

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

SYLLABUS AND ASSIGNMENTS

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Course Objectives: 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. 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; and (4) how to develop an effective communication strategy once an estate is fully drafted and executed. At the conclusion of the course, students will have a list of templates and forms they can use to begin serving clients once they begin practicing law.

Course Materials: 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 be able to access the Code on your computer during class. Professor Ulibarri will provide documents for the course in class only, which the student is responsible for reading prior to the next scheduled class (see Assignment Chart below). If a student does not attend a class for any reason, it is the student's responsibility to obtain a copy of the document(s) from a classmate. Unless otherwise instructed, Professor Ulibarri will not be emailing documents to students who have missed class.

General Principles regarding Drafting 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.

Latin Terms

ab initio
ad valorem
de facto
de jure

English Counterparts

from the beginning
according to value
in fact, actually
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

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

Plain English

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 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.

Course 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). 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.

Class Participation: Legal education is a cooperative venture. Class participation therefore is a mandatory part of this course. Any student who is deemed unprepared for class will be treated as absent for that day and a student who is unprepared on two (2) occasions will automatically be withdrawn from the course.

Homework Expectations and Time Commitment: You should expect to spend, on average, at least two hours of preparation for every one hour of class time.

Class Attendance: **Attendance in person is mandatory.** Unless instructed otherwise, classes will not be recorded via Zoom for those who cannot attend class in person. If you arrive late to class, leave during class time or depart early (without prior permission), you will be marked absent for that session. If you miss more than two class sessions, you will be withdrawn from the class. If you have not already done so, you should study the appropriate portions of the current edition of the “Student Handbook” regarding attendance requirements.

Class Decorum: 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.”

Course Website: *There will be no course website for this course.*

Office Hours, Appointments, and Email: I encourage you to communicate with me on a regular basis. All appointments are to be made by e-mail. Please allow 48 hours for response to schedule an appointment. 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 sulibbarri@wsulaw.edu or ulibbarri.estatesprof@gmail.com.

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 Allen Easley at aesley@wsulaw.edu or (714) 459-1168. Complaints will be handled in accordance with the College of Law’s “Policy against Discrimination and Harassment.”

Assignments and Class Times: 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.

Week	Date	Subject/Topic	Assignment (Due Before Next Class)
1	01/23/2023	<ul style="list-style-type: none"> • Introduction to Wills and Trusts Drafting • Overview of Handouts and Course Materials • Solo-Practitioner vs. Associate • Estate Plan General 	<ul style="list-style-type: none"> • No assignment due for 1st day of class.
2	01/30/2023	<ul style="list-style-type: none"> • Marketing & Sales • Client Intake • 1st Client Meeting • Follow Up Meetings & Schedule 	<ul style="list-style-type: none"> • Read Handout #1

3	02/06/2023	<ul style="list-style-type: none"> • Engagement Agreements • Conflicts Checks • Billing, Fees & Payments • Discuss Invoicing Fact Pattern 	<ul style="list-style-type: none"> • Read Handout #2 • Create Marketing and Sales Approach for your ideal client • Create a Questionnaire for New Clients Before Their Initial Consultation
4	02/13/2023	<ul style="list-style-type: none"> • Trust Types • Pour-Over Wills • Discuss Fact Pattern & Outline for Revocable Living Trust 	<ul style="list-style-type: none"> • Read Handout #3 • Create Invoice Based on Fact Pattern
5	02/21/2023	<ul style="list-style-type: none"> • Durable Power of Attorney for Asset Management (“DPOA”) • Discuss DPOA Fact Pattern 	<ul style="list-style-type: none"> • Read Handout #4
6	02/27/2023	<ul style="list-style-type: none"> • Review DPOA’s Produced by Colleagues • Heath Care Directive (“HCD”) Principles • Discuss HCD Fact Pattern 	<ul style="list-style-type: none"> • Draft DPOA Based on Fact Pattern • Read Handout #5
7	03/06/2023	<ul style="list-style-type: none"> • Review HCD’s Produced by Colleagues • Wills (General Principles) • Discuss Last Will and Testament Fact Patterns 	<ul style="list-style-type: none"> • Draft HCD Based on Fact Pattern • Read Handout #6
	03/13/2023	NO CLASS – SPRING BREAK	
8	03/20/2023	<ul style="list-style-type: none"> • Review Will’s Produced by Colleagues • Tax Obligations & Issues 	<ul style="list-style-type: none"> • Draft Will Based on Fact Pattern
9	03/27/2023	<ul style="list-style-type: none"> • Review Letters Produced by Colleagues • Execution Day for Will • Married Clients & Dual Representation 	<ul style="list-style-type: none"> • Draft Explanatory Letter to Client for Will & Instructions for Execution Day • Read Handout #7
10	04/03/2023	<ul style="list-style-type: none"> • Review Waiver Letters Produced by Colleagues • Clients with Minor Children • Discuss Clients with Minor Children Fact Pattern 	<ul style="list-style-type: none"> • Read Handout #8 • Draft Waiver Letters for Dual Representation
11	04/10/2023	<ul style="list-style-type: none"> • Review Trust Provisions Produced by Colleagues • Modifications of Wills & Trusts • Discuss Fact Pattern re: Modification of Estate Plans 	<ul style="list-style-type: none"> • Prepare Will and Trust Provisions to Address Clients with Minor Children • Read Handout #9

12	04/17/2023	<ul style="list-style-type: none"> • Review Modifications Produced by Colleagues • Final Instructions to Client on Execution Day • Discuss Execution Day Fact Pattern 	<ul style="list-style-type: none"> • Read Handout # 10 • Prepare Modifications to Trust and Will for Client in Fact Pattern
13	04/24/2023	<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 	<ul style="list-style-type: none"> • Read Handout #11 • Draft Final Letter to Provide Client Upon Execution & Delivery of Estate Plan
14	05/01/2023	<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 	<ul style="list-style-type: none"> • Draft Follow Up Letters After Execution & Delivery of Estate • Draft Funding Documents
TAKE HOME FINAL EXAM DUE MAY 8, 2023			

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.