

**WILLS & TRUSTS - LAW 521-1**  
**Professor Diane Klein**  
**University of La Verne College of Law**  
**Fall 2018**  
**3 Credits/Units**  
*Current as of November 26, 2018*

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**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**

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**Class Time and Place**

Meeting day: Thursday  
Meeting time: 6:30-9:30  
Location: Rm. 207

**Office Hours**

M: 11am-1:30pm (except when Faculty Policies Committee/Faculty Senate are meeting)  
W: 11am-1:30pm (except when COL Faculty meetings occur)  
Thurs: 1pm-6pm

Professor Klein is also available by email, which is typically 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.

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).

### **Basis of Grade**

30 points      MIDTERM (administered on TWEN between October 5-October 8)

70 points      FINAL EXAM (December 6)

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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) (Prior editions may be acceptable, although you may need to print out occasional statutory materials or cases that update an older edition)

(referred to below as “French”) (other statutory supplements are also acceptable, but page number assignments, etc. will not be provided.)

Please ADD THE TWEN COURSE FOR THIS COURSE

**Other materials**, such as cases and law review articles, will be assigned/distributed as the term progresses (some are noted below on the syllabus). Most will be hyperlinked directly to this Syllabus.

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.

### **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**.

I will frequently give short “**attendance quizzes**” in the first few minutes of class. These will typically consist of a single question, either reviewing the prior week’s material or previewing the material for the upcoming class. If you regularly review your prior week’s notes, and do the assigned reading, these quizzes will not be a problem. Quiz scores do not count towards your grade; **however, two zeroes in a row 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, which can be found at <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 directly to the Director of Student Affairs before any formal accommodations can be made.

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 Disabilities Act Compliance Officer, located on the first floor of the College of Law. You may also contact the University of La Verne Disabled Student Services office at (909) 448-4441, 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 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**

### **PART I: WILLS (AND RELATED DOCTRINES) SOURCES OF ESTATE LAW, INTESTACY, & BARS TO SUCCESSION**

#### **LEARNING OBJECTIVES**

By the end of this Unit, students will

- 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 case law-based bars to succession, including advancements, simultaneous death, homicide, elder abuse, disclaimer, waiver, and negative disinheritance

Class/ Week #	Date	Topic(s)	Readings/Other Assignments (including
1	1/10	<p>1. Introduction/Bar Exam Exercise</p> <p>2. Brief Overview of Probate Procedure</p> <p>3. Intro to PR Dimensions of W&amp;T</p> <p>4. Sources of W&amp;T law</p>	<p>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 &amp; trusts area. You are not expected to have seen it or to have any familiarity with the law it examines.</p> <p>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)</p> <p>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)</p> <p>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> <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) Klein, “<a href="#">R-E-S-P-E-C-T</a> Her Postmortem Right of Publicity?: The Aretha Franklin Estate May Test Michigan Law”</p>
2	1/17	<p><b>I. Intestacy</b></p> <p><b>A. Share of spouse, descendants, other</b></p>	<p><b>I. Recommended: CALI lesson on California Intestate Succession</b> (on TWEN page)</p>

		<p><b>family</b></p> <p><b>1. Terminology &amp; Basic Rules</b></p>	<p><b>A. Dukeminier, Chapter 2.A and 2.B (pp. 63-76, 79-90)</b> (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 <b>CPC § 100, 240, 245, 246, 247, 249.5, 6401, 6402, 6406.</b></p>
3	1/24	<p><b>2. Application of the rules in various family situations</b></p>	<p>2. Statutes to be covered include <b>CPC §6407, 6409, 6450, 6451, 6453, 6454, 6455, 21115. Dukeminier, Chapter 2.C (pp. 90-126)</b> <u>Read and brief:</u> <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)</p> <p><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) <i>Estate of Griswold</i>, 25 Cal.4th 904, 24 P.3d 1191, 108 Cal.Rptr.2d 165 (2001) (nonmarital children) 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><b>TO REVIEW YOUR UNDERSTANDING: <a href="#">Some intestacy problems</a></b></p>
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