

Western State University College of Law

Estates §497B

Fall 2016

Syllabus & Policies

Professor Cheyana L. Jaffke

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Phone Number: (714) 459-1138
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, (4th 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 2016 code.

Recommended Texts:

Understanding Trusts and Estates, (latest 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 AND 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

The points earned during law firm assignments will be shared with the law firm members. At the end of the semester, each member of the law firm will "pay" the other members of the law firm. Law firm members who do not do their share of the work will be penalized and not allocated points.

Office Hours:

Tuesdays: 3:00 – 5:30 p.m.

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 with you.

Examinations and Grading:

All students will receive a numeric grade for the course. The final exam is 100% of your grade. It will be worth 100 points. 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 16, 2016.

DropBox

I use drop box to upload the images displayed during class from my iPad or the overhead projector. 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 Estates 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.

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.

DISABILITY SERVICES STATEMENT:

Western State College of Law provides accommodations to qualified students with disabilities. The **Disabilities** 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 Senior Assistant Dean Donna Espinoza, Student Services Director and Disabilities Services Coordinator, whose office is in the Students Services Suite 119. Dean Espinoza's phone number and email address are: (714) 459-1117; despinoza@wsulaw.edu. When seeking accommodations, a student should notify Dean Espinoza of her or his specific limitations and, if known, her or his 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 Dean Espinoza to allow for time to gather necessary documentation. If you have a concern or complaint in this regard, please notify Dean Espinoza; or please notify Associate Dean of Students Charles Sheppard at csheppard@wsulaw.edu or (714) 459-1152. Complaints will be handled in accordance with the College of Law's "Policy against Discrimination and Harassment."

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 NOT learn the Uniform 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 & #2 on page 114

#1 on page 151

Answer problems

1 & #2 on page 75

On pages 90-91

On page 94

#1 - #5 on page 99

On pages 108-109

#1 & #2 on page 142

#1 on page 154

#1 & #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** & skip 2-603(c)

Problems

#1 & #2 on page 239

Page 249-250

Page 268

#1 & #2 on page 275

#1 - #5 on page 277

#1 & #2 on page 290

#1 on page 302

#2 & #3 on page 303

Page 309

#1 & #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

ABA Standard 310. DETERMINATION OF CREDIT HOURS FOR COURSEWORK

(a) A law school shall adopt, publish, and adhere to written policies and procedures for determining the credit hours that it awards for coursework.

(b) A “credit hour” is an amount of work that reasonably approximates:

(1) not less than one hour of classroom or direct faculty instruction and two hours of out-of-class student work per week for fifteen weeks, or the equivalent amount of work over a different amount of time; or

(2) at least an equivalent amount of work as required in subparagraph (1) of this definition for other academic activities as established by the institution, including simulation, field placement, clinical, co-curricular, and other academic work leading to the award of credit hours.

Interpretation 310-1

For purposes of this Standard, fifty minutes suffices for one hour of classroom or direct faculty instruction. An “hour” for out-of-class student work is sixty minutes. The fifteen-week period may include one week for a final examination.

Interpretation 310-2

A school may award credit hours for coursework that extends over any period of time, if the coursework entails no less than the minimum total amounts of classroom or direct faculty instruction and of out-of-class student work specified in Standard 310(b).

This standard requires for every one hour in the classroom, you must spend at least two (2) hours of out of classroom preparation. For a three (3) unit course, you should expect to spend six (6) hours a week at a minimum preparing for class. This preparation includes reading and briefing cases, preparing written answers to the problems, working within your law firms on assignments and any additional assigned work: such as memorizing the definition of a gift. Please note that you do not need to spend all six hours at once. You can spend two hours one day, two hours with your law firm and another two hours reading and briefing cases. This standard is the ABA minimum, it is NOT the Professor Jaffke minimum. Given my experience teaching this class, please expect to take about 10 hours a week.

Argosy University
Institutional Learning Outcomes:

1. Analytical Reasoning

Analyze issues objectively, interpret and synthesize data and ideas, and develop feasible, flexible, and creative solutions to real world problems

2. Effective Communication

Identify audiences, assess information provided, interpret needs, and present relevant information using appropriate written, oral, and listening skills and media to meet the needs of the situation

3. Information Competency

Gather, evaluate, and ethically use information from a variety of relevant technological and library resources to make decisions and take action

4. Interpersonal Effectiveness

Develop individual and group interpersonal skills to improve and foster participation and interaction critical for achieving individual and group goals

5. Personal and Professional Integrity and Ethical Behavior

Demonstrate a multi dimensional awareness of individual and social responsibility to act ethically and with integrity in a diverse, global society.

6. Professional Competence

Apply skills appropriate to program objectives and employ critical reasoning to contribute to one's field and profession

Western State College of Law – Programmatic Learning Outcomes

Western State College of Law’s curriculum is designed so that every student achieves a level of competency prior to graduation in each of the eight Programmatic Learning Outcomes listed below:

(1) Doctrinal Knowledge

Students will demonstrate knowledge of substantive and procedural law in the core curriculum subjects, including Contracts, Criminal Law, Criminal Procedure, Torts, Real Property, Business Association, Evidence, Civil Procedures, Constitutional Law, Estates, Community Property, Remedies, and Professional Responsibility.

(2) Practice Skills

Students will demonstrate the development of other law practice skills. Each student’s chosen outcomes within this category will be varied based on the student’s particular interests, coursework and work experiences. They may include, but are not limited to, the following topics: oral presentation and advocacy; interviewing; counseling; client service and business development; negotiations, mediation, arbitration, or other alternate dispute resolution methods; advanced legal research and writing (excluding purely academic papers and the first four units earned in introductory first-year legal research and writing class); applied legal writing such as drafting contracts, pleadings, other legal instruments; law practice management or the use of technology in law practice; cultural competency; collaboration or project management; financial analysis, such as accounting, budgeting project management, and valuation; cost benefit analysis in administrative agencies; use of technology, data analyses, or predictive coding; business strategy and behavior; pre-trial preparation, fact investigation, such as discovery, e-discovery, motion practice, assessing evidence, or utilizing experts; trial practice; professional civility and applied ethics; a law clinic that includes a classroom component; or a legal externship that includes a classroom component.

(3) Legal Analysis

Students will demonstrate the ability to identify the factual and legal issues implicated by a fact pattern and to appropriately use cases (including identifying the salient features of an appropriate precedent case, identifying legally significant similarities or differences between the precedent case and a fact pattern and explaining why those are legally significant) and rules (including the ability to connect legally significant facts in a fact pattern to the rule) to predict how a court would decide the issue. Students will also demonstrate the ability to identify and evaluate the public policies of a precedent case or rule, and be able to evaluate how public policy can impact the application of a rule to the legal issue.

(4) Legal Research

Students will demonstrate the ability to locate relevant legal authority using a variety of book and electronic resources, and to properly cite to such legal authority.

(5) Communication

Students will demonstrate the ability to communicate both orally and in writing in a manner appropriate to a particular task to effectively convey the author or speaker's ideas. This includes audience sensitivity in written and oral communication (the ability to adopt a tone, style and level of detail appropriate to the needs, knowledge and expertise of the audience); and written communication basic proficiency (the ability to use the conventions of grammar, spelling, punctuation, diction and usage appropriate to the task and sufficient to convey effectively the author's ideas).

(6) Advocacy of Legal Argument

Students will demonstrate the ability, in both oral and written formats, to evaluate the legal, economic and social strengths and weaknesses of a case and use case and statutory authority as well as public policy to persuade others. Making policy-based arguments includes the ability to identify and evaluate the public policies of a precedent case or rule and their implications, and be able to assert such appropriate arguments to support a particular application or distinction of a precedent case to a legal controversy or a particular resolution of the application of a rule to the legal controversy.

(7) Client Sensitivity and Cultural Competency

Students will demonstrate an awareness of clients' needs and goals, including a sensitivity to clients' background and circumstances (including, but not limited to, socio-economic, gender, race, ethnicity, educational, disability and/or religious background(s)), the ability to make decisions that reflect an appropriate focus on those needs and goals, and awareness that cultural issues may affect the relevance of facts and application of the law.

(8) Legal Ethics

Students will demonstrate the ability to identify ethical issues in law practice contexts and make appropriate decisions to resolve such issues.

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?