ESTATE PLANNING SYLLABUS
PROFESSOR JOHN A. MILLER
Spring 2019

REQUIRED TEXTS


John A. Miller & Jeffrey A. Maine, Wealth Transfer Tax Planning for 2013 and Beyond (2013 B.Y.U. L. Rev. 879-948) available on SSRN at Abstract no. 2214422. (We are working on an update of this article and may have one available for the class by the time we address this topic.)

Daniel Lathrope, Selected Federal Taxation, Statutes and Regulations (2018 or later West)

Mark Ascher and MP McCouch, Selected Statutes on Trusts and Estates, 2012 or later Edition (West)

REQUIRED TOOLS

Turning Technologies ResponseWare for your phone or Laptop (phone preferred). This requires buying a license from TurningTechnologies.Com. You must do this even if you already have a clicker. The reason for this is that the course is being taught in two locations simultaneously.

We will use polling to take roll and to test our understanding of the material as we go. It has the great advantage of giving instant feedback to teacher and student alike.

THE PLACE OF THE ESTATE PLANNING COURSE IN THE CURRICULUM

What is estate planning? Estate planning is a process of effective disposition of the Client’s property consistent with the client’s intent, but informed by the alternatives available.

What kind of course is estate planning? This is a simulation course in document drafting. There will be three writing assignments during the semester along with a multiple choice final exam. Each assignment will involve adapting an existing document or form to suit the needs and objectives of a particular client. These will be challenging assignments. Don’t take this course if you are not prepared to work hard on each of these assignments. In this regard it is important to appreciate that procrastination is the enemy of success. If you wait until the weekend before an assignment is due to begin, you lose much of the opportunity to do a great job.
planning can be frustratingly difficult. It touches on many areas of law and involves complex family, business, and interpersonal situations. Sorry. That is just the way it is. It is also fun and rewarding when you have mastered the fundamentals and do good work.

Polling Software:
As a follow-up to each drafting assignment I use an in-class polling sessions to see how the students performed on the drafting assignment. Thus, in a sense, you get immediate feedback on each assignment before it is even graded. There is a self-assessment component required for experiential learning certification. You will self-assess your written work product after we have been through the polling exercise with respect to the assignment.

The general conduct of estate planning is to focus on applying principles of law, especially the Probate Code and the Tax Code, and reason to an array of estate planning problems to develop the your ability to analyze, plan and communicate. Throughout the course we pay close attention to the potential for ethical issues that often arise in the estate planning context. We also concern ourselves with the importance of being competent to serve a diverse body of clients whose circumstances and needs may vary depending on such factors as gender, age, marital status, race, ethnicity, economic circumstances and sexual preference.

Throughout the course I use a large number of polling questions in class to test your ability to understand the law and apply it in a number of situations.

We will begin building your “Forms File” for practice. We will consider the various categories of clients you are likely to encounter in real life and how their differing circumstances pose challenges that require different solutions. Thus, you will function as a legal writer, a planner and a problem solver.

Though there is significant overlap in knowledge base, this course is not a substitute for taking the basic course in Wills and Trusts. Unless you have received permission to do otherwise, you should be taking or already have taken Wills and Trusts. Estate Planning will build on the Wills and Trusts course by demonstrating its practical application. It will build on the individual income tax course by demonstrating its application to property transfers among related parties. Estate Planning also offers a view into the Federal Wealth Transfer Tax system.

This course is not a substitute for taking Elder Law. Instead, Elder Law makes a good companion course to Estate Planning (though Elder Law can function as a stand-alone area of practice). The focus of Elder Law is in the governmental entitlements area (i.e., Social Security, Medicare and Medicaid), disability planning, housing for the elderly, guardianship law, special ethical issues when representing the elderly, and end of life issues. Thus, Elder Law focuses on living comfortably in old age while Estate Planning focuses on the transmission of wealth.

EVALUATION
As noted above, most of your grade will rest on three document drafting assignments during the semester. There is also a multiple choice final exam worth one fourth of your grade. I also reserve the right to raise or reduce your grade based on class participation or lack thereof. You may have up to 3 absences for any reason. However, lack of attendance is a form of lack of participation. Thus, more than 3 absences for any reason are grounds for grade reduction or, in extreme cases, for removal from the course.

**SELF ASSESSMENT**

You will self-assess, in writing, your performance on each assignment after it has been turned in and an in-class review of the assignment is complete.

**READING ASSIGNMENTS**

Reading assignments will usually reference a full chapter in the main text, Gazur & Phillips. In most cases it may take more than one class meeting to complete the assignment. Nonetheless, unless directed otherwise, the student should read the entire chapter in preparation for the initial class meeting addressing that chapter. Read for understanding. Whenever you encounter a word or phrase that you do not understand, you should make a good faith effort to grasp the meaning of that word or phrase as a lawyer would use it. The book contains a number of “Exercises” or “Case Studies.” The assignment list below highlights those exercises and case studies that will be the focus of our in-class discussion. Some of these exercises or case studies involve simulations or role playing where the students are assigned different parts to play or documents to draft. I will give you more specific directions with respect to some of the assignments during the semester. Some assignments will simply be addressed by lectures in order to convey useful information as efficiently as possible.

**PowerPoint Slides**

I often make PowerPoint slides that I have created available to the class. This is for your use only and not for distribution to any other person. Please respect this rule.

**Hypos**

There is a section on Blackboard labeled Hypos. Please check that section for Hypotheticals relating to the reading assignments.

**Assignments**

For our first class meeting please review the course website. Please read the course syllabus carefully. In this class I will introduce you to estate planning and to our course of study.

1. Ch. 1 Working with Clients
a. Exercise 1-1,
b. Exercises 1-3, 1-5, 1-8

2. Ch. 2  A Review of the Fundamentals of Drafting Wills
   a. Exercises 2-1, 2-2, Will Review Exercise using Form H
   b. Case Study 2-1 Exercise 2-6, and How not to Write a Will Exercise (Hypo posted on BBLearn)

3. Ch. 15  Planning for Disability
   a. Lecture on Trusts
   b. Basics of Disability Planning

4. An Overview of Intestacy Law and Other UPC Defaults: Be sure to bring your Selected Statutes on Trusts and Estates book

5. Ch. 3  The Young Adult
   a. Case Study 3-1
   b. Lecture on Deferred Compensation

6. Ch. 4  The Wealthy Young Adult Contemplating Marriage
   a. Case Study 4-1

7. Ch. 5  The Young Married Couple (Without Children)
   a. Case Study 5-1

8. Ch. 6  Unmarried Couples
   a. Case Study 6-1

9. Ch. 7  The Married Couple (with Young Children)
   a. Case Study 7-1

10. Ch. 16 Federal Wealth Transfer Tax Principles and Planning Strategies
    a. Overview of the Federal Wealth Transfer Taxes
    b. Planning Strategies
    c. Estate Planning for the Super-wealthy

11. Ch. 8  Gifts from Grandparents
    a. Case Study 8-1, Planning for Vacation Homes Hypos
    b. Trust planning, Lecture on Income Taxation of Trusts and Estates

12. Ch. 9  Remarriage (with Children)
    a. Case Study 9-1
    b. Hypos on Serial Marriages

13. Ch. 10 Migratory Married Couples

14. Practice Exam

15. Ch. 11 The Wealthy Married Couple
    a. Case Study 11-1
    b. Hypos on Business Owners

16. Ch. 12 Asset Protection and Retirement Planning

17. Ch. 13 The Generation-Skipping Trust and Other Wealth Perpetuation Measures

18. Ch. 14 Charitable Gifts

19. Ch. 17 Probate and an Estate Tax Return
Credit Hours for Coursework

In accordance with ABA Standard 310, the College of Law awards one credit hour for experiences that are reasonably designed to involve 50 minutes of classroom or direct faculty instruction and two hours of out-of-class student work per week, or at least the equivalent amount of work for academic activities including simulation, field placement, clinical, and other academic work leading to the award of credit hours.

The Course requirements outlined above with respect to materials and assignments, in my professional judgement, are complex enough in nature that it is expected that the amount of out-of-class time it will take students to complete the assignments will meet the rule.

Center for Disability Access and Resources (CDAR) Reasonable Accommodations Statement:

Reasonable accommodations are available for students who have documented temporary or permanent disabilities. Ideally, students in Moscow and Boise should meet with CDAR by the end of the first week of class to assess if any accommodations are needed for courses and/or examinations. All accommodation requests are then submitted by CDAR to Dean Dodge for final approval. CDAR serves as the sole evaluator of medical documentation and determines reasonable accommodations on a per semester basis. The College of Law does not have the authority to evaluate or grant disability accommodations without CDAR first submitting a recommendation. You may contact CDAR by:

- Calling 208-885-6307
- Emailing cdar@uidaho.edu

It is ultimately the student’s responsibility to seek a disability accommodation, and until an accommodation is approved by CDAR and Dean Dodge, no student will be entitled to receive any accommodations. To learn more about CDAR, visit its website at http://www.uidaho.edu/current-students/cdar. Moscow students may also visit CDAR in suite 127 of the Pitman Center. Please review the College of Law Catalog and Student Handbook for more information on the disability accommodation process.

Recording Class Sessions:

Students may not electronically record classes unless they have the express consent of the instructor, except where the Dean of Students has allowed recording as a disability accommodation pursuant to a recommendation by CDAR. Recording classes without the instructor’s express consent violates the Honor Code. Students recording classes as a disability accommodation must follow procedures set down by CDAR. Students who are unable to attend
class for reasons of illness or other exigencies must receive permission from the instructor before classes are recorded on their behalf. Contact the Law Library for recording equipment and information on recording procedures.

Civility
In any environment in which people gather to learn, it is essential that all members feel as free and safe as possible in their participation. To this end, it is expected that everyone in this course will be treated with mutual respect and civility, with an understanding that all of us (students, instructors, professors, guests, and teaching assistants) will be respectful and civil to one another in discussion, in action, in teaching, and in learning. Should you feel our classroom interactions do not reflect an environment of civility and respect, you are encouraged to meet with your instructor during office hours to discuss your concern. Additional resources for expression of concern or requesting support include the College of Law Dean of Students (jdodge@uidaho.edu), the University Dean of Students office and staff (885-6757), the UI Counseling & Testing Center’s confidential services (885-6716), or the UI Office of Civil Rights & Investigations (885-4285).

Learning Outcomes

1. You will be sensitized to the various ethical issues that arise in estate planning and understand how to address them.
2. You will learn about the client intake process and about drafting the engagement letter.
3. You will recognize the peculiar planning challenges posed by various sorts of clients. For example, the challenges of planning for someone with minor children are different than the challenges of planning for someone with adult beneficiaries.
4. You will understand the importance of building a comprehensive forms file and begin that process.
5. You will learn to draft a variety of complex legal documents including wills and trusts.
6. You will learn how to construct an estate plan and how to assess the quality of an existing estate plan.
7. You will learn about various specialized planning techniques such as how to plan for a disabled beneficiary or for a beneficiary with addiction problems.
8. You will learn how to conduct the administration of an estate.