or adopted, shall be considered in this Will as lawful blood descendants of the adopting parent or parents and of anyone who is by blood or adoption an ancestor of the adopting parent or of either of the adopting parents. The terms “child” or “children” shall *[not]* include any child who is born out of wedlock.

(b) A child in gestation at the time of an event who is later born alive shall be deemed to be “in being,” “living” or “surviving” at the time of such event.

IN WITNESS WHEREOF, I hereunto set my name and affix my seal to this my LAST WILL AND TESTAMENT this ___ day of _____, ____ .

*(SEAL)*_____

[TESTATOR]

ATTESTATION CLAUSE

The above and foregoing instrument was on the day and year above set forth and in the presence of each of us, the undersigned witnesses, acknowledged by as his LAST WILL AND TESTAMENT, and said instrument was on said date and in our presence voluntarily signed and acknowledged by , who appeared at that time to be of sound mind, and we, the undersigned in the presence of and at his request, and in the presence of each other, have hereunto subscribed our names as witnesses this __ day of _____, _____.

WITNESSES

_____

_____

WORKSHEET #1 Fall 2011

For estate of decedents dying in:	Exemption Equivalent:
2002	$1 million
2003	$1 million
2004	$1.5 million
2005	$1.5 million
2006	$2 million
2007	$2 million
2008	$2 million
2009	$3.5 million
2010	Repeal
2011	$5 million
2012	$5 million

1. On January 1, 2011, Helen gives $513,000 to her nephew. Assume she has made no prior taxable gifts. What amount of this gift is *potentially* taxable?

Must Helen pay gift tax on that amount?

2. On January 4, 2011, Helen dies with an estate of $7 million. She has given no more gifts during her lifetime. Her will leaves $1,000,000 to her spouse and the rest of her property to her niece.

1) Calculate Helen's potentially taxable estate:

2) Take any allowable *deductions:*

3) Then, take into account her EXEMPTION EQUIVALENT