

WESTERN STATE COLLEGE OF LAW
Spring 2025

WILLS AND TRUST DRAFTING
Syllabus

Professor: Kevin Khoa Nguyen, Esq.
Email: knguyen@wsulaw.edu
Class Meetings: Tuesdays, 3:00 PM - 4:50 PM

Overview:

The goals of Wills & Trusts Drafting are to introduce students to the practical skills and law necessary to create wills, trusts and other estate planning tools for their clients. At the conclusion of the course, students will have several templates and forms they can use to serve clients upon practicing law.

Course Objectives:

By the end of the course, successful students will understand:

- 1) Marketing and sales techniques to attract ideal clients;
- 2) How to conduct an initial consultation with estate planning clients;
- 3) How to draft a client's estate plan to meet his/her/their particular needs;
- 4) How to develop an effective communication strategy once an estate is fully drafted and executed.

Prerequisite:

Estates.

Required Casebook:

There is no required textbook for Wills & Trusts Drafting. However you will need access to the California Probate Code. You may use a California Probate Code book or to access the Code on your computer during class. Professor Nguyen will provide documents for the course, such as Handouts, Assignments, or other documents on TWEN or in class. PowerPoint presentations of lectures will be uploaded periodically shortly before lecture time. The student is responsible for reading the Handouts prior to the next scheduled class and submit assignments at the beginning of class on the due dates (see Assignment Table below).

Attendance:

You should attend every class session. Attendance will be taken. Western State policy requires you to attend at least 85% of the class sessions in order to sit for the examination. As such, failure to attend at least 85% of the classes may result in your withdrawal from the class. For this class that means that you can have no more than 2 absences. We all know that emergencies and significant unforeseen circumstances happen, preventing you from attending some class sessions. That is what the 15% missed class rate is intended to accommodate.

Expectations Regarding Preparation Time for the Course:

When preparing for class, you should expect to spend 2-3 hours for every hour of class time.

Read the cases critically. You are free to disagree with the conclusion the court came to, but understand the reasoning even if you do not agree with it.

Course Methodology:

The lecture method will be used 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 with fellow classmates. 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 subsequent assessment and feedback.

Classroom Participation:

You should be prepared to discuss class assignments each session and arrive on time.

Professionalism:

An important aspect of class participation is arriving to class on time and treating each other with professionalism and respect.

Grading and Examinations:

The maximum number of points you can earn in this course is 100. Participation and homework assignments will be worth 15 points. At the end of the semester, you will draft two documents that will be worth 85 points total (called the final drafting assignment). The assignments you submit in class will either earn you a +1 for a good faith effort or a 0 for an incomplete, bad faith or not submitted assignment. 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.

Expectations for Students in Zoom Sessions:

- Find a dedicated quiet space to attend Zoom sessions, to minimize the chances that you will be disrupted during the session.
- Arrive to class early and dressed as you would to attend an in-person class.
- Your camera must be turned on for the duration of the class. If desired, you can use the background settings in Zoom to create an artificial background that blocks the view of your space while still allowing you to be seen on camera.
- Come prepared, as you would for an in-person class. Participation in Zoom classes is as important as it is during an in-person class session.
- Do not multitask – stay focused on the class discussion – do not wander in and out of the Zoom session.
- If you have to miss a Zoom session, or arrive late or leave early, notify the professor in advance, as you would for an in-person class.
- If you have connectivity issues, whether it be long-term or short-term, that impact your ability to participate (e.g., if you are limited to dial-in without video), notify your professor so other accommodations can be explored.
- Do not post screenshots or recordings of any Zoom classes on social media. Such actions would constitute a violation of the Student Honor Code. If you need access to a recording of the Zoom session, please contact your professor.

- Sign into Zoom with the name under which you are registered for class. If you prefer to be called by a different name or nickname, please notify your professor in advance so you are not marked absent.
- Unless your professor instructs you otherwise, mute your microphone when you are not speaking. Unmute to speak or to ask or answer questions.
- Zoom classes are not YouTube or Netflix. You should be actively engaged in answering questions, taking notes, writing down questions you wish to ask later during class or during office hours, etc. This will not only help you stay engaged and participating in class, it will also help your learning in the online format.
- If you are using your computer to take notes and/or using an e-casebook, remember that you may not be able to easily switch between those apps and the Zoom session. This could undermine your ability to pay attention to the class discussion. Figure out how you will resolve that technological issue before your first class session and consider possible modifications to your normal note taking style (e.g., handwritten notes) or using a two-screen set-up.
- Zoom has a number of tools available to you as a student: yes/no symbols, raise hand and thumb icons, share screen (with permission of the professor), chat windows, etc. Please familiarize yourself with those tools before class so that you can use them as requested by the professor. Your professor will inform you about the ways in which you should use these tools in that particular class.
- Professors may use a number of interactive functions in Zoom to engage with students, e.g., polling questions, breakout rooms, as well as asking you to share your screen, type in the chat window. Like being called on in a live classroom, you are expected to participate fully in these activities and functions, i.e., answer polling questions, speak with your classmates in breakout groups, share your screen as requested, etc.

General Principles regarding Drafting Trusts and Wills:

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 Wills and Trust Drafting:

- 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 Wills and Trusts:

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

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:

<u>Legalese</u>	<u>Plain English</u>
accorded	given
cause it to be done	have it done
consequence	result
donate	give
effectuate	carry out
expiration	end
necessitate	require
retain	keep
utilize	use

Additional examples of legalese or lawyerisms are:

and/or	hereof	said, such
anything to the contrary	in witness whereof	therein
as to	namely referred to	thereof
herein	notwithstanding	to wit

hereinabove	now, therefore	whereas
hereinbelow	referred to	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	kind and character
cease and desist	last will and testament
convey, transfer and set over	null and void
due and payable	order and direct
for and during	perform and discharge
force and effect	rest, residue and remainder
free and clear	save and except
free and harmless	suffer or permit
full and complete	terms, conditions and provisions
good and sufficient	undertake and agree
good and workmanlike	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	appraise	apprise
effect	affect	capitol	capital
amend	emend	counsel	council

device	devise	intrastate	interstate
elicit	illicit	persecute	prosecute
extent	extant	prescribe	proscribe
farther	further	principle	principal
insure	ensure	stationary	stationery

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.

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.

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

Reading List and Assignments:

There is no assignment due before our first class. Below is a list of the subject matter and skills covered during each class of the semester, and the assignments for each class session. This list is not exhaustive and may be amended as needed. Please note, the final drafting assignment will cover everything that is assigned here, regardless of whether or not we discuss it in class. Any adjustments to this schedule will be announced.

Class Session	Date	Subjects	Reading & Homework (Assignment is Due at Beginning of Next Class Meeting)
1	January 14	<ul style="list-style-type: none"> • Introduction to Wills and Trust Drafting • Overview of Handouts and Course Materials • Solo-Practitioner vs. Associate Attorney • Estate Plan General 	<p>First Class No Reading or Assignments</p>
2	January 21	<ul style="list-style-type: none"> • Marketing & Sales • Client Intake • 1st Client Meeting • Follow Up Meetings & Schedule 	<p>Read Handout 1</p> <p>Assignment 1:</p> <ul style="list-style-type: none"> • Create Marketing and Sales Approach for your ideal client • Create a Questionnaire for New Clients Before Their Initial Consultation
3	January 28	<ul style="list-style-type: none"> • Engagement Agreements • Conflicts Checks • Billing, Fees & Payments • Discuss Invoicing Fact Pattern 	<p>Read Handout 2</p> <p>Assignment 1 Due</p> <p>Assignment 2: Create Invoice Based on Fact Pattern</p>
4	February 4	<ul style="list-style-type: none"> • Trust Types • Pour-Over Wills • Discuss Fact Pattern & Outline for Revocable Living Trust 	<p>Read Handout 3</p> <p>Assignment 2 Due</p>

5	February 11	<ul style="list-style-type: none"> • Durable Power of Attorney for Asset Management (“DPOA”) • Discuss DPOA Fact Pattern 	<p>Read Handout 4</p> <p>Assignment 3: Draft DPOA Based on Fact Pattern</p>
	February 18	<ul style="list-style-type: none"> • CLASS DOES NOT MEET 	
6	February 25	<ul style="list-style-type: none"> • Review DPOA’s Produced by Colleagues • Heath Care Directive (“HCD”) Principles • Discuss HCD Fact Pattern 	<p>Read Handout 5</p> <p>Assignment 3 Due</p> <p>Assignment 4: Draft HCD Based on Fact Pattern</p>
7	March 4	<ul style="list-style-type: none"> • Review HCD’s Produced by Colleagues • Wills (General Principles) • Discuss Last Will and Testament Fact Patterns 	<p>Read Handout 6</p> <p>Assignment 4 Due</p> <p>Assignment 5: Draft Will Based on Fact Pattern</p>
No Class	March 11	SPRING BREAK	
8	March 18	<ul style="list-style-type: none"> • Review Will’s Produced by Colleagues • Tax Obligations & Issues 	<p>No Reading</p> <p>Assignment 5 Due</p> <p>Assignment 6: Draft Explanatory Letter to Client for Will & Instructions for Execution Day</p>
9	March 25	<ul style="list-style-type: none"> • Review Letters Produced by Colleagues • Execution Day for Will • Married Clients & Dual Representation 	<p>Read Handout 7</p> <p>Assignment 6 due</p> <p>Assignment 7: Draft Waiver Letters for Dual Representation</p>

10	April 1	<ul style="list-style-type: none"> • Review Waiver Letters Produced by Colleagues • Clients with Minor Children • Discuss Clients with Minor Children Fact Pattern 	<p>Read Handout 8</p> <p>Assignment 7 Due</p> <p>Assignment 8: Prepare Will and Trust Provisions to Address Clients with Minor Children</p>
11	April 8	<ul style="list-style-type: none"> • Review Trust Provisions Produced by Colleagues • Modifications of Wills & Trusts • Discuss Fact Pattern re: Modification of Estate Plans 	<p>Read Handout 9</p> <p>Assignment 8 Due</p> <p>Assignment 9: Prepare Modifications to Trust and Will for Client in Fact Pattern</p>
12	April 15	<ul style="list-style-type: none"> • Review Modifications Produced by Colleagues • Final Instructions to Client on Execution Day • Discuss Execution Day Fact Pattern 	<p>Read Handout 10</p> <p>Assignment 9 Due</p> <p>Assignment 10: Draft Final Letter to Provide Client Upon Execution & Delivery of Estate Plan</p>
13	April 22	<ul style="list-style-type: none"> • Follow up Actions After Execution and Delivery of Estate Documents is complete. • Funding a Living Trust • Discuss Asset Fact Pattern for Funding 	<p>Read Handout 11</p> <p>Assignment 10 Due</p> <p>Assignment 11:</p> <ul style="list-style-type: none"> • Draft Follow Up Letters after Execution & Delivery of Estate • Draft Funding Documents
14	April 29	<ul style="list-style-type: none"> • Review Funding Documents Produced by Colleagues • Review Follow Up Letters Produced by Colleagues • Final Review and Wrap Up • Discussion of Final Exam Project 	<p>Last Class - No Reading</p> <p>Assignment 11 Due</p> <p>Assign Take Home Final Project</p>

FINAL PROJECT SUBMISSION DEADLINE: TBA