

WILLS & TRUSTS
MICHAEL ZAMPERINI

FALL 2013
M 1:10-3:20; W 1:10-2:10

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TEXTS:

- 1) Sterk et al., Estates and Trusts, 4th edition, Foundation Press; and
- 2) California Probate Code, 2013 Compact Edition, West.

MIDTERM EXAMINATION:

Tentatively scheduled for Friday, October 4, afternoon, to be confirmed. Type: One-hour essay; restricted open book, i.e., the above 2013 Probate Code you use in class with no interpolated notes.

FINAL EXAMINATION:

Tentatively scheduled for Monday, December 2, 2013. Type: Two-hour objective; restricted open book, as above. The final examination will be cumulative, i.e., it will cover material from the first to the last class.

NB: Class will not meet on Monday, September 2 (Labor Day) or Monday, November 11 (Veterans' Day). Class will meet on Tuesday, November 19 (an "Administrative Monday" when Monday classes meet to make up for the foregoing holidays). Therefore, the final 2 classes will be from 1:10-3:20pm on both Monday, November 18 and Tuesday, November 19.

ATTENDANCE AND PREPARATION:

This course requires regular and punctual attendance and preparation. A student who amasses an excessive number of absences, or who is unprepared an excessive number of times when called upon, will be subject to the College's Academic Regulations in order to continue enrollment in the course.

STUDENT LEARNING OUTCOMES AND ASSESSMENT

This course is designed to familiarize students with the basic concepts of gratuitous property transfers both inter vivos and at death. The course incorporates family law concepts to explain statutory choices for encouraging certain behaviors and relationships and discouraging others. In addition to cases and statutes, the use of problems both in-class exercises and out-of-class hypotheticals, all help students understand the policy decisions made by jurisdictions (particularly California) to facilitate these property transfers. Another concept running through most of the materials is the non-legal practical situation of facing mortality and assuring a smooth transition of property during a time of grief and mourning.

As such, the course builds on students' common sense knowledge of family and friendly relationships by complementing and improving students' exposure to substantive areas of law including property, community property, and family law. In particular, the course aims to provide students with a firm legal grasp of the following specific areas:

*Statutory schemes for intestacy or a "default will," that provide for any family structure (traditional or "modern") in order to achieve ease of probate administration.

*The use of and limits on control over testamentary disposition to alter the intestate default positions.

*The statutory formalities for a will "ritual," including different forms of wills as well as provisions for additions, changes, modifications and revocations, and problems associated with the formalities necessary to accomplish those concepts.

*Construction of wills as to meaning, mistake and ambiguities. Construction also deals with statutory defaults once again for changes in property and beneficiaries between the time of will execution and death.

*The use of a trust to transfer interest and title to property and the relationships, including the responsibilities and duties of a settler, trustee and beneficiary.

*Modification and termination of trusts both as to instrument provisions and statutory requirements, and the inter-relation of trusts and wills.

*Fiduciary administration of estates and trusts, including parallel statutory requirements for personal representatives and trustees and ramifications for breach of duties attendant upon such fiduciaries.

Assessment methods used include: student self-assessment by doing hypothetical problems both in and outside of class; a midterm examination to provide feed-back of expertise in working with a statutory scheme to resolve intestacy and testacy problems; and a final examination to assess the ability to focus and make decisions concerning multiple-choice questions.

SYLLABUS

In addition to the reading in the Sterk text, required reading material includes the relevant California Probate Code sections. Use the following as a rough guide to the material that will be covered each week:

<u>Week</u>	<u>Subject(s)</u>	<u>Text</u>	<u>Code Secs.</u>
1, 2, 3 [8/19, 8/21, 8/26, 8/28, & 9/4	<i>INTRODUCTION AND OVERVIEW</i>	1-16; 28-54; 60-64	
	<i>INTESTATE SUCCESSION</i>		
	-INTRODUCTION	65-72	240, 6400-02
	-THE SURVIVING SPOUSE	72-85	
	-LINEALS	85-92	246, 247
	-ANCESTORS AND COLLATERALS	93-98	
	-THE "MODERN FAMILY"	100-106; 107-113; 130-139; 142-145	6406-07, 6450-54
	-SPECIAL SITUATIONS		
	--Simultaneous Death	147-148	6403
	--Disclaimer	154-161	275-288
	--Advancements	164-166	6409
	--Homicide	16-22	250-259
4 [9/9, 9/11]	<i>TESTAMENTARY LIMITATIONS</i>		
	-INTRODUCTION & - PROTECTION OF SPOUSE	167-170	6412
	--Modern Elective Share Statutes	(*skim 178-196)	
	--Waiver of Rights	196-203	
	--Homestead and Family Allowance	203-206	6520-6528; 6540-6545
	--Premarital Wills and Omitted Spouses	206-207	21610-12
	--Community Property	212-213	6101, 6401
	-PROTECTION OF CHILDREN/FAMILY	213-217; 220-223	21620-23

<u>Week</u>	<u>Subject(s)</u>	<u>Text</u>	<u>Code Secs.</u>
5 [9/16, 9/18]	<i>EXECUTION OF WILLS</i> -INTRODUCTION	227-235	6110-13
	-FORMALITIES	235-243	
	-SALVAGING "COMPLIANCE"	243-250	
	-HOLOGRAPHIC AND FORM WILLS	250-259	6220-40; 8220-21
6 [9/23, 9/25]	<i>CONSTRUCTION OF WILLS (PART 1)</i> -INTEGRATION & INCORPORATION	260-276	6130
	-"INDEPENDENT SIGNIFICANCE"	276-281	6131-32
	-MISTAKES	324-346; 353-359	
7 [9/30, 10/2]	<i>REVOCAION & REVALIDATION & REVIVAL</i> -REVOCAION	359-381	6120-24
	-REVIVIAL AND "DRR"	382-389	
	-LIMITS ON REVOCAION	389-397	21700
8 [10/7, 10/9]	<i>CONTESTING THE WILL</i> -INTRODUCTION AND CAPACITY	413-442	48; 6100- 6100.5; 6104; 8000-07; 21310-13; 21350-51
	-UNDUE INFLUENCE	442-469	
	-FRAUD	469-473	
	-TORTIOUS INTERFERENCE	473-482	

<u>Week</u>	<u>Subject(s)</u>	<u>Text</u>	<u>Code Secs.</u>
9 [10/14, 10/16]	<i>INTRODUCTION TO TRUSTS</i> -CREATION	519-548 (reread 1-8)	15200-12
	-TRUST AS ESTATE TOOL	548; 566-576	16200, (*skim 16220-49)
	-POUR-OVERS	576-580	6300
	-PROTECTIVE TRUSTS	600-619	15300-08
10 [10/21, 10/23]	<i>TRUST TERMINATION/MODIFICATION</i>	671-696	15400-15410
	<i>CHARITABLE TRUSTS</i> -NAURE & PURPOSE	696-710	
	-CY PRES	710-736	
11 [10/28, 10/30]	<i>FUTURE INTERESTS</i>	792-803	
	<i>PERPETUITIES</i> -INTRODUCTION & OPERATION	869-889	21200-21208
	-SAVINGS & REFORM	917-927	
12, 13 [11/4, 11/6, and 11/13]	<i>CONSTRUCTION OF WILLS (PART 2)</i> -ABATEMENT (& EXONERATION)	283-293	21402-03; 21111, 21131
	-ADEMPTION	293-305	21117, 21132-35
	-LAPSE	306-316	21109-10
	-CLASS GIFTS	828-833; 835-840	21112-15

<u>Week</u>	<u>Subject(s)</u>	<u>Text</u>	<u>Code Secs.</u>
13, 14 [11/13, 11/18 and 11/19]	ADMINISTRATION		8400, 8405
	-INTRODUCTION	1005-1021	8420, 8460 8461
	-FEES	1027-1040	
	-DUTY OF LOYALTY	1041-1051	16000-15; 16040, 16046-49, 16051-52 16060; 16062-64, 16069
	-DUTY OF CARE	1053-1064	
	-DUTY TO INVEST	1067-1075	9600, 9652, 9730-31
	-DUTY TO SAFEGUARD	1087	
	-MANAGEMENT	1026-1027	
	-ACCOUNTING	1092-1096	
	-REMEDIES		16420, 16440-42; 16461-62
	-SAMPLE WILL	405-412	

END OF COURSE