

Western State University College of Law

***Estates §497B***

Fall 2013

Syllabus & Policies

Professor Cheyaña L. Jaffke

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Office Hours: I will have NO office hours after the last day of class.

Course Objectives:

1. To introduce students to the substantive area of donative transfers of property through the creation of trusts, wills and other estate planning devices.
2. To expose students to the formalities of will and trust drafting.
3. To prepare the student to be able to analyze the powers and fiduciary duties of the trustee and executor.
4. To study court enforcement and interpretation of estate planning documents.

According to the State Bar of California in the area of Wills and Succession, applicants should be familiar with the following provisions of the California Probate Code and understand California law in the specific areas noted:

Division 2. General Provisions

Part 1. Effect of Death of Married Person on Community and Quasi-Community Property, Sections 100-103

Part 3. Contractual Arrangements Relating to Rights at Death, Sections 140-147, 150

Part 5. Simultaneous Death, Sections 220, 222-224

Part 6. Distribution Among Heirs or Beneficiaries, Section 240

Division 6. Wills and Intestate Succession

Part 1. Wills

Chapter 1. General Provisions, Sections 6100, 6101, 6104, 6105

Chapter 2. Execution of Wills, Sections 6110-6113

Chapter 3. Revocation and Revival, Sections 6120, 6121, 6123

Part 2. Intestate Succession, Sections 6400-6402

Part 3. Family Protection

Division 11. Construction of Wills, Trusts and Other Instruments

Part 1. Rules of Interpretation of Instruments, Sections 21105, 21109, 21110, 21137

Part 6. Family Protection: Omitted Spouses and Children

Chapter 2. Omitted Spouses, Sections 21610-21612

Chapter 3. Omitted Children, Sections 21620-21623

This course is not a bar preparation course. However, I expect that you will gain sufficient knowledge that when it comes to bar preparation for this topic, it should be easy for you.

### Methodology:

This course will use two methods of learning:

1. *The problem method.* Your textbook contains problems throughout the chapters. Unless otherwise indicated, all problems are assigned, but may not be discussed in class. All students are required to prepare written answers to the problems.
2. *The case method.* Your textbook also contains cases, notes and questions. You are responsible for reading and briefing all assigned material.

### Required Texts:

Casebook: Ritchie, Alford and Effland's Estates and Trusts, (latest edition) By Dobris, Sterk, and Leslie University Casebook Series

You must have access to the California Probate Code online during class or you must purchase a copy of the 2013 code.

### Recommended Texts:

Understanding Trusts and Estates, (3rd edition), by Roger W. Andersen. Matthew Bender Publishing.

Wills, Trusts and Future Interests, by Lawrence H. Averill, Jr. Black Letter Series. West Group Publishing.

### Attendance

Attendance is required for all classes. A student with more than **two (2)** absences will be academically disenrolled from the course and will receive a grade of "W" or "F" on their transcript as provided under the applicable attendance policies in your Student Handbook. It is your responsibility to keep track of the number of your absences, so don't ask my secretary, the Records Office or me how many absences you have. Because this course is bar-tested, I will not waive or excuse any absences.

The courts, employers, clients and I expect punctuality. Students who arrive after class has begun will be the first students called on for that day.

Class Participation and Professionalism:

Class participation is required of all students. Your preparation and participation is necessary to advance the discussion. Class participation consists of being prepared when called upon, having *written* answers to the assigned problems and written case briefs (not book briefs), and bringing the casebook and probate code to class. Electronic problem answers and case briefs are acceptable.

Students who answer a problem incorrectly will NOT be penalized. Students who do not attempt to answer a problem will be penalized. You will receive points over the course of the semester for your class participation. It is possible to have **NEGATIVE** points for class participation.

I will call on students randomly by pulling the name on a card out of a box. A student who is called upon may receive 1 point (+1) for adequately briefing the case or answering the problems. To be adequate, the student must be able to answer all questions without prompting or assistance from either me or co-counsel (your classmates). A student who requires minimal prompting or assistance will get 0 points. A student who requires more than minimal prompting or assistance will lose 1 point (-1). Also a student who is unable to define a term in the case or fails to pull and brief the case(s) attached to the problem will also lose 1 (-1) point. If after briefing a case or answering a problem, you would like to know what you received, you may ask immediately after class or send me an e-mail within 24 hours of the class.

Students who are unprepared when called upon will lose 10 points (-10) in class participation for the first instance during the semester. A student who is called on and is unprepared more than once in a semester will receive an absence for each time the student is not prepared after the first time in addition to the loss of 10 (-10) points each time. This absence counts towards your total number of absences and may result in your academic dismissal from the course.

You may also receive one point (+1) for participating in classroom discussion by regularly answering questions that are open for the entire class. You may also lose one point (-1) if your participation is disruptive and not helpful, such as wisecracking.

Do not assume that problems, questions and/or cases will be covered in the order in your casebook or syllabus. If there is a case or other reference cited in your problem or question, you are responsible for reading it prior to class and telling the class the impact it has on your problem or question. If you fail to pull and read the reference attached to your problem / question, you will lose one point (-1). Additionally, you must prepare a written brief for your classmates that explains the impact of the material on the answer you gave and submit it via the online classroom within 24 hours of the class ending. If you fail to do so within the 24 hour grace period, then you will lose 2 points (-2).

Much to the disappointment of many people, I am not able to read minds. That means that if you do not understand the material it is YOUR responsibility to ask questions. You should not wait until the end of the semester to tie all of your loose ends together. If you have question(s), are unclear on something in class, you may contact me via e-mail at [chjaffke@wsulaw.edu](mailto:chjaffke@wsulaw.edu) or [taxprof920@yahoo.com](mailto:taxprof920@yahoo.com). Or you can schedule an appointment with me. I am on campus frequently, so you should stop by and see if I am in. Please knock, because a closed door does not always mean I am not here.

### Law Firms

At the first class, every student will be placed into a law firm. Each week, the managing partner of the law firm will assign the responsibilities of the reading and problems among the law firm's partners. The managing partner's responsibilities rotate on a weekly basis in alphabetical order within the law firm.

Managing partner's responsibilities include but are not limited to:

- Assigning who briefs which case in class
- Assigning who presents which problems in class
- Assigning responsibility for typing up of assignments that will be turned in
- Turning in any assignments **BEFORE** class starts
- Making sure an absent partner is informed about what he or she missed in class
- Collecting handouts for the entire law firm and distributing them within the law firm
- Assuring that each present partner signs in on the sign-in sheet
- Informs Prof. Jaffke of a partner absent without notice to the law firm
- Communicating with Prof. Jaffke about problems within the law firm

Associate partner's responsibilities include but are not limited to:

- Satisfactorily completing work assigned by the managing partner
- Communicating with the managing partner regarding your absence and solution to who will participate in class on your behalf

### REWARD

Each law firm will earn points toward a prize selected by the law firms on the first day of class. **LAW FIRM POINTS DO NOT IMPACT YOUR GRADE.**

Office Hours:

**Mondays 2:30 – 5:30** ... walk-ins welcome

**Mondays 5:30 – 6:15** ... appointment and Estates students only

**Tuesdays 12:15 – 2:15** ... walk-ins welcome

If these times do not fit into your schedule, I am happy to meet with you at another time and location that is mutually acceptable.

My policy is an open-door policy even when the door is closed (Fiona may be hanging out in the office.) It is acceptable to interrupt my meals, class preparation, day dreaming, etc. If I am not available at that time, because of other faculty business, I will schedule something for you.

Examinations and Grading:

All students will receive a numeric grade for the course. You will have the rare opportunity to experience democracy in the dictatorship of Estates. You will choose how you want to be graded. You will vote in class on Monday, August 26, 2013. The majority decides. The options are:

- Final exam and class participation only
- Final exam (50%), midterm (50%) & class participation
- Final exam (50%), midterm (40%), other assignments (10%) & class participation.

The final exam will be a three-hour examination. The exam will be a closed book exam, which means that you will not be able to bring anything into the exam except a pen or your laptop. The exam is intended to mock a bar exam question or questions. To prepare for your exam, you should review sample wills and trust questions that have been on the California Bar. Copies are available on reserve at the library. The exam may consist of multiple choice and / or essay questions. I will provide more information about the final exam by November 6, 2013.

DropBox

I use drop box to upload the images displayed during class from my iPad. These things include any math we do in class or adjustments made to handouts. If you do not have an account with drop box, you can sign up for one free. You must then send me an e-mail requesting that I invite you to drop box. You will then receive an invitation to join in the community property folder of drop box.

### Service Dog

Please be aware that I have a service dog. She may or may not come to class. Please do not attempt to feed or pet the dog if you see her without asking my permission first. She is a working dog and not a family pet. She is a puppy right now and in training, so if she comes to class, she will be crated for her protection.

If you have a fear of dogs or are allergic, please make arrangements to speak with me so that we can find the best possible solution.

### Reading Assignments:

These reading assignments do **NOT** correspond to a class session. You should always be at least 60 pages ahead of where we ended the last class. For example, if we end class around page 90, you should be prepared (AT A MINIMUM) through page 150. This will allow the class to either speed up or slow down depending upon its understanding of the material.

Students should be prepared to discuss all cases, problems and questions. I expect you to have written answers for the problems and questions listed. \*When answering questions / problems, if it refers you to a particular case or law review article, you are expected to know how that reference impacts the answer to the question / problem.

***MAKE SURE TO APPLY RELEVANT CALIFORNIA LAW TO ALL PROBLEMS***  
*Generally, we will only learn the Uniform Probate Code and the California Probate code.*

### Read Chapter one

Brief all cases

Answer Questions

#1 & #3 on page 8

#4 on page 22

#7 on page 23

# 1 & #2 on page 27

#1 & #4 on page 32

#1 on page 63

Answer problems

# 1 & #2 on page 27

#3 on page 28

# 2 & #3 on page 34

## Read Chapter twelve

Brief all cases

Answer Questions

#1 on page 992

Law Firm Assignment (more information in class)

#5 on page 993

## Read Chapter two

You may skip

pages 132 – 135 (Start with Estate of Burden)

pages 142 (starting at D) to 147 (start at section VII)

Brief all cases

Pay special attention to the chart of consanguinity on page 71

Answer questions

#1 &amp; #2 on page 114

#1 on page 151

Answer problems

# 1 &amp; #2 on page 75

On pages 90-91

On page 94

#1 - #5 on page 99

On pages 108-109

#1 &amp; #2 on page 142

#1 on page 154

#1 &amp; #2 on page 163

Law Firm Assignment (more information in class)

#2 on page 154

## Read Chapter 4

Brief all cases

Ignore non-UPC and CA law, except the NY law on page 238 &amp; skip 2-603(c)

Problems

#1 &amp; #2 on page 239

Page 249-250

Page 268

#1 &amp; #2 on page 275

#1 - #5 on page 277

#1 &amp; #2 on page 290

#1 on page 302

#2 &amp; #3 on page 303

Page 309

#1 &amp; #2 page 323

Page 332

#3 on page 345

Page 346

Page 359  
Page 368  
#1 & #2 on page 369  
#1 & #2 on page 377  
#1 & #2 on page 383  
#1 - #3 on page 388

Questions

#1 & #4 on page 287  
#2 on page 290  
#3 on page 395

Law Firm Assignment

Problems on page 304-305

Read Chapter 5

Brief all cases

Pull, read and brief the CA case Estate of Sarabia (dealing with undue influence)

Questions

#1 on page 423  
#4 on page 424  
#3 on page 436-437  
#1 on page 456  
#1 on page 465

Problems

#1 & #2 on page 442  
# 1 & # 2 on page 470  
Page 489 – 490

Law Firm Assignment

Barnes Case

Read Chapter 7

Read pages 519-548 stopping at II

Read pages 671 -696 stopping at IV

Brief all cases

Questions

#1 on page 539  
#2 on page 674

Problems

#1 on page 539  
# 2 - #4 on page 540  
#1 & 32 on page 684



Law Firm Assignment  
#4 on page 684

### Chapter 13

Start on page 1041  
Brief all cases

#### Questions

#1 & #4 on page 1046  
#1 on page 1051  
#1 on page 1064  
#1 & #2 on page 1085  
#1 on page 1099  
#2 on page 1107

#### Problems

Page 1079

### Chapter One Study Guide

After reading chapter one, you should be able to define the following terms and concepts. If you cannot determine the meaning from the context, then you should make use of your reference materials or a legal dictionary. You should also be able to answer the questions provided.

Define:

1. antimiscegenation
2. in terrorem clause
3. testator
4. testate
5. intestate
6. intestate succession
7. devise
8. bequest
9. legacy

10. probate

11. gift

For every case you read, be able to answer the following question:  
What is the authority of this case in my jurisdiction?

Answer the following questions.

1. What is the role of the lawyer?
2. Is there a right to inherit from one's parents?
3. When does a fiduciary relationship exist?
4. What three things are required for a valid gift?