

**CHAPMAN UNIVERSITY SCHOOL OF LAW
WILLS & TRUSTS—LAW 7334
FALL 2014 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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OPTIONAL 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 who 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.

DISABILITY ACCOMODATIONS

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.

EQUITY AND DIVERSITY NOTIFICATION

Chapman University is committed to ensuring equality and valuing diversity. Students and professors are reminded to show respect at all times as outlined in Chapman's Harassment and Discrimination Policy: <http://tinyurl.com/CUHarassment-Discrimination>. Any violations of this policy should be discussed with the professor, the Dean of Students and/or otherwise reported in accordance with this policy.

PROGRAM LEARNING OUTCOMES

The law school has identified three program learning outcomes: legal analysis, legal writing, and client counseling. This course will address legal analysis and legal writing.

COURSE LEARNING OUTCOMES

1. Legal analysis: Students will learn to analyze cases and probate code provisions that apply to California trusts and wills.
2. Legal argument: Students will learn how to articulate legal and equitable arguments in support of legal positions taken in the trusts and wills arena.
3. After the course, students will be familiar with the law of California trusts and wills, how to spot trust and will issues, and how to articulate a legal position in this arena.
4. All of the course learning outcomes are designed to support the Law School's "legal writing" program learning outcome.

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 21, 2014

- Introduction to inheritance law (Reading: pgs. 3 – 9; 28-34)
 - Constitutional Right to Inherit
 - *Hodel v. Irving*
 - Right to exclude children
 - *Shapira v. Union National Bank*
- Probate Court Basics (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 (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 28, 2014

- **No Class**

Week 3: September 4, 2014

- Will Creation
 - Intentionalities
 - Lack of Capacity
 - Testamentary Capacity
 - Prob. Code, §§ 6100 and 6100.5(a)
 - *Estate of Shay* (1925) 196 C 355
 - *Estate of Clegg* (1978) 87 CA 3d 594
 - Insane Delusion
 - *Estate of Perkins* (1925) 195 C 699
 - *In Re Strittmater* (N.J. 1947) 53 A. 2d 205
 - *Goodman v. Zimmerman* (1994) 25 CA 4th 1667
 - Presumptions and Burdens of Proof
 - *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
 - *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)
 - *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
 - *Estate of Carson* (1920) 184 C 437
- Duress/Menace
 - Civil Code § 1569
- Mistake NOT applicable to Wills
 - *Estate of Smith* (1998) 61 CA 4th 259

Week 4: September 11, 2014

- Formalities
 - Signed writing
 - Witnessed Wills
 - 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 5: September 18, 2014

- 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 6: September 25, 2014

- 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. Seward* (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 7 through 11: See Trust Syllabus (October 2, 2014 through October 30, 2014). The Trust syllabus will be posted later in the semester.

Week 12: November 6, 2014

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 13: November 13, 2014

Probate administration overview.

Week 14: November 20, 2014

Class review

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