

WESTERN STATE UNIVERSITY  
COLLEGE OF LAW

SYLLABUS, POLICIES, AND ASSIGNMENTS  
2018 SPRING SEMESTER  
WILLS AND TRUSTS DRAFTING  
PROFESSOR C. JAFFKE

## **YOU MAY NOT ENROLL IN THIS COURSE UNLESS YOU HAVE COMPLETED THE ESTATES COURSE.**

### **CLASS MATERIALS:**

#### **REQUIRED TEXT**

**Do not purchase a text until after the first class.** If you already have, please see if you can return it. We will discuss the book at the first class. There is a book at the bookstore, but wait until after our first class to purchase it.

You will also need access to the California Probate Code. You may use a California Probate Code book or be able to access the Code on your computer during class.

### **COURSE COVERAGE AND OPPORTUNITIES:**

The course of Wills and Trust Drafting provides students with the opportunities to review various doctrines learned in the courses of Property and Estates and to apply that knowledge to study various techniques concerning the counseling of clients regarding estate planning, and the drafting of various types of estate plan documents with a focus on the drafting of wills and express trusts.

### **SOME GENERAL PRINCIPLES REGARDING THE DRAFTING OF TRUSTS AND WILLS**

#### **Goals**

The goals of drafting non-adversarial, legal documents are:

- Use of language in a manner that is understandable to the reader; and
- Use of language in a manner that is precise.

Attorneys use various types of legal writings in an attempt to persuade another or others. However, persuasion is not the aim or goal of certain types of

legal instruments. By and large, transactional documents (e.g., trusts and wills) fall into the latter category.

### **Typical Checklist**

- Understanding the client's goal or goals
  - Development of an outline of the manner in which the client's goal or goals will or might be achieved
- Investigation of facts
- Investigation of legal issues
- Preparation of a time and responsibility chart
- Evaluate whether a particular type of document is necessary
- Review of related and similar documents
- Preparation of a checklist or outline of issues
- Draft document(s)
- Review final draft(s) with client
- Prepare for execution ceremony (checklist, chart, or table)
- Monitor or complete follow-up (i.e., post-execution) matters.

### **Basic Principles of Trusts and Wills Drafting**

The goals of understandability and preciseness are achieved when a document is drafted in a manner that:

- Enables interested parties to understand the content of the document.
- Is understood by laypersons.
- Is the result of the attorney ascertaining and understanding the details of the client's intent.
- Transforms imperfectly formed ideas of the client into a legally enforceable document in the manner explained by legal counsel to the client.
- Establishes and protects the rights of the interested parties.
- Anticipates risks and problems and evidences the manner in which those risks and problems are allocated or resolved.

### **Basic Purposes of Express Trusts and Wills**

- Basic Purposes of an Express Trust
  - To provide for the administration and transfer ownership of property for the benefit of designated beneficiaries.
  - To satisfy laws which mandate certain formalities (e.g., statutes of frauds, or statutes of wills).
- Basic Purposes of a Will
  - To designate or nominate the representative of the decedent's testamentary estate.

- To designate to who interests in the decedent's testamentary estate are transferred effective as of the time of the death of the decedent.
- To satisfy laws which mandate certain formalities (e.g., statutes of wills).

### **General Principles Regarding Organization of Provisions**

- General provisions should precede specific provisions.
- Major provisions should precede minor provisions.
- Provisions that will be used more often should come before provisions that will be used less often.
- The statement of a rule should precede the statement of exceptions to the rule.
- Permanent terms should come before temporary terms.

### **Style and Word Usage**

Should the document be written in "plain English"? Should the drafter include or omit Latin terms? Should the drafter include or omit formal, legal language (i.e., "legalese")?

Many of the experts in the field of legal writing note that an effective document is one that is written in language the interested parties can read and understand.

Some experts advocate the drafting and use of "plain English" or "plain language" documents. However, what does it mean to draft a document in "plain English" or "plain language"? Some experts list the following as characteristics of "plain English" documents:

- The inclusion of familiar words.
- The avoidance of legalese and foreign terminology.
- The omission of needless words or redundancy.
- The inclusion of active, rather than passive, verbs.
- The inclusion of short, specific sentences, paragraphs, and sections.
- The use of "bullets," or numbered clauses, to break up long sentences and lists.
- Where appropriate, the inclusion of article, section, or paragraph headings.
- The use of multiple columns if the document must be printed in a small font size.

Even if it is the common practice of a drafter of legal documents to use "plain English," the drafter might determine that the inclusion of Latin terms, or legalese, or specialized vocabulary in the subject document is appropriate.

The following is a list of Latin terms and English counterparts. The list is not a complete or exhaustive listing of Latin terms and English counterparts.

<u>Latin Terms</u>	<u>English Counterparts</u>
<i>ab initio</i>	from the beginning
<i>ad valorem</i>	according to value
<i>de facto</i>	in fact, actually
<i>de jure</i>	of right
<i>eo instanti</i>	at that instant
<i>e.g., exempli gratis</i>	for example
<i>et al., et alii (or et alius)</i>	and others (and another)
<i>et seq., et sequentia</i>	and following
<i>force majeure</i>	irresistible force
<i>inter alia</i>	among other things
<i>per annum</i>	for each year
<i>per diem</i>	for each day
<i>per se</i>	by, in or of itself
<i>per capita</i>	share equally
<i>pro tanto</i>	as far as it goes
<i>quid pro quo</i>	something for something
<i>vice versa</i>	with the relations reversed
<i>viz.</i>	namely, to wit

The following is a sampling of specialized real estate vocabulary. The sampling is not a complete or exhaustive list.

appurtenant easement	leasehold
condominium	life tenant
covenant running with the land	perpetuity
deed of trust	profit a prendre
dominant tenement	remainderman
easement in gross	running with the land
fee estate	servient tenement
hereditament	zoning

It is not always easy to adopt an approach to drafting that involves the process of word simplification throughout the subject document. Effective use of thesauri may be helpful when you engage in the process of word simplification. The following is a brief listing of examples of word simplification:

Legalese

Plain English

accorded  
cause it to be done  
consequence  
donate  
effectuate  
expiration  
necessitate  
retain  
utilize

given  
have it done  
result  
give  
carry out  
end  
require  
keep  
use

Additional examples of legalese or lawyerisms are:

and/or  
anything to the contrary  
as to  
herein  
hereinabove  
hereinbelow  
hereof  
in witness whereof  
namely

Now, therefore,  
notwithstanding  
referred to  
said, such  
therein  
thereof  
to wit  
whereas  
witnesseth.

Another type of legalese or lawyerism is the use of redundancies. Some authorities in the field of legal writing suggest that redundancies should be avoided. Those authorities also opine that the avoidance of redundancies in attorney work product will achieve the goal of simple precision of expression. The following are examples of redundancies:

alter or change  
cease and desist  
convey, transfer and set over  
due and payable  
for and during  
force and effect  
free and clear  
free and harmless  
full and complete  
good and sufficient  
good and workmanlike

kind and character  
last will and testament  
null and void  
order and direct  
perform and discharge  
rest, residue and remainder  
save and except  
suffer or permit  
terms, conditions and provisions  
undertake and agree  
unless and until.

A drafter should avoid sex-specific words, whenever possible, when not specifically referring to a male or female. Put another way, a drafter should avoid the use of vocabulary that is regarded as sexist. Some suggestions follow:

- Avoid references to gender where gender is not relevant.
- Avoid sex-based job descriptions and titles where reasonable alternative descriptions are available.
- Avoid the use of masculine-singular pronouns. Use neutral designations whenever possible. Examples of neutral designations include “buyer,” “optionee,” “shareholder,” “seller.”

There are two factors that limit the extent to which simple words can be used in legal instruments. Those factors are:

- The expression of complex ideas might require the use of complex, but understandable, words or phrases.
- The simpler of synonyms might be ambiguous, and, therefore, the objective of precision is not achieved by use of the simpler synonym.

Some words sound like other words. Even though the words in question might sound alike, each probably does not mean the same thing. The difference in the manner of spelling of one word as opposed to another might be a single letter. A drafter must be sure that a word that might sound like another word that has a different meaning to the word used in the document is a word that is being used correctly in the document. The same is true regarding words that are spelled in a similar, but different, manner

Examples:

advice	advise
affect	effect
amend	emend
appraise	apprise
capitol	capital
counsel	council
credible	creditable
device	devise
elicit	illicit
extent	extant
farther	further
insure	ensure
intrastate	interstate
persecute	prosecute
prescribe	proscribe
principle	principal
stationary	stationery
therefore	therefore.

A drafter should adhere to rules of punctuation. Those rules include, but are not limited to, proper use of capitalization, proper use of periods, proper use of commas, proper use of colons, proper use of semi-colons, proper use of quotation marks, and proper use of parenthesis and brackets.

### **COURSE METHODOLOGY:**

I will use the lecture method sparingly to introduce various concepts to the class or to highlight a portion of assigned reading.

The bulk of your classroom experience will be in the form of collaborative learning via participation in assigned law firms. You will be placed into groups of 3-4 and will be a law firm for the entire semester. Each law firm has the opportunity to accumulate law firm points. At the end of the semester, the law firm points will be added to the law firm members' points on the exam. For example, if the law firm of Meats & Bounds earns 4 points, each member of that law firm can earn 4 points. At the end of the semester, each law firm member will be able to grade their other members. For law firm members who do not pull their weight, that law firm member will receive less than the possible 4 points.

You will be required to complete various drafting assignments and to submit those assignments to me at the start of a designated class session for my subsequent assessment and feedback to you. Please bring two copies of your drafting assignments to class.: one to turn in to me at the beginning of class and the other to use for any classroom discussion.

### **COURSE WEBSITE:**

*There will be no course website for this course. You will need to e-mail me to gain access to the Wills & Trusts Drafting folder on DropBox. If you had access to my previous folders on DropBox, you still need to e-mail me to gain access.*

### **GRADING:**

The maximum number of points you can earn in this course is 100. At the end of the semester, you will draft two documents that will be worth 100 points total (called the final drafting assignment). These two documents will satisfy the upper level writing requirement. The two documents will be cumulative of what you have learned over the course. The assignments you submit before class will either earn you a +1 for a good faith effort or a -1 for an incomplete, bad faith or not submitted assignment. Those points will be added to your final drafting assignment score before the grade is calculated. Your class participation points will also be added to that.

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.

**OFFICE HOURS, OFFICE TELEPHONE NUMBER, EMAIL ADDRESS, FAX NUMBER:**

I encourage you to communicate with me on a regular basis. All appointments are to be made by either e-mail or text. I am available all days except Sundays.

I will **not** maintain regular office hours after the last day of classes for this semester and prior to the course exam.

You may contact me via email by addressing your communication to [chjaffke@wsulaw.edu](mailto:chjaffke@wsulaw.edu) or [taxprof920@yahoo.com](mailto:taxprof920@yahoo.com).

You may text me at (714)366-3543, please be sure to include your name in the text, so I don't think you are a creep or scammer.

**ATTENDANCE, CLASS PARTICIPATION, DECORUM, AND SEATING:**

**Attendance in class is mandatory.** If you miss more than two (2) classes, you will be 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.

**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.

You are expected to maintain proper decorum when entering the classroom, while attending and participating in each class session, and when departing the classroom. The subject of classroom decorum is covered in the current edition of the "Student Handbook."

### 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.

### **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 Second Floor Students Services Suite. Dean Espinoza's phone number and email address are: (714) 459-1117; [despinoza@wsulaw.edu](mailto: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](mailto: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:**

To be properly prepared for class sessions, you must complete an appropriate, critical reading and study of the assignments that are listed in the "Table of Assignments" . The Table of Assignments will be distributed after the first class.

This reading assignment progress depends upon you. If you are unprepared and do not contribute to the class discussion, then we may not complete the entire reading assignment. However, the final drafting assignment will cover everything that is assigned here, regardless of whether or not we discuss it in class.

In the first class you will be organized into law firms and will receive your first law firm assignment.

## 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.