

CHAPMAN UNIVERSITY SCHOOL OF LAW
WILLS & TRUSTS—LAW 7334
FALL 2013 COURSE SYLLABUS
WILL SECTION—WEEKS 1 THROUGH 5
One University Drive
Orange, California 92866

Thursday Evenings
6:00P – 8:45P

INSTRUCTORS:

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REQUIRED TEXTS:

- Wills, Trusts and Estates, 8th Ed., Dukeminier and Johanson (Aspen).
- California Probate Code (also available online for free: 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 each of the non-textbook cases.

Week 1: August 22, 2013

- Introduction to inheritance law (Reading: pgs. 3 – 9; 28-34)
 - Constitutional Right to Inherit
 - *Hodel v. Irving* (Textbook pg 3)
 - Right to exclude children
 - *Shapira v. Union National Bank* (Textbook pg. 28)
- Probate Court Basics (Reading: pgs. 38-42; Prob. Code sections listed below)
 - In Rem Jurisdiction
 - No juries
 - CCP Applies; Probate Code § 1000
 - Full power of Superior Court
 - Filing, serving
 - Asset trail
 - Prob. Code § 21105 (Will passes all property owned at death)

- Passing Assets without probate (\$150,000 or \$50,000) Prob. Code §§ 13000-13210.
- Passing assets between spouses Prob. Code § 13500 (Spousal Prop. Petition)
- Terms
 - Issue, Prob. Code § 50
- Intestate Succession (Reading: pgs. 71-80; 87-91; 92-93; Prob. Code sections listed below)
 - Degree of Kinship, Prob. Code § 13
 - Married v. single
 - Community Property v. Separate Property, Prob. Code § 6401
 - Rights of Domestic Partners, Fam. Code §§ 297 & 297.5
 - Simultaneous death, Prob. Code § 220
 - 120 Hour Survival Requirement for Intestate Succession, Prob. Code § 6403

Week 2: August 29, 2013

- Will Creation
 - Intentionalities
 - Lack of Capacity
 - Testamentary Capacity (Reading: pgs. 167-168; Prob. Code sections and cases listed below)
 - Prob. Code, §§ 6100 and 6100.5(a)
 - *Estate of Shay* (1925) 196 C 355
 - *Estate of Clegg* (1978) 87 CA 3d 594
 - Insane Delusion (Reading: pgs. 168-171; cases listed below)
 - *Estate of Perkins* (1925) 195 C 699
 - *In Re Strittmater* (Textbook pg. 169)
 - *Goodman v. Zimmerman* (1994) 25 CA 4th 1667
 - Presumptions and Burdens of Proof (Reading: cases listed below)
 - *Estate of Mann* (1986) 184 CA 3d 593 (Lucid interval)
 - *Estate of Fosselman* (1957) 48 C 2d 179 (presumption of continuing incompetence)
 - Evidentiary Standard to Prove Lack of Capacity Prob. Code § 811 (Reading: cases listed below)
 - *Estate of Wright* (1936) 7 C 2d 348
 - *Estate of Goetz* (1967) 253 CA 2d 107 (Weight of drafting attorney)
 - Undue Influence

- Elements of Undue Influence (Reading: pgs. 180 – 186; cases listed below)
 - *Estate of Yale* (1931) 214 C 115 (elements of undue influence)
 - *Estate of Snowball* (1910) 157 C 301
 - *Estate of Baker* (1982) 131 CA 3d 471
 - *Estate of Lingenfelter* (1925) 38 C 2d 571
 - *Alter v. Alter* (See link on <http://www.aldavlaw.com/forms/law-students/>)
- Burden Shift
 - *Estate of Graves* (1927) 202 C 258
 - *Estate of Sarabia* (1990) 221 CA 3d 599
- Fraud (Reading: pgs. 207 - 210; case listed below)
 - *Estate of Carson* (1920) 184 C 437
- Duress/Menace (Reading pg. 210)
 - Civil Code § 1569
- Mistake NOT applicable to Wills
 - *Estate of Smith* (1998) 61 CA 4th 259

Week 3: September 5, 2013

- Formalities
 - Signed writing
 - Witnessed Wills (Reading pgs. 223 – 229; 233 – 239; 241 – 246; 253; 261-263; Prob. Code sections and cases listed below)
 - Attested Wills, Prob. Code § 6110
 - Time of Signing Will
 - *Estate of Saueressig* (2006) 38 C 4th 1045
 - *Estate of Eugene* (2002) 104 CA 4th 907
 - Competent Witnesses, Prob. Code § 6112
 - Curing Defects
 - Prob. Code § 6110(c)(2)
 - *Estate of Stoker* (2011) 193 CA 4th 236
 - Holographic Wills (Reading: 268-269; 277-285; Prob. Code sections and cases listed below)
 - Prob. Code § 6111
 - *Estate of Williams* (2007) 155 CA 4th 197
 - *Estate of Brenner* (1999) 76 CA 4th 1298
 - *Estate of Sola* (1990) 225 CA 3d 241
(handwritten notations on an attested Will are invalid.)
 - *Estate of Charles Kuralt* (See Textbook pg. 280)

- Will Components
 - Incorporation by reference (Reading: pgs. 307-316; Prob. Code sections and case below)
 - Prob. Code § 6130
 - Prob. Code § 6132 (disposition of tangible personal property)
 - *Clark v. Greenhalge* (Textbook, pg. 310)
 - Acts of Independent Significance (Reading: pgs. 323-325; Prob. Code section below)
 - Prob. Code § 6131
 - 14 Witkins, Summary 10th (2005) Wills § 169, pg. 242
 - Construction of Wills (Reading: Prob. Code section below)
 - Prob. Code § 21102; 21120 to 21122 (intent, construction, extrinsic evidence)
 - *Estate of Goyette* (2004) 123 CA 4th 67
 - Mistaken or ambiguous language (Reading: pgs. 335 -343; Prob. Code sections and cases below)
 - Prob. Code § 6111.5; 21102
 - *Mahoney v. Grainger* (Textbook, pg. 336)
 - *Citizens Business Bank v. Carrano* (2010) 189 CA 4th 1200
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Week 4: September 12, 2013

- Lapse and anti-lapse (Reading: pgs. 358-359; 364-367)
 - Prob. Code § 21110 (Anti-Lapse Statute)
 - *Estate of Tolman* (2010) 181 CA 4th 1433
- Change in property after execution (ademption and abatement) (Reading: pgs. 380-392)
 - *Estate of Anton* (Textbook pg. 381)
 - Prob. Code § 21117 (Classification of gifts)
 - Prob. Code § 21133 Ademption by extinction
 - *In re Estate of Anton* (Textbook pg. 381)
 - Prob. Code § 21135 Satisfaction of general gifts
 - Prob. Code § 21401 Abatement; § 21402 Order of abatement
- Advancements (loans vs. gifts) (Reading: pg. 133-135)
- Will Revocation
 - Written revocation (Reading: pg. 286 – 287)
 - Prob. Code § 6120(a)
 - Physical revocation (Reading: Prob. Code section and case below)
 - Prob. Code § 6120(b)
 - *Harrison v. Bird* (Textbook pg. 287)
 - *Thompson v. Royall* (Textbook, pg. 290)
 - Presumption of Revocation (Reading: Prob. Code section and case below)

- Prob. Code § 6124
 - *Lauermann v. Sup. Court* (2005) 127 CA 4th 1327
 - Revival
 - Prob. Code § 6123
 - Dependent relative revocation (Reading: pgs. 295-307)
 - *LaCroix v. Senecal* (Textbook, pg. 295)
 - *Estate of Alburn* (Textbok, pg. 300)
- Restrictions on Power of Disposition
 - Right of surviving spouse to community property
 - Right of omitted spouse
 - Prob. Code § 21610 to 21612
 - Right of omitted child
 - Prob. Code § 21620; §21621 (when omitted child does not apply)
 - *Estate of Mowry* (2003) 107 CA 4th 338
 - Homesteads and Family Allowance
 - Prob. Code § 6520-6545
- Bars to succession (Reading: pgs. 145-154)
 - Felony murder statute
 - Divorce
 - Prob. Code §§ 6122, 6122.1.
 - *Estate of Coleman* (2005) 129 CA 4th 380
 - Disclaimer
 - Elder Abuse

Week 5: September 19, 2013

- Lawsuits against estate's and beneficiaries (Reading: Prob. Code sections and cases below)
 - Tortious Interference with an Expected Inheritance
 - *Beckwith v. Dahl* (2012) 205 CA 4th 1039
 - Elder Abuse Actions
 - Welfare & Institutions Code §15610.30 "Financial Elder Abuse"
 - Contract to make a Will
 - Prob. Code § 21700
 - *Brewer v. Simpson* (1960) 53 C 2d 567
 - Fam. Code § 1612(a)(4) Premarital Agreement contracts to make a Will
 - *Stewart v. Stewart* (2007) 148 CA 4th 1513 (one-year statute of limitation)
 - Non-married partner rights (Marvin Claims)
 - *Marvin v. Marvin* (1976) 18 C 3d 660
 - Creditor claims
 - Attorney Malpractice for Will drafting
 - *Lucas v. Hamm* (1961) 56 C 2d 583

- *Chang v. Lederman* (2009) 172 CA 4th 67
- Will Contest Actions (Reading: Prob. Code sections and case listed below; case study)
 - Petition for Probate
 - Will Contest Complaint
 - Proof of Due Execution by Proponent of Will Prob. Code § 8252(a).
 - Burden shift to prove lack of due execution *Swift v. Superior Court* (1952) 39 C 2d 358
 - Case Study

Weeks 6 through 10: See Trust Syllabus (September 26, 2013 through October 24, 2013). The Trust syllabus will be posted later in the semester.

Week 11: October 31, 2013

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

Trust administration and Trust litigation case study

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 or 714-628-

2641. You also may contact the Office of Disability Services at 714-516-4520 or 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.