

**CHAPMAN UNIVERSITY SCHOOL OF LAW  
WILLS & TRUSTS—LAW 7334  
FALL 2013 COURSE SYLLABUS  
TRUST SECTION—WEEKS 6 THROUGH 14  
One University Drive  
Orange, California 92866**

**Thursday Evenings  
6:00P – 8:45P**

**INSTRUCTORS:**

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**REQUIRED TEXTS:**

- Wills, Trusts and Estates, 8<sup>th</sup> Ed., Dukeminier and Johanson (Aspen).
- California Probate Code (also available online for free: [www.leginfo.ca.gov/calaw.html](http://www.leginfo.ca.gov/calaw.html); or on Lexis and Westlaw; or at the Chapman Law Library).
- Links to case law not found in Textbook available at <http://www.aldavlaw.com/forms/law-students/>, or you can look up each case on Lexis or Westlaw; or in book form at the Chapman Law Library.

**COURSE GRADING:**

15% Meaningful Class Participation  
85% In Class Essay Final

**ATTENDANCE:**

Difficult material will be covered in lecture. Absences from classes will likely be reflected in performance on the final exam.

**CLASS PARTICIPATION:**

Classes are based on lecture and questions and answers. Answers, correct or incorrect, are welcome from volunteers or from the student addressed. Any good faith effort to participate is counted towards the class-participation points available. In both oral and

written presentations (and especially for the final exam), the use of IRAC (issue, rule, analysis and conclusion) is required.

Please be respectful in class. You should act in class as you would act in Court, meaning no audible interruptions (such as laughing at a internet video). Class participation points will be reduced for students for do not act professionally when class is in session.

## **CALIFORNIA PROBATE CODE SECTIONS**

During lectures, we will discuss the specific provisions of the California Probate Code that you will be expected to know for purposes of the final exam. A majority of the relevant code sections (but NOT all of them) are listed in this syllabus. We will **NOT** provide you with a list of California Probate Code sections we cover in class. It is your responsibility to take notes of the code sections we discuss and then you can prepare a list of California Probate Code sections on your own if you like. Many of the California Probate Code sections we cover in class will be included in the final exam.

A copy of the California Probate Code is not required since you can access the same information for free online (see sources listed under Required Texts above). But reading the assigned California Probate Code sections for each class is required.

## **READING**

Weekly required reading assignments are set forth below. We have identified the specific cases that we will discuss in class, but you are responsible for all material contained within the assigned reading regardless of whether it is covered in class. A majority of the cases listed below are NOT in the textbook; therefore, you can either look them up using Lexis, Westlaw, Google Scholar, or in book form at the Chapman Law Library. We also have posted this syllabus on our website (<http://www.aldavlaw.com/forms/law-students/>) with links to most of the non-textbook cases.

### **Week 6: Sept 26, 2013**

- Nonprobate Transfers (Reading: pgs. 393-398)
  - Prob. Code, § 5000 et seq.
  - Financial Accounts
  - Joint Accounts
    - *Lee v. Yang* (2003) 111 Cal.App.4th 481
    - Rights on death of party to joint account. Prob. Code, § 5302
  - Joint tenancies. Civ. Code, § 683
  - Community Property with right of survivorship. Civ. Code, § 682.1
    - *Dorn v. Solomon* (1997) 57 Cal.App.4th 650
  - Pour-over Wills
    - Prob. Code, § 6300
  - Trusts vs. Other Entities

### **Week 7: Oct 3, 2013**

- Trust Creation Nonprobate Transfers (Reading: pgs. 541-558; 562)
  - Required Elements. Prob. Code, § 15200
    - Trustor Intent. Prob. Code, § 15201
    - Transfer of Property (Res). Prob. Code, § 15202
      - *Reagh v. Kelley* (1970) 10 Cal.3d 1082
      - *Estate of Heggstad* (1993) 16 Cal.App.4th 943
      - *Estate of Powell* (2000) 83 Cal.App.4th 1434
    - Designation of Beneficiary(ies). Prob. Code, § 15205
      - Pet Trusts. Prob. Code, § 15212
  - Revocation and Amendment
    - Presumption of Revocability. Prob. Code, § 15400
    - Methods of Revocation. Prob. Code, § 15401
    - *Masry v. Masry* (2008) 166 Cal.App.4th 738
    - *Aguilar v. Aguilar* (2009) 168 Cal.App.4th 35
  - Powers of Appointment
    - Prob. Code, §§ 600-690

### **Week 8: Oct 10, 2013**

- Grounds for Setting Aside Trust
  - Burden of Proof. Prob. Code, § 8252
  - Lack of Capacity
    - What constitutes lack of capacity? Prob. Code, §§ 811, 812, 6100.5
    - *Goodman v. Zimmerman* (1994) 25 Cal.App.4th 1667
    - *Walton v. Bank of Cal.* (1963) 218 Cal.2d 527
    - *Anderson v. Hunt* (2011) 196 Cal.App.4th 722
  - Undue Influence
    - Civ. Code § 1575
    - *Estate of Truckenmiller* (1979) 97 Cal.App.3d 326
    - *Estate of Yale* (1931) 214 Cal. 115
    - *Estate of Lingenfelter* (1952) 38 Cal.2d 571
    - *David v. Hermann* (2005) 129 Cal.App.4th 672 (Circumstantial evidence)
    - *Estate of Garibaldi* (1961) 57 Cal.2d 108
    - Burden Shift: Presumption of Undue Influence
      - Confidential relationship
      - Active participation
      - Undue profit
  - Fraud, Duress, or Menace
  - Mistake
    - *Walton v. Bank of Cal.* (1963) 218 Cal.App.2d 527
    - Civ. Code, §§ 1576-1579
  - Prohibited Transferees. Prob. Code, § 21360 et seq.
    - *Bernard v. Foley* (2006) 39 Cal.4th 794

- Certificate of Independent Review. Prob. Code, § 21384
- Irrevocability on First Death (ouch!)
- Drafting Attorney Malpractice

### **Week 9: Oct 17, 2013**

- Impediments in Trust Litigation
  - No-Contest Clauses
    - Prob. Code, §§ 21310-21315
  - Statute of Limitations
    - Prob. Code, § 16061.7 (120 days)
    - Other SOLs.
  - Exculpatory Clauses
  - Arbitration Clauses
  - Trustee's Litigation Expenses
    - *Donahue v. Donahue* (2010) 182 Cal.App.4th 259
  - Prob. Code, § 17211
    - *Leader v. Cords* (2010) 182 Cal.App.4th 1588
    - *Uzyel v. Kadisha* (2010) 188 Cal.App.4th 866
    - *Chatard v. Oveross* (2010) 179 Cal.App.4th 1098

### **Week 10: Oct 24, 2013**

- Fiduciary Duties and Breach of Trust. Prob. Code, § 16000 et seq., (Reading: pgs. 667-675;)
  - Trustee Standard of Care
    - Prob. Code, § 16040
    - *Pillsbury v. Karmgard* (1994) 22 Cal.App.4th 743
  - Uniform Prudent Investor Act. Prob. Code, § 16045 et seq.
    - Trustee Standard of Care Under UPIA. Prob. Code, § 16047
  - Duty to Administer Trust
  - Duty of Loyalty
  - Duty of Impartiality
  - Duty to Avoid Conflicts of Interest
    - *In re Rothko* (Book pg. 679)
  - Duty to Control, Preserve, and Make Trust Assets Productive
    - *Conservatorship of Pelton* (1982) 132 Cal.App.3d 496
    - *Lynch v. John M. Redfield Found* (1970) 9 Cal.App.3d 293
    - *Estate of Collins* (1977) 72 Cal.App.3d 663
  - Duty to Keep Trust Assets Separate
  - Duty to Enforce or Defend Trust
  - Trustee Removal and Suspension
    - Prob. Code, § 15642
    - *Wells Fargo Bank v. Sup. Ct.* (2000) 22 Cal.App.4th 201
    - *Moeller v. Sup. Ct* (1997) 16 Cal.App.4th 1124
    - *Schwartz v. Labow* (2008) 164 Cal.App.4th 417
  - Trustee's Defenses

- Exculpatory Clauses. Prob. Code, § 16461
  - *Estate of Collins* (1977) 72 Cal.App.3d 663
- Consent of Beneficiaries
  - Prob. Code, §§ 16463, 16465.
  - *Ferro v. Citizens Nat'l Trust & Sav. Bank* (1955) 44 Cal.2d 401
- Statute of Limitations
  - Prob. Code, § 16460 (3-year SOL)
    - *Quick v. Pearson* (2010) 186 Cal.App.4th 371
- Laches
  - *Getty v. Getty* (1986) 187 Cal.App.3d 1159
- Res Judicata and Collateral Estoppel
  - *Noggle v. Bank of America* (1999) 70 Cal.App.4th 853
  - *Getty v. Getty* (1986) 187 Cal.App.3d 1159
- Damages
  - Compensatory damages. Prob. Code, § 16400 et seq.
  - Double damages. Prob. Code, § 859
  - Punitive damages. Civ. Code, § 3294
  - Surcharge

### **Week 11: October 31, 2013 (Professor Davidson)**

Chapter 13: Construction of Trusts: Future Interests; pgs. 837-839; 841-883:

*In Re Estate of Gilbert*, pg. 847;

*Dewire v. Haveles*, pg. 863;

*Estate of Woodworth*, pg. 869;

*Lux v. Lux*, pg 880;

Chapter 14: The Rule Against Perpetuities and Trust Duration; pgs. 885-917.

### **Week 12: November 7, 2013**

Probate administration overview (Reading page 38 – 70).

### **Week 13: November 14, 2013**

- Rights of Beneficiary's Creditors. Prob. Code, § 15300 et seq. (Reading: pgs. 609-616)
  - Spendthrift provisions.
    - *Scheffel v. Krueger* (Book pg. 616)
  - Self-Settled Asset Protection Trusts.
  - Claims for child or spousal support.
  - *Laycock v. Hammer* (2006) 141 Cal.App.4th 25
  - Code Civ. Proc., § 709.010
  - *Ventura County Dept. of Child Support Services v. Brown* (2004) 117 Cal.App.4th 144
  - *Young v. McCoy* (2007) 147 Cal.App.4th 1078
  - *Canfield v. Security-First Nat'l Bank of Los Angeles* (1939) 13 Cal.2d 1

- *DeMille v. Ramsey* (1989) 207 Cal.App.3d 116
- *Chatard v. Oveross* (2010) 179 Cal.App.4th 1098
- Modification of Trust. Prob. Code, §§ 15403, 15404, 15409 (Reading: pgs. 641-645)
  - *Conservatorship of Kane* (2006) 137 Cal.App.4th 400
  - *Bilafer v. Bilafer* (2008) 161 Cal.App.4th 363
- T&E Montage
  - Financial Elder Abuse Litigation. Welf & I C §§ 15600 et seq.
  - Accountings and Trustee Surcharge. Prob. Code, § 16060 et seq.
    - Prob. Code, § 16061.7
    - Prob. Code, § 16063
    - Statute of Limitations
    - Petition to Compel Accounting
  - 850 Petitions
  - 17200 Petitions
  - T&E Litigation Procedure
    - Moving Papers
    - Discovery
    - Motions
    - 998 Offers
    - Trial
    - Appeals

**Week 14: November 21, 2013**

Class review

**Accommodations: In compliance with ADA guidelines, students who have any condition, either permanent or temporary, that may affect their ability to perform in this class are encouraged to contact Associate Dean of Student Affairs and Administration Jayne Kacer or the University Disability Services Office. Dean Kacer is located in the law school Dean's Suite and can be reached at [kacer@chapman.edu](mailto:kacer@chapman.edu) or 714-628-2641. You also may contact the Office of Disability Services at 714-516-4520 or [www.chapman.edu/disabilities](http://www.chapman.edu/disabilities). If your request for an accommodation is granted, please discuss with your professor *only* those accommodations that relate to classroom learning, e.g., the need to sit in a special location, audio taping, etc. Because exam grading is anonymous, please**

**do not discuss with your professors any accommodations related to exams. These accommodations will be handled by the Registrar's Office. The granting of any accommodation will not be retroactive and cannot jeopardize the academic standards or integrity of the course.**