

WILLS & TRUSTS – LAW 521 – Sec 2
Professor Robert Johnston
University of La Verne College of Law
FALL 2018
3 Credits/Units

You are responsible for checking this Syllabus for updates/changes on **at least a weekly basis**.

It will be revised and updated from time and time, and students are expected to consult the [Google Doc](#) version with regularity and be aware of changes made there.

Professor

Name: Robert Johnston
Office: Faculty Suite
Phone: (949) 290-2445
Email: rjohnston@laverne.edu

Class Time and Place

Meeting days: Thursday 6:30-9:30 p.m.
Meeting time: 6:30-9:30 p.m.
Location: room number 207

Note: No Class Thursday, November 22 – Thanksgiving – (make up on November 27 or 28.
Specific make-up date and time to be confirmed later)

Office Hours

Thursday 4:30 -6:30 p.m.

AND BY APPOINTMENT

Professor Johnston is available by email, which is the quickest way to get a response to questions.

Course Description

This course is a study of family wealth transmission problems. Subjects include will creation (formal and informal), will interpretation, and will revocation. Also studied are the creation and enforcement of trusts (both private and charitable), the duties of the trustee, and revocation issues.

This course is intended to prepare students for the California bar examination in the subjects of Wills and Trusts. This means it will focus on the California Probate Code (especially those

sections required for the bar exam), and the common law of trusts/Uniform Trust Code. We will cover intestate succession; all wills formalities issues; changes in circumstances (such as lapse and pretermission); trust types and creation; and the fiduciary duties of trustees/executors.

Basis of Grade

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| 30 points | MIDTERM (administered on TWEN between October 5-October 8) |
| 70 points | FINAL EXAM (DATE TBD) |

100 points

Required and Suggested Materials

NEW(ER) EDITION: Dukeminier, Sitkoff, & Lindgren, *Wills, Trusts, and Estates* (10th ed. 2017) (referred to below as “Dukeminier”) (You must have this edition)

French, *A California Companion for the Course in Wills, Trusts, and Estates* (2017-2018) (referred to below as “French”) (Prior editions may be acceptable, although you may need to print out occasional statutory materials or cases that update an older edition) (other statutory supplements are also acceptable, but page number assignments, etc. will not be provided.)

Please ADD THE TWEN COURSE FOR THIS COURSE

At the end of most sub-units, there is a link to Problems reviewing that area. I strongly suggest working through these Problems during and at the end of the sub-unit (rather than waiting until closer to the Midterm or Final). They are the best way to assess whether you are learning what you need to know in each area. I do not post answers/solutions to these problems (I believe that posting lists of answers interferes with the usefulness of the Problems). However, if you are unable to find the solution to a particular problem, I am happy to provide guidance.

ABA Standard 310

This course is designed to satisfy the requirements of ABA Standard 310. Standard 310 requires that for each hour of in-class time, students spend two hours preparing for class (reading or completing class assignments or assessments).

Attendance Quizzes and Attendance Policies

The University of La Verne College of Law requires attendance at no less than 80% of the scheduled class meetings. Our course has 14 scheduled meetings; if you are absent 3 times, you will exceed the permitted number of absences and be dropped from the class. There are no excused absences.

Our class meets for 3 hours. Late arrival or early departure will result in a ½ **absence**.

Course Objectives

1. The course will cover the California Probate Code as it is bar-examined in California, including the California law of intestate succession (and bars to succession), all will-making formalities, changes in circumstances, and bases for challenging a will (including competence/capacity and undue influence and related doctrines).
2. The course will also cover the common law of trusts (including the UTC), as bar-examined in California, focusing on elements of trusts, duties of trustees/executors as fiduciaries, beneficiaries'/creditors' rights, and modification/termination of trusts,

Course-Specific Learning Outcomes

1. Students will demonstrate understanding of the basic principles of Wills and Trusts law (common law and California law), specifically as these relate to doctrines of intestate succession, bars to succession, will formalities, revocation, testamentary capacity, bases for will contests, ademption, abatement, lapse/anti-lapse, pretermisison, the law of trusts, beneficiaries' and creditors' rights in trust property, modification and termination of trusts, powers of appointment, and fiduciary duties as applied to estates and trusts
2. Students will demonstrate ability to identify and evaluate the relevant facts, rules of law, and policies underlying the holding of each of the cases assigned, and to discuss these matters aloud and in "real time"
3. Students will demonstrate basic ability to read, understand, and apply statutes covering relevant subjects to assigned cases and to hypothetical fact patterns, including all probate statutes covered by the California bar exam in the areas of wills and trusts
4. Students will demonstrate ability to apply general principles and statutory rules drawn from the assigned reading to novel fact patterns and scenarios, both orally and in writing
5. Students will demonstrate ability to resolve assigned problems by applying fundamental principles and rules, including clearly articulating their own reasoning and analysis in their answers
6. Students will utilize opportunities to demonstrate their learning in bar-style essay examinations

Disability Accommodations Statement

Students with disabilities should refer to the policies described at the University of La Verne Disabled Student Services Handbook [as of September 13, 2017 located at <https://sites.laverne.edu/disabled-student-services/disabled-student-services-handbook/>, which can be found on the website of the University of La Verne Disabled Student Services website (<https://sites.laverne.edu/disabled-student-services/disabled-student-services-handbook/>) or at their office. Temporary accommodations are offered on a case by case basis. All required

documentation must be submitted by the student before any formal accommodations and should be made directly to the Director of Student Affairs.

Any student eligible for and requesting academic accommodations due to a documented disability (or a suspected disability) is asked to contact the College of Law Director of Student Affairs and Americans with Disability Act Compliance Officer, Akita Mungaray by email at amungaray@laverne.edu or by phone at (909) 460-2017. Her office is located on the first floor of the College of Law, Office # 107. You can also contact Cynthia Denne at the University of La Verne Disabled Student Services office at (909) 448-4441. The office is located at the La Verne campus Health Center. In order to be considered for accommodations, disabilities must be documented and the proper medical evaluations must be submitted. The office is here to help you succeed in law school. Visit it online at <https://sites.laverne.edu/disabled-student-services/>.

Academic Integrity Policy

All University of La Verne and College of Law rules against plagiarism, cheating, and all forms of academic dishonesty will be energetically and stringently enforced. This includes but is not limited to reports to the California Committee of Bar Examiners which may affect the Moral Character application for admission to the Bar.

(Reading Assignments next page)

Reading Assignments

| Class # | Date | Topic(s) | Readings/Other Assignments (including cases to brief) |
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| PART I: WILLS (AND RELATED DOCTRINES) SOURCES OF ESTATE LAW, INTESTACY, & BARS TO SUCCESSION LEARNING OBJECTIVES By the end of this Unit, students will <ul style="list-style-type: none"> Demonstrate familiarity with and ability to apply, in appropriate circumstances, the bar-examined California Probate Code Sections relating to intestacy (CPC §100, 140, 141, 142, 143, 144, 145, 146, 220, 240, 6401, 6402), as well as relevant non-bar statutes Demonstrate the ability to distribute an intestate estate consisting of community and separate property for married and unmarried intestate decedents with a variety of family configurations, including adoption, step-families, and assisted reproductive technology Recognize and demonstrate understanding of the significance of historical (including race- and status-based) common law, statutory, and California caselaw-based bars to succession, including advancements, simultaneous death, homicide, elder abuse, disclaimer, waiver, and negative disinheritance | | | |
| Week # 1 | Th 8/23 | 1. Introduction/Bar Exam Exercise 2. Brief Overview of Probate Procedure 3. Intro to PR Dimensions of W&T 4. Sources of W&T law | 1. Intro Dukeminier, 10th ed., Chapter 1 (as set out below) We will also work through a recent California Bar Exam question in the wills & trusts area. You are not expected to have seen it or to have any familiarity with the law it examines. 2. Procedure Dukeminier, Chapter 1.B (pp. 40-51) CPC § 8200, § 8226 <u>Read and brief:</u> <i>Estate of Earley</i> , 173 Cal.App.4th 369, 92 Cal.Rptr.3d 577 (2009) 3. PR Dukeminier, Chapter 1.C (pp. 51-62) <u>Read and brief:</u> <i>Simpson v. Calivas</i> (Dukeminier, p. 52) <i>A v. B</i> (Dukeminier, p. 57) 4. Sources Dukeminier, Chapter 1.A (pp. 1-39) and Chapter 8.A (pp. 553-560; SKIM pp. 520-544) <u>Read and brief:</u> |

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| | | | <p><i>Shapira v. Union National Bank</i> (Dukeminier, p. 5) <i>Hodel v. Irving</i> (Dukeminier, in text beginning p. 30) <i>Shaw Family Archives</i> (the “Marilyn Monroe” case) (Dukeminier, p. 33)</p> |
| Week # 2 | Th 8/30 | <p>I. Intestacy</p> <p>A. Share of spouse, descendant s, other family</p> <p>1. Terminology & Basic Rules</p> | <p>I. Recommended: CALI lesson on California Intestate Succession (on TWEN page)</p> <p>A. Dukeminier, Chapter 2.A and 2.B (pp. 63-76, 79-90)</p> <p>(SKIP: 76-79, “Simultaneous Death” (to which we will return below))</p> <p>1. We will first familiarize ourselves with the “nuts and bolts” of California’s intestacy scheme (and the traditional approach superseded by it), and the terminology used there. Statutes include CPC § 100, 240, 245, 246, 247, 249.5, 6401, 6402, 6406.</p> |
| Week # 3 | Th 9/6 | <p>2. Application of the rules in various family situations</p> | <p>2. Statutes to be covered include CPC §6407, 6409, 6450, 6451, 6453, 6454, 6455, 21115.</p> <p>Dukeminier, Chapter 2.C (pp. 90-126)</p> <p><u>Read and brief:</u></p> <p><i>Hall v. Vallandingham</i> (p. 91) (adopted children) <i>Estate of Dye</i>, 92 Cal.App.4th 966, 112 Cal. Rptr.2d 362 (2001) (adopted-out children) <i>Minary v. Citizens Fidelity</i> (p. 96) (adult adoption) <i>O’Neal v. Wilkes</i> (p. 102) (equitable adoption) <i>Estate of Ford</i>, 32 Cal.4th 160, 82 P.3d 747, 8 Cal.Rptr.3d 541 (2004) (equitable adoption) (note in Dukeminier, p. 108) The Kitty Oakes/Billy Tipton case (an additional article is here) <i>Estate of Griswold</i>, 25 Cal.4th 904, 24 P.3d 1191, 108 Cal.Rptr.2d 165 (2001) (nonmarital children) <i>Estate of Burden</i>, 146 Cal.App.4th 1021, 53 Cal.Rptr.3d 390 (2007) (nonmarital children) <i>Woodward v. Comm’r</i> (Dukeminier, p. 111) (posthumously-conceived children) <i>Vernoff v. Astrue</i>, 568 F.3d 1102 (2009) (posthumously-conceived children)</p> |

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| | | | <p><i>In re Martin B.</i> (p. 118) (posthumously-conceived children as trust beneficiaries) Child with three genetic parents</p> <p>Where the materials include California and non-California cases on similar subjects, make sure you are clear on the California rule, and try to identify how, if at all, the California rule is different.</p> <p>TO REVIEW YOUR UNDERSTANDING: Some intestacy problems</p> |
| Week # 4 | Th 9/13 | <p>B. Bars to succession: advancements, simultaneous death, “unworthy heirs” (homicide/parental neglect/elder abuse), disclaimer, (spousal) waiver, negative disinheritance</p> | <p>B. Bars to succession Dukeminier, Chapter 2.C Relevant statutes: 103, 220, 221, 250, 251, 252, 253, 259, 282, 6403, 6409, 6452</p> <ol style="list-style-type: none"> Advancements (Dukeminier, pp.122-124) (Sec. 6409) Simultaneous death (Dukeminier, pp. 76-79) (Sec. 103, 220, 221, 6403) <i>Janus v. Tarasewicz</i> (p. 75) <u>and</u> <i>In re Doyle</i>, 581 N.E. 2d 669 (Ill. 1991) (a disciplinary proceeding against one of the lawyers in <i>Janus</i>) Unworthy heirs (Dukeminier, p. 127-135) (Sec. 250-254, Sec. 259) (including “slayers”) <i>Estate of Mahoney</i> (p. 127) (homicide) The story of the Carman case and petition (updated links) <i>Estate of Shellenbarger</i>, 169 Cal.App.4th 894, 86 Cal.Rptr.3d 862 (2008) (review denied 2009) (parental neglect) but now Sec. 6452 <i>Estate of Dito</i>, 198 Cal.App.4th 791 (2011) (elder abuse) Disclaimer (Dukeminier, p. 135-140) (Sec. 282) <i>Drye</i> (p. 138) (note case) <i>Troy v. Hart</i> (p. 140) (note case) (Spousal) waiver (Dukeminier, pp. 544-553) NOTE: The Dukeminier material is mostly drawn from non-community property states; we will focus on the California law. CPC §§ 140, 141, 142, 143, 144, 145, 146, Family Code § 1615 <i>Estate of Will</i>, 170 Cal.App.4th 902, 88 Cal.Rptr.3d 502 (2009) (spousal waiver) Negative disinheritance |

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| | | | <p><i>In re Barnes' Estate</i>, 63 Cal.2d 580, 407 P.2d 656 (Cal. 1965) (negative disinheritance)</p> <p>To review your understanding: BARS TO SUCCESSION PROBLEMS</p> |
| Week #5 | Th 9/20 | II. WILLS A. WILL FORMALITIES: EXECUTION | <p>A. Dukeminier, Chapter 3 (141-216) CPC Sec. 6105, 6110, 6111, 6111.5, 6112, 6130, 6131, 6132</p> <p>There are also now Panopto videos for each of these (by number) on the TWEN page for our course.</p> <p>1. The Will Execution ceremony (Dukeminier, pp. 158-160)</p> <p>For the following topics, no need to brief note cases; just extract the rule of the case.</p> <p>2. Witnessing & the “presence” requirements <i>In re Groffman</i> (Dukeminier, p. 147) <i>Stevens v. Casdorph</i> (Dukeminier, p. 149) (witnessing)</p> <p>3. Signature <i>Estate of McCabe</i> (Dukeminier, p. 154) <i>Taylor v. Holt</i> (Dukeminier, p. 154) BUT CONSIDER: pp. 188-189, “Probating an unsigned instrument.”</p> <p>4. The requirement of a “writing” <i>In re Castro</i> (Dukeminier, p. 191)</p> <p>5. “Interested” witnesses <i>Estate of Morea</i> (Dukeminier, p. 157-158) (interested witnesses)</p> <p>6. Mistakes, substantial compliance, and the dispensing power <i>In re Pavlinko's Estate</i> (Dukeminier, p. 163) (mistaken signatures) <i>In re Snide</i> (Dukeminier, p. 166) (mutual wills)</p> <p>In reading the two cases above, identify at least two important <u>differences</u> between the cases that may account for their differing outcomes.</p> |

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| | | | <p>9. What instruments comprise “a” will or “the” will?</p> <p>CPC § 6130, 6131, 6132, 6300*</p> <p>NOTE: The version of CPC § 6300 in the French book is outdated/superseded. Be sure to print out the current version; I suggest pasting it into your book.</p> <p><i>Minton v. Minton</i> (Dukeminier, p. 216) (note case) <i>Estate of Rigsby</i> (Dukeminier, p. 241) <i>Clark v. Greenhalge</i> (p. 245) (incorporation by reference) <i>Johnson v. Johnson</i> (p. 250) (incorporation by reference) Pour-overs (§ 6300)</p> |
| Week # 7 | Th 10/4 | B. REVOCATION OF WILLS & CONTRACTS RELATING TO WILLS | <p>Dukeminier, pp. 214-263 CPC § 6120, 6121, 6124, 21700</p> <p>10. Revocation</p> <p>CPC § 6120, 6121, 6124</p> <p><i>Lauermann v. Sup. Ct.</i>, 127 Cal.App.4th 1327, 26 Cal.Rptr.3d 258 (2005) (photocopies) <i>Thompson v. Royall</i> (Dukeminier, p. 219) (revocation by subsequent writing) <i>Harrison v. Bird</i> (Dukeminier, p. 222) (presumption of revocation) <i>Estate of Stoker</i> (Dukeminier, p. 226) <i>Estate of Tolin</i> (Dukeminier p. 230) (note case)</p> <p><i>LeCroix v. Senecal</i> (Dukeminier, p. 232) (dependent relative revocation) <i>Estate of Alburn</i> (Dukeminier, p. 237) (DRR) <i>Estate of Anderson</i>, 56 Cal.App.4th 235, 65 Cal.Rptr.2d 307 (Cal.App.2d 1997) (CA common law DRR)</p> <p>11. Contracts relating to wills</p> <p>CPC § 21700</p> <p><i>Keith v. Lulofs</i> (Dukeminier, p. 258) <i>Allen v. Stoddard</i>, 212 Cal.App.4th 807 (2013) (breach of contract to make a will)</p> |

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| | | | <p><i>Estate of Ziegler</i>, 187 Cal.App. 1357 (2010)</p> <p>To review your understanding: <u>WILL FORMALITIES PROBLEMS</u></p> <p>NOTE: The Midterm will not examine past this point of the Syllabus. Depending on time, I may move on to C.1. below, but it will <u>not</u> be on the Midterm.</p> |
| <p style="text-align: center;">MIDTERM</p> <p>The Midterm Examination will be taken online, through TWEN, during any ninety (90) minute period of the student's choice, beginning Friday, October 5 at 9am, and ending (Midterm Examination must be <u>completed</u>) by Monday, October 8 at 5pm.</p> | | | |
| Week # 8 | Th 10/11 | C. CAPACITY AND CONTESTS | <p>Dukeminier, Chapter 4 (pp. 263-351) CPC Sec. 6100, 6100.5, 6104</p> <p>1. Capacity/Insane Delusion</p> <p>CPC § 6100, 6100.5</p> <p><i>In re Wright's Estate</i> (Dukeminier, p. 266) (capacity) <i>Wilson v. Lane</i> (Dukeminier, p. 270) (capacity) <i>In re Strittmater</i> (Dukeminier, p. 274) (insane delusion) <i>Breeden v. Stone</i> (Dukeminier, p. 276) (capacity) <i>In re Honigman</i> (Dukeminier, p. 281) (insane delusion) (note case)</p> <p><i>Estate of Mann</i>, 184 Cal.App.3d 593, 229 Cal.Rptr. 225 (Ct. App. 1st Div. 1986)</p> <p>For both 2. and 3. below: Dukeminier, p. 281-309 (combining undue influence and the presumption of undue influence)</p> <p>2. Undue influence</p> <p>CPC § 6104 covers 2. and 3., as do CPC § 21380 et seq. (drafter-beneficiary rules)</p> <p><i>In re Estate of Sharis</i> (Dukeminier, p. 283) <i>In re Will of Moses</i> (Dukeminier, p. 290) <i>In re Kauffman's Will</i> (Dukeminier, p. 294) (note 2) <i>Lipper v. Westlow</i> (Dukeminier, p. 296)</p> |

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| | | <p>3. Presumption of undue influence and disqualified transferees (including lawyer-drafter-beneficiaries), malpractice</p> <p>CPC § 21380, 21382, 21384, 21386</p> <p><i>Estate of Stephens</i>, 28 Cal.4th 665, 49 P.3d 1093 (2002) (presumption of undue influence) <i>Rice v. Clark</i>, 28 Cal.4th 89, 47 P.3d 300, 120 Cal.Rptr.2d 522 (2002) (transcriber) <i>Estate of Lira</i>, 212 Cal.App.4th 1368 (2012) <i>Estate of Winans</i>, 183 Cal.App.4th 102 (2010)</p> <p><i>Moore v. Anderson Zeigler</i>, 109 Cal.App.4th 1287, 135 Cal.Rptr.2d 888 (2003) <i>Ventura County Humane Society v. Holloway</i> (Dukeminier, p. 335, note case)</p> <p>4. Fraud, duress, tortious interference</p> <p>Dukeminier, p. 310-324</p> <p><i>Beckwith v. Dahl</i>, 205 Cal.App.4th 1039, 1046-1060 (remaining portion optional), 141 Cal.Rptr.3d 142 (Cal.App.4 2012).</p> <p>5. Mistakes (revisited) (Dukeminier, p. 325-351)</p> <p>For this section, for each of the cases below, rather than a traditional brief, do the following:</p> <ul style="list-style-type: none"> • identify the mistake, • whether it was corrected, • what doctrine (if identified) was used to explain the result, • assess whether an action for malpractice would (also) have been appropriate <p>Students with last names A-L:</p> <p><i>Mahoney</i> (Dukeminier, p. 326) <i>Gustafson</i> (Dukeminier, p. 328, note) <i>Smith</i> (Dukeminier, p. 328, note) <i>Scale</i> (Dukeminier, p. 329, note) <i>Fleming</i> (Dukeminier, p. 329, note) <i>Cole</i> (Dukeminier, p. 330) <i>Bacot</i> (Dukeminier, p. 333)</p> |
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| | | | <p>Students with last names M-Z:</p> <p><i>Moseley</i> (Dukeminier, p. 333) <i>Ihl</i> (Dukeminier, p. 334) <i>Estate of Black</i> (Dukeminier, p. 334) <i>Arnheiter</i> (Dukeminier, p. 335) <i>Gibbs</i> (Dukeminier, p. 337) <i>Erickson</i> (Dukeminier, p. 341, note) <i>Estate of Duke</i>, 61 Cal.4th 871 (2015) and (Dukeminier, p. 342) (recap)</p> <p>6. No-contest clauses</p> <p>Dukeminier, p. 302-3 CPC §§ 21310-21315</p> <p><i>Colburn v. Northern Trust</i>, 151 Cal.App.4th 439, 59 Cal.Rptr.3d 828 (as modified June 4, 2007) (enforceability of no-contest clauses)</p> |
| Week # 9 | Th 10/18 | <p>D. CHANGES IN CIRCUMSTANCES</p> <p>Changes in property</p> <p>Changes in persons</p> | <p>D. CHANGES IN CIRCUMSTANCES</p> <p><u>Changes in property</u> (incl. classification of gifts) Dukeminier, pp. 373-384</p> <p>1. Ademption (by extinction and by satisfaction)</p> <p>CPC § 21132, 21133, 21134, 21135, 21138, 21139 <i>Estate of Anton</i> (Dukeminier, p. 374)</p> <p>2. Abatement</p> <p>CPC § 21400-21403</p> <p>3. Exoneration</p> <p>CPC § 21131</p> <p><u>Changes in persons</u></p> <p>1. Death of beneficiary/lapse & anti-lapse</p> <p>CPC §§ 21109, 21110, 21111, 673 Dukeminier, p. 351-373; 820-821 (note 3) (anti-lapse in the POA context)</p> |

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| | | | <p><i>Estate of Russell</i> (Dukeminier, p. 352) <i>Ruotolo v. Tietjen</i> (Dukeminier, p. 361) (antilapse) <i>Dawson v. Yucus</i> (Dukeminier, p. 368) (class gifts and antilapse)</p> <p>2. Simultaneous death – reviewed – along with other legal events that result in beneficiary being treated as predeceasing</p> <p>CPC § 6403, §§ 220-224</p> <p><i>Estate of Lensch</i>, 177 Cal.App.4th 667 (2009) (interaction of simultaneous death and anti-lapse)</p> <p>3. Omitted spouse/post-will marriage</p> <p>CPC § 21601, 21610, 21611, 21612</p> <p>Dukeminier, p. 511-556, pp. 562-566 (NOTE: much of this material can be skimmed, because it either does not apply in California, or it should be a review of some of the community property rules we have already learned, esp. pp. 545-552)</p> <p><i>In re Estate of Prestie</i> (Dukeminier, p. 564)</p> <p>4. Divorce</p> <p>CPC § 6122 Dukeminier, p. 239-241</p> <p><i>Estate of Jones</i>, 122 Cal.App.4th 326, 18 Cal.Rptr.3d 637 (2004) (stepchildren's contingent gift also revoked) (French p. 76) <i>Estate of Reeves</i>, 233 Cal.App.3d 651, 284 Cal.Rptr. 650 (1991) (French p. 79)</p> <p>5. Pretermitted child/post-will adoption, birth</p> <p>CPC §§ 21620, 21621, 21622, 21623 Dukeminier, pp. 556-562, pp. 566-577</p> <p><i>Lambeff</i> (Dukeminier, p. 558) (NON-U.S. case) (will of competent decedent CHANGED!!)</p> |
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| | | | <p><i>Gray v. Gray</i> (Dukeminier, p. 568) (child not “pretermitted” because of a divorce that revokes disqualifying gift to other parent)</p> <p><i>In re Estate of Jackson</i> (Dukeminier, p. 574) (old fashioned pretermittance statute, trust doesn’t count)</p> <p>Review questions:</p> <p>https://docs.google.com/document/d/1vMg1xVLir3fo9Au6VP1eYl3F8sGL2iSGgzyvjs3OWOw/edit?usp=sharing</p> |
| Week # 10 | Th 10/25 | <p>III. TRUSTS (AND RELATED DOCTRINES)</p> <p>PRIVATE TRUST ELEMENTS</p> <p>A. Elements</p> | <p>III. TRUSTS (AND RELATED DOCTRINES)</p> <p>PRIVATE TRUST ELEMENTS</p> <p>Introduction: Dukeminier, Chapter 6, pp. 385-434</p> <p>A. Elements</p> <p>CPC § 82 (defs)</p> <p>Sec. 15002</p> <p>Sec. 15200</p> <p>Sec. 15203 (purpose)</p> <p>Sec. 15204 (trust for indefinite or general purpose)</p> <p>Sec. 15205 (beneficiary ascertainable or to be selected by another)</p> <p>1. Intent - Sec. 15201</p> <p><i>Jimenez v. Lee</i> (Dukeminier, p. 404):</p> <p><i>Hebrew Univ. Assoc. v. Nye</i> (Dukeminier, p. 409) (2 opinions)</p> <p>2. Trust Property (Trust Res) - Sec. 15202</p> <p><i>Unthank v. Rippstein</i> (Dukeminier, p. 414)</p> <p>3. Beneficiaries</p> <p><i>Clark v. Campbell</i> (Dukeminier, p. 419)</p> <p>4. Oral Testamentary & Inter Vivos Trusts (Secret and Semi-Secret Trusts)</p> <p>CPC § 15206, 15207</p> |

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| | | | <p><i>Fournier</i> (Dukeminier, p. 429) <i>Olliffe v. Wells</i> (Dukeminier, p. 433) <i>Curdy v. Berton</i>, 21 Pac. 858 (1889) <i>Cabral v. Soares</i>, 157 Cal.App.4th 1234 (2007) (also mentioned at Dukeminier, p. 139)</p> |
| Week # 11 | Th 11/1 | B. TRUSTEES & EXECUTORS AS FIDUCIARIES | <p>B. TRUSTEES AND EXECUTORS AS FIDUCIARIES</p> <p>Dukeminier, pp. 750-757, Chapter 9 (pp. 587-693) See Appendix A below.</p> <p><i>Davis v. U.S. Bank National Association</i> (Dukeminier, p. 752)</p> <p>1. Duty of Loyalty</p> <p><i>Hartman v. Hartle</i> (Dukeminier, p. 596) <i>In re Gleeson's Will</i> (Dukeminier, p. 597) <i>In re Rothko</i> (Dukeminier, p. 602)</p> <p><u>Strongly recommended:</u> Judith Younger, "Falling in Love," 58 <u>Saint Louis University L.J.</u> 767, 771-777 (Spring 2014) (this article, a short memoir, contains a detailed explanation of what happened in the <u>Rothko</u> case, and makes that opinion much easier to read and understand)</p> <p>2. Duty of Prudence - risk management Exculpation: Sec. 16040</p> <p>a. Beneficiaries' Rights to Discretionary Distributions</p> <p><i>Marsman v. Nasca</i> (Dukeminier, p. 612) DO READ the Notes following the case</p> <p>CPC § 16080, 16081, 16461</p> <p>b. Duty to Diversify Investments</p> <p>Read the material on The Investment Function, pp. 624-625 (continue to p. 632 if you find this material interesting)</p> <p><i>In re Estate of Janes</i> (Dukeminier, p. 632)</p> |

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| | | | <p><i>Wood v. U.S. Bank, N.A.</i> (Dukeminier, p. 644)</p> <p>3. Custodial and Administrative Functions, pp. 654-657 (no cases, but do read this section)</p> <p>4. Trustee Selection, pp. 657-667</p> <p>5. Duty of Impartiality, pp. 667-674</p> <p><i>Howard v. Howard</i> (Dukeminier, p. 667) (life tenant v. remaindermen)</p> <p><i>In re Matter of Heller</i> (Dukeminier, p. 671 (UPIA))</p> <p>6. Duty to Inform & Account (p. 675-693)</p> <p>https://theonefeather.com/2016/11/cherokee-nation-suing-federal-government-over-trust-fund/</p> <p><i>Wilson v. Wilson</i> (Dukeminier, p. 676)</p> <p><i>Allard v. Pacific National Bank</i> (Dukeminier, p. 682)</p> <p><i>National Academy of Sciences v. Cambridge Trust</i> (Dukeminier, p. 686)</p> <p><i>Esslinger v. Cummins</i>, 144 Cal.App.4th 517, 50 Cal.Rptr.3d 538 (2006) (rev. den. 2007)</p> <p>7. Litigation Against Trustees and Others for Breach of Trust</p> <p><i>Donahue v. Donahue</i>, 182 Cal.App.4th 259 (2010) (French, p. 267)</p> <p><i>King v. Johnston</i>, 178 Cal.App.4th 1488 (2009) (French, p. 267)</p> |
| Week # 12 | Th 11/8 | <p>C. TRUST CREDITORS' RIGHTS; TRUST MODIFICATION & TERMINATION</p> <p>Alienation of Beneficial Interests (Creditors' Rights)</p> | <p>C. TRUST CREDITORS' RIGHTS; TRUST MODIFICATION AND TERMINATION</p> <p>Alienation of Beneficial Interests (Creditors' Rights)</p> <p>Dukeminier, Chapter 10 (pp. 695-757)</p> <p>1. Settlor's Creditors</p> <p>CPC § 18200, § 19001</p> <p><i>Laycock v. Hammer</i>, 141 Cal.App.4th 25 (2006)</p> |

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| | | | <p>2. Beneficiaries' Creditors (Discretionary, Support, & Spendthrift Trusts)</p> <p>CPC § 15305, 15305.5, 15306, 15306.5, 15307, 15309</p> <p>a. Discretionary Trusts</p> <p><i>Young v. McCoy</i>, 147 Cal.App.4th 1078 (2007) (discretionary trust and restitution judgment)</p> <p>b. Spendthrift Trusts (and similar trusts): and exceptions</p> <p><i>Scheffel v. Krueger</i> (Dukeminier, p. 706) (tort creditor exception to spendthrift)</p> <p><i>Ventura County v. Brown</i> (117 Cal.App.4th 144 (2004) (child support exception)</p> <p><i>In re Marriage of Chapman</i>, 697 N.E.2d 365 (Ill. App. 1998) (for comparative law purposes)</p> <p><i>Canfield v. Security Bank</i>, 13 Cal.2d 1 (1939) (support trust and discretionary payments)</p> <p><i>Shelley v. Shelley</i> (Dukeminier, p. 709) (child support) (note case)</p> <p><i>DeMille v. Ramsey</i>, 207 Cal.App.3d 116 (1989)</p> <p><i>Chatard v. Oveross</i>, 179 Cal.App.4th 1098 (2010) (note in Dukeminier, p. 709)</p> <p><i>Shewry v. Arnold</i>, 125 Cal.App.4th 186 (2004)</p> |
| Week # 13 | Th 11/15 | D. Modification & Termination | <p>D. Modification and Termination</p> <p>Dukeminier, Chapter 10 (pp. 727-750)</p> <p>CPC § 15403, 15404, 15408, 15409, 15410</p> <p>Note: The version of § 15403 in the French book is outdated/superseded. Make sure to find and print out the new version (which took effect January 1, 2018). I suggest pasting it into your book.</p> |

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| | | <p><i>In re Estate of Brown</i> (Dukeminier, p. 729) (<i>Claflin</i> doctrine) <i>In re Trust of Stuchell</i> (Dukeminier, p. 734) (modification) (note case) <i>In re Pulitzer</i> (Dukeminier, p. 735) (administrative deviation) (note case) <i>In re Riddell</i> (Dukeminier, p. 736) (modification) <i>Bilafer v. Bilafer</i>, 161 Cal.App.4th 363 (2008) (note case in French, p. 304) <i>Boys & Girls Club of Petaluma v. Walsh</i>, 169 Cal.App.4th 1049 (Cal.App. 2008) <i>Masry v. Masry</i>, 166 Cal.App.4th 738 (2008) <i>Conservatorship of Kane</i>, 137 Cal.App.4th 400 (2006) <i>Harrell v. Badget</i> (Dukeminier, p. 745) (trust “decanting)</p> <p>CHARITABLE, HONORARY & PET TRUSTS</p> <p>LEARNING OBJECTIVES</p> <p>By the end of this Unit, students will</p> <ul style="list-style-type: none"> • Demonstrate familiarity with the basic elements of charitable trusts • Be able to explain the uses and limitations of honorary trusts • Recognize distinctive problems relating to the enforcement of charitable trusts and various approaches to those problems • Demonstrate familiarity with the statutory innovations for pet trusts <p>Dukeminier, Chapter 11, pp. 759-806 (charitable trusts) and pp. 422-26 (honorary and pet trusts)</p> <p>CPC § 15212</p> <p><i>Shenandoah Valley National Bank v. Taylor</i> (Dukeminier, p. 760) <i>In re Neher</i> (Dukeminier, p. 768) <i>Barnes Trust</i> (Dukeminier, p. 777) <i>Smithers v. St. Luke’s</i> (Dukeminier, p. 783) <i>In re Searight’s Estate</i> (Dukeminier, p. 423)</p> <p>If you are interested in planning for pets, you may enjoy reading Frances Foster, “Should Pets Inherit?,” 63 Florida Law Review 801 (July 2011).</p> |
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| Week # 14 | Th 11/22 Tu 11/27 Or Wed 11/28 | <u>FINAL EXAMINATION PREPARATION</u> | Fall 2017 Wills & Trusts Final Examination Spring 2017 Wills & Trusts Final Examination Spring 2017 Point-allocating scoresheet Fall 2016 Wills & Trusts Final Examination Fall 2016 Point-allocating scoresheet |
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Appendix of Mission, Values and Learning Outcomes

University of La Verne Mission and Values

It is the mission of the University of La Verne to provide opportunities for students to achieve their educational goals and become contributing citizens to the global community.

The University of La Verne shares four core values that promote a positive and rewarding life for its students through fostering a genuine appreciation and respect for:

1. Values Orientation. The University affirms a philosophy of life that actively supports peace with justice, the health of the planet and its people. Therefore, in light of this affirmation, it encourages students to become reflective about personal, professional, and societal values. It also encourages values-based ethical behavior.
2. Community and Diversity. The University promotes the goal of community within a context of diversity. Therefore, it encourages students to understand and appreciate the diversity of cultures that exists locally, nationally, and internationally. It also seeks to promote appreciation and preservation of biodiversity by helping students understand the impact/dependence of human beings on their environment.
3. Lifelong Learning. The University commits itself to promoting education that facilitates lifelong learning. Therefore, it teaches students how to learn, to think critically, to do constructive research, and to access and integrate information in order to prepare them for continued personal and career growth.
4. Community Service. The University believes that personal service is a primary goal of the educated person. Therefore, it encourages students to experience the responsibilities and rewards of serving the human and ecological community.

University of La Verne College of Law Vision, Mission, and Values

VISION

La Verne Law is an incubator for innovation in legal education, thought, and advocacy for individuals passionate about serving their communities and promoting access and justice.

MISSION

The mission of La Verne Law is to guide our students in the discovery of law and self as they prepare for the practice of law or other professional careers. Our faculty of scholars and teachers is committed to creating an innovative, collaborative learning environment designed to develop the knowledge and skills relevant to achieving individual and professional success.

Our mission encompasses educating, as well as enhancing the professional lives of, the members of the local, regional, national, and international communities we encounter – students, faculty, staff, administrators, alumni, members of the bench and bar, and others who pursue social justice.

Our mission is grounded in the core values of the University of La Verne – life-long learning, ethical reasoning and decision-making, diversity & inclusivity, and community & civic engagement.

Difference-making is our legacy.

CORE VALUES

University Values: As a College within the University of La Verne we adopt and endorse the University core values of Lifelong Learning, Diversity and Inclusivity, Community Engagement, and Ethical Reasoning.

College of Law Core Principles and Values: As an institution dedicated to teaching and training the next generation of lawyers and leaders, we operate institutionally and individually on the principles of professionalism, innovation, ethics, student centeredness and community enhancement. In our actions and interactions, we are and seek to be affirming, respectful, humble, accountable, committed, inclusive, empathetic, responsive, passionate, and positive.

University of La Verne College of Law Program Objectives

- A. Upon completion of the program of legal education, students will possess the skills and knowledge to enable them to pass any bar examination of their choosing.
- B. Upon completion of the program of legal education, students will possess those skills to participate as respected members of the legal profession.
- C. Upon completion of the program of legal education, students will model ethical, responsible, and professional behavior.
- D. Upon completion of the program of legal education, students will embrace cultural differences and civic and community engagement.

American Bar Association Standard 302: LEARNING OUTCOMES

A law school shall establish learning outcomes that shall, at a minimum, include competency in the following:

- (a) Knowledge and understanding of substantive and procedural law;

- (b) Legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context;
- (c) Exercise of proper professional and ethical responsibilities to clients and the legal system; and
- (d) Other professional skills needed for competent and ethical participation as a member of the legal profession.

In compliance with ABA Standard 302, the University of La Verne College of Law has established the following.

University of La Verne College of Law Program Learning Outcomes

1. Students shall demonstrate knowledge and understanding of substantive and procedural law.
2. Students shall demonstrate competence in legal analysis and reasoning.
3. Students shall demonstrate competence in conducting legal research.
4. Students shall demonstrate competence in problem-solving.
5. Students shall demonstrate competence in written and oral communication.
6. Students shall be able and motivated to exercise proper professional and ethical responsibilities to clients, the legal system, and the wider community.
7. Students shall demonstrate competent litigation skills.
8. Students shall demonstrate competent transactional skills.
9. Students shall apply cultural competency while exercising their legal skills.