I. Basic Course Information

A. Course Title and Number: Wills, Trusts & Estate Administration LEGL-126
B. New or Modified Course: Modified
C. Date of Proposal: Spring 2011
D. Sponsoring Department: Business & Public Service
E. Semester Credit Hours: 3
F. Weekly Contact Hours: Lecture: 3 Lab: 0
G. Prerequisites: Role of Paralegal LEGL-101
   (This prerequisite is for AAS students only – No prerequisite for Certificate students)
H. Laboratory Fees: None
I. Name/Email of Coordinator: Maria M. DeFilippis, Esq.
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II. Catalog Description

Prerequisite: Role of the Paralegal LEGL-101. This prerequisite is for AAS students only; no prerequisite for Certificate students. This course is a survey of basic wills, trusts and probate practice. Students will become familiar with the various methods of testamentary distribution and the format of probate administration. NJ probate law will be reviewed with emphasis on the initial preparation and drafting of basic documents in the field, including simple and living wills, formal and informal probate, and federal and state tax forms.

III. Statement of Course Need

In the area of wills, estates and trusts, the attorney practitioner is relying more and more upon paraprofessional staff to assist with daily practice. This course provides those students who have a career interest in this
legal area with the basic skills necessary to effectively assist practicing attorneys with the delivery of these specialized legal services.

IV. **Place of Course in College Curriculum**

A. The course is an elective in the following programs: Paralegal Studies, AAS Degree and Certificate.

B. This course will transfer to any school with a Paralegal Studies four year degree, which includes Montclair, Thomas Edison, and St. Elizabeth College in New Jersey. It will also transfer to any four year institution offering an ABA approved paralegal program of study.

V. **Outline of Course Content**

**Unit I**

The first half of the course will introduce the student to the area of wills in detail. Included will be a discussion of sources of law, types of property and forms of property ownership, New Jersey laws on intestate and testate succession, as well as the validity and drafting of both testamentary and living wills in New Jersey.

A. **Sources of Probate Law** (2 hours)
   1. Constitutional Law
      a. Federal
      b. N.J. State
   2. Statutory Law
      a. Federal
      b. N.J. State
   3. Case Law
   4. Conflicts of Law

B. **Basics of Estate Planning** (2 hours)
   1. Client Interview
      a. Personal data
      b. Asset/debt data
      c. Use of checklists
   2. Terminology
      a. Testate vs. intestate
      b. Decedent vs. testator/trix
      c. Administrator/trix VS. executor/trix
   3. Probate
      a. Formal VS. informal
      b. Probate VS. non-probate assets
   4. Administration
a. Domiciliary vs. ancillary
b. N.J. statutes

5. Participants and Their Duties and Functions
   a. Personal representative
   b. Attorney
   c. Paralegal

6. Probate Court
   a. Jurisdiction
   b. Function

C. The Concept of Property (3 hours)
   1. Types of Property
      a. Personal-tangible and intangible
      b. Real-land and fixtures
   2. Estates in Property
      a. Freehold-fee simple and life estate
      b. Leasehold-tenancy for years and at sufferance
   3. Forms of Property Ownership
      a. Severalty
      b. Joint tenancy
      c. Tenancy in common
      d. Tenancy by the entirety
      e. Community property
   4. Methods of Transfer of Property
      a. By deed
      b. By gift
      c. By will
      d. By statute
         1. foreclosure and judgment liens
         2. intestate succession

D. Laws of Succession (3 hours)
   1. Testacy
      a. Definition
      b. Proper procedures for execution of a will in N.J.
         1. signature of testator
         2. attestation of witnesses
         3. subscription of witnesses
         4. notary for self-providing will
      c. Types of wills
         1. formal
         2. holographic
         3. nuncupative
      d. Types of disposition of property
         1. devise
         2. bequest
3. legacy
4. residue or residuary estate
5. testamentary trust

e. Types of recipients
1. devisee
2. beneficiary
3. legatee
4. trustee
5. executor

2. Intestacy
   a. Definition
   b. N.J. succession laws
   c. Administration and distribution
   d. Types of successors
      1. heir
      2. next of kin
      3. lineal relatives
      4. collateral relations
      5. issue

E. Creating a Valid Will (3 hours)
1. Statutory Requirements of Validity
   a. Capacity
   b. Requirement of a writing
   c. Forms of testator's signature
   d. Witnesses
      1. number required
      2. capacity
      3. interest in will
      4. signature

2. Modification of an Existing will
   a. By act of testator
      1. codicil
      2. destruction
      3. creating a new will
   b. By ademption
   c. By operation of law
      1. lapse
      2. marriage or divorce

3. Contesting a Will
   a. Standing to contest
   b. Procedure
      1. by caveat
      2. by order to show cause
   c. Grounds
      1. improper execution of will
      2. competence of testator
3. undue influence
4. fraud
5. ambiguity

F. Preparing to Draft a Will (3 hours)
   1. Pre-conference Responsibilities
      a. Scheduling client
      b. Client letter
      c. Asset/debt list
   2. Conference Responsibilities
      a. General duties to client
      b. Explain various types of dispositions
      c. Explain differing roles of fiduciaries
      d. Compile data
         1. family information checklist
         2. familiy advisor checklist
         3. assets checklist
         4. liabilities checklist
         5. life insurance checklist
         6. important document checklists
   3. Post Conference Responsibilities
      a. Follow up letter to client
      b. Guidelines for will-drafting

G. Drafting a Valid Will (3 hours)
   1. Provisions and Their Wording
      a. Exordium clause
      b. Debts and funeral expenses clause
      c. Tax clause
      d. Specific bequests clauses
      e. Residuary clause
      f. Contingent trusts clause
      g. Appointing personal representative clause
      h. Naming trustees and guardians
      i. Testimonium clause
      j. Self-providing attestation
   2. Effect of Simultaneous Death Act
   3. Different Will Forms
      a. Outright distribution will
      b. Reciprocal disclaimer trust will
      c. Reciprocal marital deduction will
   4. Preparation of Will Based on Hypothetical

H. Living Wills (3 hours)
   1. Definition and Purpose
   2. Client Considerations
      a. Nutrition/hydration
b. CPR  
c. Organ donation  
d. Pregnancy and its effects  
3. N.J. Health Care Act  
   a. Basic principles of act  
   b. Responsibilities of health care providers  
   c. Types of directives allowed  
      1. proxy directive  
      2. instruction directive  
      3. advanced health care directive  
   d. Formalities of a living will  
      1. capacity  
      2. writing  
      3. execution before two witnesses  
      4. execution before a notary  
      5. revocation and modification  
      6. effective operation  
   e. Previous documents and their effectiveness  
      1. durable power of attorney  
      2. living wills executed before new act  

Unit II  

After a brief introduction into the law of trusts, their uses and format, the second half of the course will concentrate on estate administration, both formal and informal probate and intestacy. The student will examine and review all necessary forms and their preparation in hypothetical fact situations. Final classes will highlight federal and state tax laws, the preparation of various tax forms and their filing requirements.  

A. Trusts in General (2 hours)  
1. Definition  
   a. Legal title vs. equitable title  
   b. Types of property transferable to trust  
   c. Settlor/trustee/beneficiary/trust res  
2. Validity and Purpose  
   a. Enforceability  
   b. Intervivos vs. testamentary trusts  
3. Elements  
   a. Consideration  
   b. Format  
4. Settlor  
   a. Capacity  
   b. Right of revocation  
5. Trustee
a. Capacity
b. Duties
   1. use reasonable skill and diligence
   2. loyalty
   3. to take possession, protect and preserve res
   4. to account
   5. to collect accounts and pay debts
c. Methods and grounds for removal
   1. by settlor
   2. by renunciation of trustee
   3. by court removal
      • lack of capacity
      • breach of trust
      • commission of crime
      • absence from state
      • refusal to account or give bond
      • unreasonable failure to cooperate
d. Compensation for trustee
6. Beneficiary
   a. Identification by name
   b. Identification by description
   c. Identification by class
d. Assignability of trust income or res
e. Remedies vs. trustee
   1. suit for damages
   2. injunction
   3. specific performance
   4. suit for removal

B. Classification of trusts
1. Express Trusts (1 hour)
   a. Private vs. public trust
      1. cy pres doctrine
   b. Active vs. passive trust
      1. statute of uses
   c. Testamentary vs. intervivos trusts
2. Creation of Express Trusts (1 hour)
   a. Formal requirements
   b. Incomplete creation
3. Legal Restrictions on Trusts (1 hour)
   a. Restraints on marriage, divorce or religion
   b. Rule vs. perpetuities
   c. Illegal contracts
      1. avoidance of creditors
      2. commission of crime/tort
4. Drafting a Private Express Trust (1 hour)
   a. Identification of parties
b. Identification of trust property

c. Transfer of res to trustee

d. Distribution of income and principal

e. Duties, powers and compensation of trustee

f. Tax aspects

5. Revocable Intervivos Trusts (1/2 hour)
   a. Purpose and creation
   b. Advantages and disadvantages
   c. Pour over wills

6. Implied Trusts (1 hour)
   a. Resulting trusts
      1. method of creation
      2. purpose and types
      3. trust failures
   b. Constructive Trusts
      1. method of creation
      2. purpose and types
   c. Miscellaneous Trusts
      1. spendthrift trust
      2. clifford trust
      3. toten trust

7. Termination of Trusts (1/2 hour)
   a. Methods of termination
   b. Distribution of remaining res

C. Personal Representative (1 hour)

1. Types
   a. Executor
   b. General Administrator
   c. Administrator C.T.A.
   d. Administrator D.S.N.
   e. Ancillary Administrator
   f. Administrator ad prosecundum

2. Appointment
   a. Letters Testamentary
   b. Letters of Administration

3. Responsibilities and Duties
   a. Pre-probate duties
   b. Probate duties
   c. Post-probate duties

4. Powers under NJ Law

D. Probate Procedures

1. In General

2. In New Jersey (1 hour)
   a. Safe deposit boxes
b. Death certificates
   1. obtaining copies
   2. correcting errors
   3. supplementing

c. life insurance policies
   1. collection and forwarding to beneficiaries
   2. preparation and filing of form 712

3. Surrogates Court (1 hour)
   a. Jurisdiction
   b. Data sheets
   c. Filing application or complaint
      1. necessary information
      2. format
      3. attaching will and death certificate
      4. Situations in which Surrogate has no authority
         NJ Court Rules 4:80 thru 4:82

4. Probate with a Will (2 hours)
   a. Solemn vs. common form
   b. Necessary pleadings and their preparation
   c. Judgment

5. Probate Without a Will (Administration) (2 hours)
   a. General requirements
      1. death certificate
      2. list of assets
      3. list of next of kin
      4. effect of N.J.S.A. 3B:5-1
   b. Statutory order of acceptance
   c. N.J.S.A. 3B: 10-2
   d. Renunciations
   e. Affidavit in Lieu of administration
   f. Necessary pleadings and their preparation
   g. Judgment

6. Special Administration Problems (1 hour)
   a. After-discovered will
   b. Ancillary administration
   c. Substituted administration
   d. Appointment of guardians and trustees

7. Post Probate Procedures (1 hour)
   a. Bank accounts (existing and estate accounts)
   b. Transferring stocks and bonds
   c. Transferring motor vehicles and other personal property
   d. Collecting insurance proceeds
   e. Transferring real estate (L-9 waiver)
   f. Paying estate liabilities
      1. insufficient assets
   g. Inventory of assets
   h. Personal tax returns
1. prepare and file last income tax return of decedent
2. preparation and filing of fiduciary tax return (Form 1041-K-1)
   i. Order barring creditors
   j. Accounting
      1. formal (complaint, order to show cause)
      2. informal (consent to account and release)
   k. Distribution
      1. refunding bonds and releases

E. **N.J. Inheritance Tax** (2 hours)
   1. Classes of Beneficiaries and Their Tax Rates
   2. Exemptions From Tax
   3. Waivers
      a. Self-executing waiver (Form L-8)
      b. Real property tax waiver (Form L-9)
      c. Filing requirements
   4. Preparing the Return
      a. In general
         1. information and documents needed
         2. appraisals and evaluations
         3. filing requirements
      b. Schedule A-real property
         1. instructions for completion
         2. description and evaluation
         3. taxability
      c. Schedule B-personal property
         1. instructions for completion
         2. obtaining date of death values
         3. affidavits proving joint tenancies
      d. Schedule C-intervivos transfers
         1. instructions for completion
         2. gifts in contemplation of death
         3. revocable trusts
      e. Schedule D-allowable deductions
         1. instructions for completion
         2. types of deductions allowed by law
      f. Schedule E-beneficiaries
         1. instructions for completion
         2. degrees of relationship
   g. Summary
      1. computation of tax

F. **N.J. Estate Tax** (1 hour)
   a. Purpose
   b. Calculation
G. Federal Tax Considerations (3 hours)

1. In General
   a. Unified tax credit
   b. Gift taxation
      Form 709-its use and preparation
   c. Generation skipping transfers
   d. Marital deduction and Q.T.I.P. property
   e. Prior transfer credit

2. Preparing the Federal Estate Tax Return (Form 706)
   a. In general
      1. method and concept of taxation
      2. determining if an estate is taxable
      3. filing requirements
   b. Review of schedules A through R
      1. definitions and use of each
      2. items includable
      3. deductions allowable
      4. credit for state death taxes
   c. Necessary documents and attachments
      1. death certificate
      2. evidence of payment of state death taxes
      3. will, if exists
      4. proofs (Forms 712/valuations/joint tenancy affidavits)
      5. check for tax due

VI. Educational Goals and Learning Outcomes

A. Education Goals

Students will:

1. Produce written work that reflects critical and creative thought in drafting legal documents. (GE NJ 1)

2. Develop the ability to communicate clearly and logically, utilizing both verbal and written skills, in the researching and preparation of probate and estate documents. (GE NJ 1)

3. Utilize technology and specific legal software to research, analyze, and make decisions in the creation of appropriate probate and estate documents. (GE NJ 4)

4. Analyze and evaluate ethical problems in client fact patterns. (GE NJ 9)
5. Apply quantitative reasoning to interpret data and solve problems in preparing state and federal estate tax returns. (GE NJ 2)

B. Learning Outcomes

Upon completion of this course, students will be able to:

1. Utilize the technical legal vocabulary necessary for use in the field of wills, trusts and estate administration.

2. Identify the differences in property types and ownership and its significance to estate planning.

3. Classify and analyze the personal facts and data which must be elicited and gathered during the initial client interview.

4. Draft different types of basic wills, trusts and gifts, based on hypothetical factual situations.

5. Analyze various estate planning problems and alternative solutions based on a hypothetical factual situation.

6. Explain the available methods of distribution of a decedent’s property under N.J. law, including testacy and intestate succession.

7. Understand and apply the laws of New Jersey as to the validity of wills and the substantive requirements for proper execution of a will.

8. Identify ethical considerations in handling probate and estate matters, including distribution of devises and settling of estate accounts.

9. Differentiate between the roles of the various fiduciaries including executor, administrator, administrator C.T.A., administrator ad prosecundum, administrator D.B.N., ancillary administrator, guardian and trustee.

11. Describe the primary functions and role of the Surrogate and the Surrogate's Court in the administration of both testate and intestate estates.

12. Identify the basic steps in the probate of a will and the administration of a testate estate, including the preparation of various standard legal forms used in the process such as notice to beneficiaries, order to limit creditors, waivers, renunciations, inventory, settlements of accounts and refunding bonds and releases.

13. Identify the basic steps in the administration of an intestate estate, including the preparation of various standard legal forms such as Affidavit in Lieu of Administration, substitutionary administration, and the probate of an after-discovered will.

14. Prepare New Jersey and Federal tax filings such as Life Insurance Form 712, the N.J. Inheritance Tax Return, the NJ State and Federal Estate Tax Returns and the U.S. Fiduciary Income Tax Return, utilizing appropriate software and legal specific forms.

VII. Modes of Teaching and Learning

This course will employ the following methods of teaching:
A. lecture/discussion
B. legal software instruction
C. extensive utilization of specific legal practice and procedure forms
D. document preparation by students based on fact patterns

VIII. Papers, Examinations, and other Assessment Instruments

This course will employ the following methods of assessment:
A. Quizzes and examinations
B. Case Studies
C. Document preparation assignments based on fact patterns

IX. Grade Determinants

Written exams, class participation and attendance, and written assignments requiring the preparation of estate, probate and tax documents from fact patterns will be used to assess the students according to the general education goals and learning outcomes listed above.
X. **Text and Materials**

B. NJ Statutes and Forms will be placed on reserve in RVCC library and/or distributed in class
C. other internet-based and software-specific legal sources

XI. **Resources**

The course will require the use of a CATT room to present course-specific software and to access the web for state and federal forms.