

**WESTERN STATE COLLEGE OF LAW
AT WESTCLIFF UNIVERSITY**

**SYLLABUS, POLICIES, AND ASSIGNMENTS
2025 FALL SEMESTER
ESTATES, SECTION 497A**

PROFESSOR SHEPPARD

CLASS MATERIALS:

REQUIRED TEXT: Peter T. Wendel and Robert G. Popovich, **CALIFORNIA WILLS AND TRUSTS, Cases, Statutes, Problems, and Materials SECOND EDITION (2024, Carolina Academic Press)**

ISBN 978-1-5310-2681-3

eISBN 978-1-5310-2682-0

RECOMMENDED: Susan F. French, *A California Companion for the Course in Wills, Trusts, and Estates: Selected Cases and Statutes Including All Statutes Required for the California Bar Exam* (2025-2026 Wolters Kluwer)

ISBN 9798897107943

RECOMMENDED: Roger W. Andersen and Susan N. Gary, *Understanding Trusts and Estates Seventh Edition* (2023, Carolina Academic Press)

ISBN 978-1-5310-2560-1 (Paperback)

Course Supplements that are posted to the LexisNexis web course.

REQUIRED AND RECOMMENDED COURSE TEXTS

I have selected the required Wendel and Popovich text and the recommended French text because those texts focus on California statutory law and California case law regarding intestate succession, wills, and trusts. Almost all graduates of the College of Law sit for the California Bar Exam. Information regarding intestate succession, wills, and trusts topics which may be tested appear on the State Bar of California website.

COURSE COVERAGE AND OPPORTUNITIES:

The course of Estates is a study of principles of law regarding intestate succession, wills, and trusts. The course material will not be limited to the provisions of the California Probate Code with which a person who sits for the California Bar Exam is expected to be familiar. Furthermore, portions of course material include comparisons between

portions of the California Probate Code with portions of the Uniform Probate Code that differ from California Probate Code provisions.

In the basic Property course, you learned that titles to and other interests in property may be transferred either during a transferor's lifetime (an *inter vivos* transfer), or as of the time of the death of the transferor (a testamentary transfer). You 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 under a will, or by operation of law under the law of intestate succession. Principles of law regarding *inter vivos* transfers are relevant when a representative of a decedent's testamentary estate, or a trustee of a trust, purport to transfer title or some other interest in property to a purported transferee.

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

1. Introduction to "the Wills and Trust Landscape"
 - a. Probate vs Nonprobate Property
 - b. An overview of estate planning
 - c. Professional Responsibility—Ethical Issues
2. Intestate Succession
 - a. An Estate Plan by Default
 - b. The Structure of Intestate Succession
 - (1) Surviving Spouse
 - (2) Descendants
 - (a) Issue
 - (b) Natural and Adopted Children
 - (c) Posthumously Born or Posthumously Conceived Children
 - (3) Ancestors, Collaterals, Others
 - c. Doctrines that may affect an heir's share
 - (1) The Advancement Doctrine
 - (2) The Slayer Doctrine
 - (3) The Disclaimer Doctrine
3. Wills: Capacity and Contests
 - a. Capacity to Make a Will
 - b. Undue Influence
 - c. Duress
 - d. Fraud
 - e. Tortious Intentional Interference with an Expectancy
4. Wills Act Formalities
 - a. Attested (Witnessed) Wills
 - b. Holographic Wills

5. Will Revocation
 - a. Express Revocation
 - b. Implied Revocation
 - c. Revival of a previously revoked will
 - d. Dependent Relative Revocation (DRR)
6. Components of a Will
 - a. The Integration Doctrine
 - b. Republication of a Will by Codicil
 - c. The Doctrine of Incorporation by Reference
 - d. Acts of Independent Significance
 - e. Contracts Concerning Wills
7. Construing Time of Death Gifts
 - a. Mistaken or Ambiguous Language in Wills: Admissibility of Extrinsic Evidence
 - b. Death of Beneficiary before Death of Testator: Lapse/Anti-Lapse
 - c. Changes in Property after Execution of Will
 - (1) Ademption
 - (2) Exoneration
 - (3) Abatement
8. Family Protection
 - a. Migrating Couples
 - b. Quasi-Community Property
 - c. Pretermitted (Omitted) Spouses and Pretermitted (Omitted) Children
9. NonProbate Transfers
 - a. Life Insurance
 - b. Joint Tenancy
 - c. Legal Life Estate and Remainders
 - d. *Inter Vivos* Trusts
10. Creation of Express Trusts
 - a. Private Trusts Compared With Charitable Trusts
 - b. Requirements for Creation of an Express Trust:
 - (1) Intent
 - (2) Trust Property
 - (3) Formalities
 - (a) Delivery
 - (b) Statute of Frauds
 - (c) Statute of Wills
 - (4) Beneficiary/Beneficiaries
 - (5) Lawful Purpose
11. Testamentary Additions to Inter-Vivos Trusts
 - a. Incorporation by Reference Doctrine
 - b. Acts of Independent Significance
 - c. Uniform Testamentary Additions to Trusts Act

12. Revocation of Express Trusts
 - a. Default Rules to Determine Whether the Trust is or is not Revocable
 - b. Mechanics of Revocation
13. Nature of a Trust Beneficiary's Interest
 - a. Equitable Interest
 - b. Distribution to Beneficiary: Mandatory or Discretionary
 - c. Spendthrift Trusts and Trusts with Spendthrift Characteristics
14. Modification of an Express Trust
 - a. By the Settlor
 - b. The Deviation Doctrine
 - c. The *Cy Pres* Doctrine
15. Termination of an Express Trust
 - a. By all parties to the trust
 - b. By all beneficiaries of the trust
16. Trustee's Powers and Trustee's Duties
 - a. From Limited Powers to Fiduciary Administration
 - b. The Duty of Loyalty
 - c. The Duty of Prudence
 - d. The Duty of Impartiality
 - e. The Duty to Inform and Account
17. Alienation of the Beneficial Interest
18. Removal of a Trustee of an Express Trust
19. Charitable Trusts: Charitable Purposes, Cy Pres, and Supervision
 - a. Charitable Purposes
 - b. Cy Pres and Deviation
 - c. Enforcement of Charitable Trusts
20. Trusts: Powers of Appointment
 - a. Purposes, Terminology, and Types of Powers
 - b. Exercise of a Power of Appointment
 - c. Failure to Exercise a Power of Appointment
21. Trusts: Construction and Future Interests
 - a. Future Interests
 - b. Construction of Trust Instruments
22. The Rule Against Perpetuities and Trust Duration
 - a. The Common Law Rule
 - b. Perpetuities Reform
 - c. Application of the Rule to Class Gifts and Powers of Appointment
 - d. Other Durational Limits
23. Summary of Trusts Created by Operation of Law
 - a. Constructive Trusts (an equitable remedy)
 - b. Resulting Trusts (based on an implied intent)

SKILLS AND VALUES

A task force report exists that is commonly referred to as “The MacCrate Report.” The authors of that report examined the legal skills and values listed above as well as other skills and values. [Section on Legal Education & Admissions to the Bar, American Bar Association Legal Education and Professional Development --An Educational Continuum (Report of the Task Force on Law Schools and the Profession: Narrowing the Gap, 1992). A collection of law review articles that represent supporting and critical views of “The MacCrate Report” appear in Volume 69 of the *Washington Law Review* published in July of 1994.]

On page 1 of his “Property Law Simulations” text, Professor Sprankling notes: “The MacCrate Report had little impact on legal education. But the Carnegie report has been more successful, prompting many law schools to make curricular changes that expand opportunities for experiential learning.” Actually, Western State was one of the few law schools that took special note of The MacCrate Report prior to the publication of the Carnegie Report as is evidenced by Western State’s “Mission Statement” and various aspects of the law school’s course offerings both in terms of courses offered and the manner in which the courses are taught.

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

- Enhance your analytical, problem solving, statutory deconstruction, and related skills that you will use as an attorney either in non-dispute resolution settings, or in dispute resolution settings, or both.
- Develop a working knowledge of various principles of law regarding intestate succession, wills, and trusts; and enhance your understanding of various principles of law regarding property, contracts, torts, civil procedure, and others.
- Enhance your oral communication skills and legal research and exam writing skills.
- Develop and enhance client counseling skills.

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 Associations, Evidence, Civil Procedure, 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 alternative 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 and 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 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's 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 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' backgrounds 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.

COURSE METHODOLOGY

I utilize a combination of classroom methods to assist you in your effort to achieve the objectives of this course, including use of the Socratic method of interaction to enable you to properly gauge the current level of your working knowledge of course subject matter, use of the case method of exploring and examining legal principles and methods of application of those principles (including, but not limited to, how to deconstruct case law, statutory law, and other sources of law), exercises regarding deconstruction of statutes, drafting of instruments, examination of documents, and problem solving.

It will be incumbent upon you to engage in an appropriate study and review of each course assignment before we engage in classroom discussions about the course material that is part of that assignment. The primary focus of our classroom discussions will be the manner in which you should use course and related material to raise and resolve issues. To engage in an appropriate study of course material, at a minimum, you must complete a critical reading of that material; and you must brief each principal case included in the course text, each case cited in a text note, and any

case which I might assign as additional reading. You should also read additional reference material (e.g., relevant portions of the recommended texts and/or another hornbook or a treatise). Your study habits must also include engaging in activities that will hone your skills of legal analysis and exam taking and writing. I will also expect you to have prepared appropriate work product regarding text problems that are part of the assigned reading. Adhere to the IRAC method of legal analysis to the extent necessary during classroom discussions, when engaged in problem solving exercises, and during the course final exam.

EXPECTATION OF YOUR AMOUNT OF OUTSIDE PREPARATION TIME

I expect you to devote a MINIMUM of four and one-half hours a week to prepare for each one and one-half hour class session (i.e., a MINIMUM of nine hours a week).

LEXIS CLASSROOM

You are required to enroll in the course LexisNexis Classroom platform so that you will be able to access information that I have posted to that platform for your benefit; and so that you will be able to receive emails that I will send to members of the class using the email function of the LexisNexis Classroom platform. I recommend that you make beneficial use of the LexisNexis Classroom Discussion Board feature.

You will be able to enroll in the course LexisNexis Classroom platform on and after 9:00 a.m., Friday, August 1, 2025. The last day and time that you will be able to access the web course material is 11:59 p.m., Wednesday, December 31, 2025. To enroll in the web course:

1. Log into LexisNexis for Law School at <https://www.lexisnexis.com/lawschool/>.
2. In the **Student** view, click the **Add A Course** link found on the right-hand side of the page.
3. Locate my name (Sheppard); then click my name.
4. Locate **Select Course to Enroll**; locate Trusts_And_Estates_112176 and click.
5. Follow the instructions to enroll in the Trusts and Estates Lexis Classroom
6. If you are directed to enter a password, enter: 9KLRGM

If you encounter a problem while attempting to enroll in the web course, please contact a LexisNexis representative, or Faculty/Academic Support person Helen Terzis, helenterzis@wsulaw.edu, (714) 459-1163, or Faculty/Academic Support person Alejandra Gonzalez, agonzalez@wsulaw.edu, (714) 459-1128.

EXAMINATION AND GRADING

There will not be a midterm exam in this course. Each class session will provide ample opportunity for you to engage in self-assessment of your level of understanding of course material which will enable you to plan weekly study regiments accordingly and to formulate questions that you will need to present to me either during a class session, or during an office consultation (in-person or via Zoom), or by email, or by a combination thereof.

There will be one graded exam; to wit: the course final exam.

FINAL EXAM

A three-hour, open-book, open notes final exam will be administered as part of this course. I will provide information to you about the format of the final exam prior to the last day of instruction.

The maximum number of points that you will be able to earn on the final exam will be 100 points. I will use the score that you earn on the final exam to determine your final grade in this class.

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.”

To earn a numeric grade of 4.0, your course grade points must equal 90 or more points. The total of 89 course grade points results in a 3.9 course grade; 88 course grade points results in a 3.8 course grade and so forth.

The foregoing illustrates that the highest accumulation of raw points earned by a student enrolled in this course is **not** automatically regarded as an “A.” For example, if the best aggregate, graded student work product in this class results in a total of 85 course grade points, the highest grade in the class will be 3.5. On the other hand, if the exam work product of **every** student in the class results in total course grade points for each student that is 90 or better, then the course grade earned by every member of the class will be 4.0.

PRACTICE EXERCISES

I encourage you to include exam preparation or writing ***exercises*** as part of your daily study habits beginning in the second week of the semester and continuing throughout

the semester including the interim between the last day of class and the administration of the final exam. Examples of such exercises include drafting an interrogatory that is the product of issue spotting, drafting a rule statement, or drafting an analysis using the IRAC approach to legal analysis. You may submit your exercises to me for me to review and provide comments to you. Please note that if you wait until close to the end of the semester to submit any such work product to me for review and comment, you will run the risk that I will not have sufficient time to provide feedback to you before the final exam is administered to the class; or that you will not have sufficient time to take advantage of feedback that I provide to you. I do **not** critique student course outlines and I do not critique essay answers to practice exams.

OFFICE HOURS, OFFICE TELEPHONE, E-MAIL, FAX

My campus office is located in the Faculty Building. **I encourage you to communicate with me on a regular basis.** I plan to be available for in person or Zoom conferences as follows:

Tuesdays: 9:00 A.M. to 10:00 A.M.
3:15 P.M. to 5:00 P.M.
Wednesdays: 10:00 A.M. to Noon
2:00 P.M. to 4:00 P.M.
Thursdays: 10:00 A.M. to Noon
3:15 P.M. to 5:00 P.M.

If your schedule will not allow you to meet with me during any of the times listed above, let me know so that we may determine if there is a different day and time that we can arrange for either an in-person or Zoom meeting.

Conferences between me and two or more students at a time are encouraged.

My WSCL email address is csheppard@wsulaw.edu.

My WSCL office telephone number is (714) 459-1152. The faculty fax number is (714) 525-2786.

ATTENDANCE

Attendance in class is mandatory. If you miss more than six hours of class sessions, or other class activities where attendance will be mandatory, you will be subject to being administratively withdrawn from the course. If you have not already done so, you should review 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 me or by another Professor.

PARTICIPATION IN CLASS AS AN ACTIVE LEARNER

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 reading 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; critically reading and deconstructing pertinent statutory law; 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, flow charts, etc.); 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.

I call your attention to the following law review article: Laurel Currie Oates, *Beating The Odds: Reading Strategies of Law Students Admitted Through Alternative Admissions Program*, 83 IOWA L. REV. 139 (1997). Portions of that law review article illustrate how a student might “outperform” his or her “law school predictors” by being an active learner and not a passive learner. That is an important message regardless of whether a person has been admitted to law school through a regular admissions program, as you were, or an alternative admissions program (e.g., an admissions by performance program).

Regardless of whether a class session is conducted in person or via Zoom or some other distant learning platform, 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 of others, you should raise your hand to be recognized, and when recognized by me, you should voice your question. 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 notify me prior to the start of that class session. You will not be penalized for being unprepared for a class session

provided you have not 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 good faith, although erroneous, attempt at analyzing a particular question or point that is a subject matter of discussion during a class session.

DECORUM

Regardless of whether a class session is conducted in person or via Zoom or some other distant learning platform, you are expected to maintain proper decorum when entering the classroom or a zoom session, while attending and participating in each class session, and when departing the classroom or zoom session. You are also required to adhere to the College of Law's "Principles of Community" and the College of Law's "Honor Code."

SEATING CHART

I plan to circulate a seating chart during the initial class 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 Senior Assistant Dean Donna Espinoza, Student Services Director and Disabilities Services Coordinator, whose office is in the Library Building, Room 275-B. 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 Dean Marisa Cianciarulo at mcianciarulo@wsulaw.edu or (714) 459-1168. Complaints will be handled in accordance with the College of Law's "Policy against Discrimination and Harassment."

TABLE OF READING ASSIGNMENTS – WENDEL/POPOVICH TEXT

Wk.	Tue/Thu	Text Pages	Topics
01	08/12 08/14	xxxv-xxxvi 03 – 08 12 – 23 25 – 58	Preface Ch. 1: Introduction and the Wills & Trusts Landscape – Skip <i>In re Succession of Plummer</i> , pp. 08 – 12 Ch. 2: The California Intestate Scheme
02	08/19 08/21	59 – 96	Ch. 3: Who Qualifies as an Heir under the California Intestate Scheme?
03	08/26 08/28	97 – 116 117 – 139	Ch. 4: Miscellaneous Doctrines That May Affect an Heir's Share; Ch. 5: Testamentary Capacity
04	09/02 09/04	139 – 181	Ch. 5: Testamentary Capacity
05	09/09 09/11	183 – 245 8 – 12	Ch. 6: Wills Act Formalities <i>In re Succession of Plummer</i>
06	09/16 09/18	247 – 282 283 – 305	Ch. 7: Will Revocation Ch. 8: Components of a Will
07	09/23 09/25	307 – 360	Ch. 9: Construing Time of Death Gifts
08	09/30 10/02	361 – 385 387 - 424	Ch. 10: Family Protection Ch. 11: Nonprobate Transfers
09	10/07 10/09	425 – 473	Ch. 12: Trusts—Creation and Revocability
10	10/14 10/16	473 – 496 497 – 533	Ch. 12: Trusts – Creation and Revocability Ch. 13: Trust Life – Beneficiary's Perspective
11	10/21 10/23	----- -----	No Class – Fall Break – Campus Move No Class – Fall Break – Campus Move
12	10/28 10/30	533 – 564 565 – 572	Ch. 13: Trust Life – Beneficiary's Perspective Ch. 14: Trust Life – Trustee's Perspective
13	11/04 11/06	572 – 616	Ch. 14: Trust Life –Trustee's Perspective
14	11/11 11/13	----- 616 – 647	NO CLASS SESSION – Veterans Day Ch. 14: Trust Life –Trustee's Perspective
15	11/18 11/20	649 – 691	Ch. 15: Charitable Trusts
16	11/25	693 – 738	Ch. 16: Powers of Appointment