

Western State College of Law
Estates §497B
Fall 2023
Syllabus & Policies
Professor Sarah M. Ulibarri

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Office Hours: Office hours are by appointment only and set up via email.
I will NOT have office hours after the last day of class.

Specific 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: Estates and Trusts, Cases and Materials, (6th edition) by Stewart E. Sterk and Melanie B. Leslie (ISBN 9781642424911)

You must have access to the California Probate Code online during class or you must purchase a copy of the 2023 code.

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. Because this course is bar-tested, I reserve the right to waive or excuse any absences. It is your responsibility to obtain any material or notes during class that you have missed from your colleagues or firm members (discussed below). Also, you do not need to notify me if you are absent unless you have used your two absences during the semester and have a valid excuse, which will be determined by myself and/or the Dean based on a case by case basis.

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).

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 sulibbarri@wsulaw.edu or Ulibarri.estatesprof@gmail.com. Or you can schedule an appointment with me. I am not on campus frequently, so you must email me to set up an appointment.

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, if any
- Assuring that each present partner signs in on the sign-in sheet
- Informs Prof. Ulibarri of a partner absent without notice to the law firm
- Communicating with Prof. Ulibarri about problems within the law firm
- Let her know about free loaders
- Tell her about ABSENT member without notice

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:

Tuesday at 6pm or by appointment only. Email me 3 available time options. I am happy to meet with you at another time and location that it mutually acceptable.

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 or online. The exam may consist of multiple choice and / or essay questions. I will provide more information about the final exam by November 14, 2023.

Google Drive

I use Google Drive to upload the images and notes displayed during class. These things include any examples we do in class or adjustments made to handouts. If you do not

have an account with Google, you can sign up for one free. You must then send me an e-mail requesting that I invite you to the Google Drive. You will then receive an invitation to join in the Estates folder.

Time Expectation

The expectation is that you are expected to complete a minimum of two-hours of out-of-class student work for every hour of in person, classroom instruction.

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. 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 mchianciarulo@wsulaw.edu or (714) 459-1168. Complaints will be handled in accordance with the College of Law's "Policy against Discrimination and Harassment."

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.

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. Please brief ALL cases within the designated sections.

| Chapter | Pages | Questions | Problems |
|---------|--|--|---|
| 1 | 1-60 | #3 and 4 on pages 2-4 #2 on pages 9-10 #1-4 and 7-9 on pages 15-18 #1-2 on pages 26-27 #1 on page 26 #1 and 2 on pages 36-37 #1 on page 59 | #2 on pages 21-22 #2-3 on pages 27-28 LAW FIRM ASSIGNMENT Review California Probate Code Sections 21610-21612 & 21620-21623 |
| 8 | 755-758 at II 807-823 | #3-5 on page 821 | LAW FIRM ASSIGNMENT More information in class |
| 2 | 61-143 154-171 <i>Pay special attention to the chart of consanguinity on page 89</i> | #1 & #2 on pages 75-77 | #1 on page 69; #2 on page 70 #1 on page 82 LAW FIRM ASSIGNMENT #1-6 on pages 89-90 #1 on page 94 Problem on page 104 Problem on page 160 Problem on page 168 Problem on page 171 |

| Chapter | Pages | Questions | Problems |
|---------|---|---|--|
| 4 | (ignore non-UPC & CA law except NY law on page 251) 237-240 to UPC 2-502 252-422 at VII | #1 on page 259 #1-2 on page 304 | Problem on page 262 #1 on page 283 #2 on page 290 Problems on pages 292-293 #1 on page 307 #1 on page 310 #2 on page 320 Problems on page 322 Problem on page 327 Problem on page 329 Problem #1 on page 336 Problem #3 on page 394 Problem #1 on page 400 Problem #1 on page 403 LAW FIRM ASSIGNMENT Problems on page 414 |
| 5 | 431-511 at VI | #1 and 2 on page 441 #3 on page 454 #3 on page 467 #2 on page 479 #2 on page 487 #1 & #2 on page 505 | Problem on page 449 #1 & #2 on pages 454-455 #1 & #2 on pages 485-486 LAW FIRM ASSIGNMENT Problems on pages 510-511 |
| 6 | 519-546 at III 606-639 at V | #1 on page 532 #3 on page 544 #1 on page 612 | #1, 3 & 4 on pages 532-533 Problems on pages 610-612 |
| 7 | 673-754 | #1 on page 679 #2 on page 685 & #6 on page 686 #2 on page 694 #1 on page 705 #1 on page 742 #2 on page 748 #2 on page 753 | Problem on page 721 |