

**WESTERN STATE UNIVERSITY
COLLEGE OF LAW**

**SYLLABUS, POLICIES, AND ASSIGNMENTS
2013 SUMMER SESSION
ESTATES, SECTION 497A
Dean C. SHEPPARD**

CLASS MATERIALS:

REQUIRED TEXT: Ira L. Shafiroff, **CALIFORNIA WILLS AND TRUSTS: Fundamental Principles, Ethical Considerations, and Moral Concerns** (2007 Thomson/West)

CALIFORNIA PROBATE CODE

RECOMMENDED: **UNIFORM PROBATE CODE and CALIFORNIA FAMILY CODE**

COURSE COVERAGE AND OPPORTUNITIES:

The course of Estates is a study of principles of law traditionally taught in separate courses on the law of Intestate Succession and Wills as one course and the law of Trusts as the other.

In the course on Property, you learned that titles to and interests in property may be transferred either during a transferor's lifetime (*inter vivos* transfers), or as of the time of the death of the transferor (testamentary transfers). We will encounter circumstances in this course that involve both *inter vivos* and testamentary transfers of titles to, or other interests in, property. An *inter vivos* transfer might result in the transferred property right not constituting a part of a decedent's testamentary estate. A testamentary transfer may be in the form of a devise or legacy under a will, or by operation of law under the law of intestate succession. We will explore circumstances where either an *inter vivos* or a testamentary transfer is made in connection with the creation of an express trust. We will also examine circumstances under which a trust may arise by implication (based upon a presumed intent due to the circumstances; e.g., a resulting trust), or as a matter of law to rectify a wrong (i.e., the constructive trust remedy).

The topics upon which we will focus most of our attention during this course are:

1. Intestate Succession
 - a. In General
 - b. Surviving Spouses or Surviving Domestic Partners
 - c. Intestate Estate not passing to Surviving Spouse or Domestic Partner
 - d. Per capita vs. By Representation inheritance
 - e. Parents, Children, Parent-Child Relationship (including non-marital children; adopted children; foster parents; stepparents)
 - f. Property attributable to a Predeceased Spouse
 - g. Halfbloods
 - h. Disclaimer/Renunciation
 - i. Escheat

- 2. Wills
 - a. Formal Wills
 - i. Intent
 - ii. Capacity
 - iii. Execution
 - iv. Witnesses
 - b. Statutory Wills and Form Wills
 - c. Holographic Wills
 - i. “material provisions” requirement vs. “material portions” requirement
 - d. What documents comprise a Will?
 - i. Introduction
 - ii. Integration
 - iii. Incorporation by Reference
 - iv. Facts of Independent Significance
 - v. Pour-Over Wills
 - e. Construction problems created by the time gap between Will execution (i.e., creation of a Will) and the death of the maker of the Will (the time at which a Will becomes effective). Until the death of the maker, a Will is an ambulatory document.
 - i. Abatement
 - ii. Ademption
 - iii. Lapse
 - f. Construction problems in general
 - i. Reading the Will as a whole
 - ii. Use of Extrinsic Evidence
 - 1. Is the Will ambiguous?
 - 2. Testator’s or Testatrix’s Circumstances and Behavior
 - 3. Testator’s or Testatrix’s Unattested Statements
 - iii. Correcting Mistakes including mistake in the validity of a subsequent testamentary instrument (Dependent Relative Revocation)
 - g. Revocation and Revival of Wills
 - i. Revocation by Instrument or Physical Act
 - 1. Revocation by Instrument
 - 2. Revocation by Physical Act
 - 3. Lost or Destroyed Wills
 - 4. Dependent Relative Revocation
 - 5. Revival
 - ii. Revocation by Operation of Law
 - 1. Omitted Spouse
 - 2. Omitted Child
 - 3. Dissolution of Marriage or Domestic Partnership
 - 4. Family Protection
 - a. Temporary possession of family dwelling
 - b. Exempt Property
 - c. Probate Homestead
 - d. Family Allowance

- iii. Revocation by change in property holdings
 - 1. Classifications of Gifts
 - 2. Ademption
 - a. By Extinction
 - b. By Satisfaction
 - c. CA Law: Securities
 - d. By Advancement
- iv. Limits on the Power to Revoke a Will
 - 1. Contracts to make or not to revoke a will
 - 2. Mutual Wills
 - 3. Joint Wills
 - 4. Accrual of cause of action and remedies
- h. Unworthy heir or beneficiaries
 - i. Killers
 - ii. Abusers
- i. Identifying testamentary beneficiaries
 - i. Generally
 - ii. Failure of Issue
 - iii. Class Gifts
 - iv. Lapse and “Anti-Lapse” Statutes
 - v. Simultaneous Death
- j. Identifying what the beneficiary is to receive
 - i. Exoneration
 - ii. Interest and Income accrued during administration
 - iii. After-acquired property
 - iv. Abatement
 - v. No Contest Clauses
 - vi. Testamentary Power and the “Widow’s Election”
- k. The Nature of Probate and Summary Procedures
 - i. CA recognition of the tort of intentional interference with expected inheritance [Read: *Beckwith v. Dahl*, 205 Cal.App.4th 1039, 141 Cal.Rptr.3d 142, 12 Cal. Daily Op. Serv. 4918, 2012 Daily Journal D.A.R. 5819 (4th Dist. Ct. of Appeal, 2012)]

3. Trusts

- a. Categories and elements required for creation:
 - i. Express, Inter Vivos or Express Testamentary Trusts
 - 1. Private Trusts
 - a. Trust intent of Settlor
 - b. Trust Property
 - c. Formalities
 - i. Capacity of Settlor
 - ii. Delivery
 - iii. Statute of Frauds
 - iv. Statute of Wills
 - v. Rule Against Perpetuities
 - d. Trustee
 - e. Beneficiary
 - i. Income Beneficiary
 - ii. Remainder Beneficiary
 - f. Lawful Purpose

2. Charitable Trust
 - a. Trust intent of Settlor
 - i. General or specific charitable intent
 - b. Trust Property
 - c. Formalities
 - i. Capacity of Settlor
 - ii. Delivery
 - iii. Statute of Frauds
 - iv. Statute of Wills
 - d. Trustee
 - e. The public or a segment of the public as beneficiary
 - i. An individual as a conduit through whom or which a public benefit flows.
 - f. Purpose
 - i. Lawful Purpose
 - ii. Charitable Purpose
 1. The Cy Pres Doctrine
 - a. General charitable intent is required
 - ii. Additional Categories re Private Trusts
 1. Revocable or Irrevocable Inter Vivos Trusts
 2. Living Trusts
 3. Spendthrift Trusts
 4. Trusts with spendthrift characteristics:
 - a. Discretionary Trusts
 - b. Support Trusts
 - c. Blended Trusts
 - iii. Trusts Created by Operation of Law
 1. Resulting Trusts
 - a. Trusts based on a presumed intent resulting from a particular set of circumstances
 - i. Failed creation of an express trust
 - ii. Excess trust property after expiration or termination of an express trust
 - iii. Purchase money resulting trust
 1. The presumption of a trust is overcome and a resulting trust does not exist if the transaction is either a gift or a loan
 2. Constructive Trust
 - a. An equitable remedy to force a person who has acquired title to property by, or as the result of, wrongful conduct to deliver that title to the person who should have the title.
- b. Modification or Termination of an Express Trust
 - i. Modification or Revocation by the Settlor
 - ii. Modification or Termination by the Settlor and all Beneficiaries
 - iii. Modification or Termination by all Beneficiaries
 1. *Clafin* Doctrine (Majority View)
 2. English View (Minority View)
 - iv. Modification or Termination without the consent of all Beneficiaries
 1. Reformation
 2. Trustee's power to invade trust corpus under judicial supervision

4. Estate and Trust Administration
 - a. Probating a Will
 - b. Contesting a Will
 - i. Grounds:
 1. Lack of testamentary capacity
 2. Undue Influence
 3. Fraud
 - ii. Preparing for the contest—The Role of the Attorney
 - iii. Issues that may arise re the testamentary estates of some Gay, Lesbian, or Transgendered Testators or Testatrixes.
 - c. Estate Administration
 - i. Marshalling Estate Assets
 - ii. Creditor Claims
 - iii. Fees
 - d. The Duty of Loyalty
 - e. The Duty of Care
 - f. Management Powers and Duties
 - i. Sale or Lease of Realty
 - ii. Operating a Business
 - g. Changing Conditions and Administrative Flexibility
 - i. The Deviation Doctrine
 - h. Duties to Multiple Beneficiaries: Principal and Income Accounting
 - i. The Duty to Account
 - j. Liability for Breach of Fiduciary Duty

In this course, you will be provided with opportunities to:

1. Enhance your analytical, problem solving, and related skills that you will use as an attorney either in transactional settings, or in dispute resolution settings, or both.
2. Develop a working knowledge of various principles of the law of CA regarding intestate succession, wills, and trusts; and in some instances, how a principle of CA law compares with the laws of other jurisdictions.
3. Enhance your oral communication skills and legal research and writing skills.

COURSE METHODOLOGY:

I utilize a combination of classroom methods of instruction to assist you in your efforts to achieve the objectives of this course. Those methods of instruction include: use of the lecture method; use of the “case and statutory deconstruction methods” of exploring and examining legal principles; use of the “Socratic method” of interaction to enable you to engage in self-assessment of your understanding of course material; “problem solving,” including group problem solving exercises; and role playing. Those methods of classroom interaction are an integral part of the active learning process in which it is important for you to engage. Please understand that a passive learning approach is not the best method by which to acquire the knowledge and skills necessary to successfully complete a law school course.

COURSE WEBSITE:

Additional course material, information, and practice exercises are and will be posted to the course website. You may enroll in the course website **at or after 9:00 a.m. on Friday, May 17, 2013**. To enroll in the course website:

1. Go to <http://webcourses.lexisnexis.com>.
2. Enter your Lexis identification number where indicated.
3. Click on the Browse Course Catalog link.
4. Click on the link for Western State.
5. Click on the "Enroll" button to the right of the course name: Estates #112176
6. Enter the access code where indicated. The access code is: SHEPPARDESTSU13.
7. Click the submit button.

Please notify me if you encounter any problem enrolling in the course website.

EXAMINATIONS AND GRADING:

There will be one on campus, graded, closed book/closed notes, examination in this course. You will not be allowed to use books, notes, or other reference material during the final examination that will be administered to you as part of this course.

Course Final Exam

A three-hour final exam will be administered to you. The final exam will be comprised of a set of thirty objective questions (allotted time—one hour), **and either** two one-hour essay problems; **or one** two-hour essay problem.

The maximum number of points that you can earn on the final exam is 100. You will earn one point for each correct answer to the set of objective questions. Thus, you can earn a total of 30 points by correctly answering all of the objective questions. The maximum number of points that you can earn by correctly answering the essay problem or problems is 70.

The score that you earn on the final exam will be used to compute your course grade.

Grading

Your academic performance in this course will be measured and recorded using a numeric grade system on a scale of 0.0 to 4.0. Please also read that portion of the current edition of the Student Handbook regarding the "Grading System and Student Honors."

A final exam score of 90 or better will earn you the course grade of 4.0. A score of 89 will earn you a grade of 3.9; 88 will earn you a grade of 3.8 and so forth. Hence, a score of 80 points will earn you a grade of 3.0; a score of 75 will earn you a grade of 2.5; and a score of 70 will earn you a grade of 2.0.

Practice Exams, Issue Spotting Exercises, Etc.

I encourage you to include exam writing, or exam taking, exercises **as part of your daily study habits**. The time devoted to any such exercise can range from about ten minutes to an hour or more.

I am amenable to reading and critiquing **practice writing exercises** to the extent that time will permit. I encourage you to email to me issue spotting or other exam writing **exercises** that you wish for me to critique for your benefit.

OFFICE HOURS, OFFICE TELEPHONE NUMBER, E-MAIL ADDRESS, FAX NUMBER:

I encourage you to communicate with me on a regular basis. If you are not able to meet with me during my office hours during a particular week for any reason whatsoever, please do not hesitate to communicate with me by e-mail, telephone, or fax.

I will be available for office consultations by appointment. I expect to maintain the office hours noted below **beginning** Tuesday, June 4, and **ending** Tuesday, July 23.

Unless you are advised to the contrary, my **office hours** during the 2013 Summer Session will be from 3:00 p.m. until 6:00 p.m. on Tuesdays and Thursdays. If my schedule permits, I am amenable to meeting with will a student or a group of students after the conclusion of a class session if I receive a request from a student to do so.

You are required to “sign-up” for office appointments in the Faculty Appointments Book maintained by the faculty secretarial staff. Office appointments will be conducted in 15-minute blocks of time. You may reserve a maximum of two consecutive blocks of time (i.e., one-half hour) per office appointment. Appointments for two or more students at a time are encouraged.

You may contact me via e-mail by addressing your communication to csheppard@wsulaw.edu.

You may contact me via telephone by calling (714) 459-1152. The faculty fax number is (714) 525-2786.

ATTENDANCE, CLASS PARTICIPATION, DECORUM, AND SEATING:

Attendance in class is mandatory. If you miss more than six hours of class sessions, you will be subject to being administratively withdrawn from the course. If you have not already done so, you should study the appropriate portions of the current edition of the “Student Handbook” regarding attendance requirements.

Due to possible differences in the manner in which course materials are covered in class, you are **not** permitted to “make-up” a missed class by attending another section of this course regardless of whether the other section is taught by another Professor, or by me.

To be successful in law school, you must be an active learner. You will gain maximum benefit from class attendance only if you have engaged in a proper preparation for class. Proper preparation for class by you will include, but not be limited to: proper time management; engaging in a critical reading and re-reading of text assignments; briefing case opinions included in the assigned reading; critically reading and re-reading text notes and footnotes; analyzing problems included in the assigned reading; critically reading court opinions of the cases cited in the text notes or text problems; reviewing and editing your class notes from prior class sessions; personally preparing and reviewing study aids (e.g., sections of your personally prepared course outline, flash cards, and/or flow charts); reading and re-reading appropriate segments of hornbooks, treatises, or commercial study aids; and including some form of exam taking exercise as part of your daily study habits.

You should be prepared to participate in class on a regular basis. You should be an active listener in class at all times when you are not speaking in class. Being an active listener includes assessing whether you understand, or you do not understand, comments being made by me, or by one of your classmates. If you conclude that you do not understand the comments, you should raise your hand to be recognized, and when recognized by me, you should voice your questions. If you understand the comments, you should then assess whether you agree or disagree with those comments. More importantly, you should assess the reason or reasons for your agreement or disagreement. Please do not hesitate to seek recognition to voice your questions or comments along those lines as well.

If you are not prepared for a particular class session, please so notify me prior to the start of that class session. You will not be penalized for being unprepared for a class session **unless** you have been unprepared for two prior class sessions. If you have not been prepared for two prior class sessions, I may regard you as being absent from the third class session for which you are also unprepared. Furthermore, I may regard you as being absent from any subsequent class session for which you are not prepared. Of course, you will not be regarded as being unprepared for class if you make a bona fide, but erroneous, attempt at analyzing a particular question or point that is a subject matter of discussion during a class session.

You are expected to maintain proper decorum when entering the classroom, while attending and participating in each class session, and when departing the classroom.

A seating chart will be circulated during the initial class session.

Each class session from 6:30 PM to 8:00 PM and from 8:15 PM to 9:45 PM is a separate class session. Hence, we will convene for two class sessions each time we meet during the summer session. I will circulate attendance sheets for each class session (i.e., two attendance sheets each Tuesday and Thursday upon which the Estates course will be conducted during the 2013 summer session).

DISABILITY SERVICES STATEMENT

Western State College of Law provides accommodations to qualified students with disabilities. The Disability Services office assists qualified students with disabilities in acquiring reasonable and appropriate accommodations and in supporting equal access to services, programs, and activities at Western State College of Law.

To seek reasonable accommodations, a student must contact Kelley Jones-Horwood, Disabilities Services Coordinator whose office is in the Third Floor Faculty Suite. Mrs. Jones-Horwood's phone number and email address are: (714) 459-1159; khorwood@wsulaw.edu. When seeking accommodations, a student should notify Mrs. Jones-Horwood of their specific limitations and, if known, their specific requested accommodations. Students who seek accommodations will be asked to supply medical documentation of the need for accommodation. Classroom accommodations are not retroactive, but are effective only upon the student sharing approved accommodations with the instructor or professor. Therefore, students are encouraged to request accommodations as early as feasible with the Disability Services Coordinator Kelley Jones-Horwood to allow for time to gather necessary documentation. If you have a concern or complaint in this regard, please notify Mrs. Jones-Horwood or please so notify me in my capacity as Associate Dean of Students. Complaints will be handled in accordance with the College of Law's "Policy against Discrimination and Harassment."

READING ASSIGNMENTS:

To be properly prepared for class sessions, you must complete an appropriate, critical reading and study of the assignments that are listed in the following “Table of Reading and Study Assignments.”

	DATE	SUBJECT(S)	TEXT PAGES	WEB COURSE & OTHER DOCS
01	06-04-13	Intestate Succession: Generally; Surviving Spouses & Surviving Domestic Partners; Children and other lineal descendants;	99 - 177	Introductory and General Reference Material; and Intestate Succession Docs 1 - 7
02	06-06-13	Intestate Succession: Property Attributable to a pre-deceased spouse; Halfbloods; Collateral Heirs; Unworthy Heirs; Aliens; Escheat Wills – In General; Testamentary Intent and Testamentary Capacity; Insane Delusions;	177 – 194 and 1 – 8 195 - 232	Intestate Succession Docs 8 - 10 Wills: Introductory Material Docs 1 - 6
03	06-11-13	Wills – Fraud; Undue Influence;	232 – 305	
04	06-13-13	Wills – Mistake; Components of the Will (Integration, Incorporation by Reference, Facts of Independent Significance); Formalities of Execution: Attested Wills	306 - 375	Wills: Components, etc. Docs. 1 – 4 and Doc. 8
05	06-18-13	Wills – Formalities of Execution: Holographic Wills; Statutory Wills; Interested Witnesses; Conditional Wills. Choice of Laws. Codicils. Revocation by Instrument or Physical Act.	375 - 438	Wills: Components, etc. Docs. 5 – 8; Wills: Revocation, etc. Doc. 1
06	06-20-13	Wills – Revocation by Operation of Law: Omitted Spouse; Omitted Child; Dissolution of Marriage or Domestic Partnership; Family Protection. Revocation by Change in Property Holdings: Ademption	439 – 504	Wills: Revocation, etc., Docs. 1 – 8 Wills: Identifying Beneficiaries Doc. 1
07	06-25-13	Wills – Contracts to make or not make a will; Unworthy heirs or beneficiaries	505 – 569	
08	06-27-13	Wills – Identifying beneficiaries & what they are to receive: In General; Lapse & the “Anti-Lapse” Statute; Simultaneous Death; Exoneration; Accrued Income & Interest; After-Acquired Property; Abatement; No Contest Clauses; Property rights; Probate and Administration	570 – 626 52 - 58	Wills: Identifying Beneficiaries, etc., Docs. 1 – 10 <i>Beckwith v. Dahl</i> , 205 Cal.App.4 th 1039, 141 Cal.Rptr.3d 142 (Ct. of Appeal 4 th Dist., 2012)
09	07-02-13	Private Trusts	627 – 690	Trusts: History, etc., Docs. 1 – 7
10	07-04-12	INDEPENDENCE DAY – NO CLASS	#####	#####

11	07-09-12	Charitable Trusts, Resulting Trusts, and Constructive Trusts	691 – 755	Trusts: History, etc., Docs. 6 – 7 and docs in the trusts folder re Charitable Trusts, Resulting Trusts, and Constructive Trusts
12	07-11-12	Restraints on Alienation, Spendthrift Trusts, Trusts with spendthrift qualities	756 – 811	Docs in the Trust folder re Restraints on Alienation; CA Civ. Code §§710 and 711
13	07-16-12	Fiduciary Duties	812 – 880	Docs in the Trust folder re a Trustee's Duties
14	07-18-12	Fiduciary Duties, Powers, and Liability to 3 rd Persons. Modification and Termination of Trusts	880 - 958	Docs. In Trust folder re a Trustee's Duties, Powers, etc. & folder re Modification and Termination of Trusts
15	07-25-13	FINAL EXAM		