

ESTATES: SUMMER 2018
Professor Stephanie J. Willbanks

COURSE OVERVIEW

This course is designed to teach the fundamentals of the transmission of property through intestacy, wills, non-probate devices, and trusts. This is a doctrinal, survey course, and the focus is on learning the statutory and judicially created rules as well as the policies and theoretical principles that support those rules. There will also be some discussion of ethical principles, client motivations, and general estate planning techniques.

Class discussion will focus primarily on the problems that are posted for each assignment. Students are responsible for downloading the problems from the course website on TWEN. The applicable statutory provisions are the Uniform Probate Code (UPC), the Uniform Trust Code (UTC), and the Vermont statutes. The most important statutory provisions are collected in the Statutory Supplement and are also posted on TWEN. Other statutory provisions are included or referenced in the text.

COURSE OBJECTIVES

The primary objective of the course is for students to learn the fundamental principles governing the transmission of property. Upon completion of the course, students should be able to analyze a factual situation, determine the relevant law, and explain, either orally or in writing, how the law applies to a specific set of facts. Students should also be able to explain the theories, rationales, and policies for the legal principles covered in the course. The specific learning outcomes are defined in terms of doctrine, skills, and values as described below.

Doctrine

1. Students should understand the basics of the probate process. They should be able to distinguish between probate and non-probate assets. They should be able to evaluate the advantages and disadvantages of the probate process and the use of specific non-probate assets. They should be able to analyze a fact situation, determine whether assets or transfers will be subject to the probate process and creditors rights in those assets, and explain their conclusion and the rationale for their conclusion.
2. Students should understand the intestacy process, including how and when it occurs, and the policies underlying the intestacy statutes. Students should be able to analyze the intestacy provisions regarding surviving spouses, descendants, and collateral kindred, including systems of representation and be able to apply those provisions to hypothetical situations. Students should be able to explain their conclusion and the rationale for their conclusion. They should be able to evaluate specific provisions and defend their conclusions.

3. Students should understand the doctrines governing the execution and revocation of wills, mental capacity and undue influence, and construction and interpretation of wills as well as the policies underlying these rules. Students should be able to explain the statutory and common law doctrines governing the execution and revocation of wills, capacity and undue influence, and construction and interpretation of wills and apply those doctrines to hypothetical situations. They should be able to explain their conclusion and the rationale for their conclusion. They should be able to evaluate specific provisions and defend their conclusions.
4. Students should understand the doctrines that protect family members from disinheritance and be able to apply those doctrines to hypothetical situations. They should be able to explain their conclusion and the rationale for their conclusion. They should be able to evaluate specific provisions and defend their conclusions.
5. Students should understand the doctrines governing the creation, modification, interpretation, and termination of trusts and be able to apply those doctrines to hypothetical situations. They should be able to explain their conclusion and the rationale for their conclusion. They should be able to evaluate specific provisions and defend their conclusions.
6. Students should understand the doctrines regarding class gifts, powers of appointment, and future interests and be able to apply those doctrines to hypothetical situations. They should be able to explain their conclusion and the rationale for their conclusion. They should be able to evaluate specific provisions and defend their conclusions.

Skills

1. Students will enhance their skills in reading and analyzing statutes as well as reading and analyzing cases.
2. Students will enhance their skills in identifying relevant issues, determining what legal principles are relevant, and in applying the appropriate legal principles to particular hypotheticals to justify a particular conclusion.
3. Students will enhance their oral communication skills through class participation and their written communication skills through written essays and a final examination.

Values

1. Students will gain a basic understanding of client behavior and ethical principles governing representation of clients in the estate planning context.
2. Students will demonstrate professionalism in meeting course outcomes.

REQUIRED TEXTS AND MATERIALS

1. Jesse Dukeminier and Robert Sitkoff, *WILLS, TRUSTS & ESTATES*, (10th ed. 2017)
2. Stephanie Willbanks, *ESTATES STATUTORY SUPPLEMENT: 2017*
The Statutory Supplement contains provisions of the Uniform Probate Code, the Uniform Trust Code, the Vermont statutes, and the Internal Revenue Code.

You are required to have the applicable statutory provisions readily available during class discussions and you will, most likely, want to refer to the statutory provisions during the final examination. Although the statutory provisions are posted on TWEN, you will not have access to TWEN or your computer files during the final examination.

3. ASSIGNMENTS

The assignments and other relevant course materials are posted on TWEN and are not included in the Statutory Supplement. You are responsible for reviewing the assigned problems prior to class discussion.

PREREQUISITE

Students must have satisfactorily completed, *i.e.*, received a passing grade in, Property prior to enrolling in this class.

CLASS SCHEDULE

This class meets four times each week for three hours a day beginning at 8:30 a.m. There will be a short break approximately halfway through each class. During the first week, class will meet Tuesday through Friday. During the following weeks, class will meet Monday through Thursday. Unless we need to make up a class for some reason, the last regular class day will be Tuesday, June 26, 2018. Wednesday and Thursday, June 27 and 28, will be optional review classes. The final exam will be Friday, June 29 2018, from 9:00 a.m. to 12:00 noon. If that presents a conflict, we will find an alternate time.

Given the compressed schedule, the amount of material, and the quizzes (see below) it will be extremely difficult for you to manage another class that meets only in Term 1 or only in Term 2. Weekend classes also present a conflict because of the quizzes. (See below.)

CLASS PREPARATION

Students must be prepared for class, be prompt in attendance, and be professional in all interactions. There is a significant amount of material in this course, which can be mastered through careful reading of the materials. You should spend approximately two hours of preparation for every hour of class. This means that you will need to spend at

least six hours of preparation for each class period. You may need to spend more. Remember that there will be only a very short break between the last class and the examination so that outlining and review need to occur during the five weeks of the course.

If you do not understand concepts, cases, statutes, or class discussion, contact me. Students should use the course web site to obtain assignments, to review class lecture notes and recordings, and obtain review materials. There are also discussion forums for student conversation.

Each assignment includes readings and problems. The assignments are posted only on TWEN. Use the problems/questions in each assignment and the statutes in the Supplement to prepare for class. You should analyze each problem prior to class. It is helpful to write down at least an outline of your analysis and the authority that supports your conclusion.

The UPC sections are in the casebook, but I have also included them in the supplement. The Vermont statutes are only in the supplement. Vermont recently adopted its own version of the Uniform Trust Code (UTC); I have not included the Vermont Trust Code (except for a few sections) in the Supplement. Instead, we will rely on the UTC provisions in the casebook and in the Supplement. Some statutes are only referenced in the text.

I will post the “board notes” (not my lecture notes) on the course web page after each class. These notes usually have the critical points from the day’s class. I try to record each class and place that recording on the course web page. These notes and recordings, and any other materials distributed by me, are copyrighted and solely for the use of students currently enrolled in the course. They may not be reproduced, shared with others, sold to others, or distributed in any manner other than with or to students currently enrolled in the course.

EMAIL

The VLS email system is an official method of communication at VLS and for this course. It is the primary way that I communicate with you. You are expected to check your VLS email on a regular basis. I also expect that all emails will be professionally written. A supplemental reading on professional emails has been posted on the course TWEN site under the Announcements and the Syllabus tabs.

GRADING POLICY

The grade in this course will be based 10 percent on professionalism, 40 percent on three quizzes, and 50 percent on the final examination.

Professionalism will count for 10 percent of the final grade and will be based on attendance, class preparation, responsiveness, and participation in discussion and group projects.

Attendance

Class attendance is required. Absences will affect your grade. Unexcused absence from two (2) classes, will result in a written warning. Unexcused absence from one additional class will result in a grade of F.Wd. This statement constitutes the notice required by the Academic Regulations.

Absences resulting from religious observance, serious illness, and personal emergency are excused if notice is given to the Professor or through the Registrar within a reasonable time of the absence. Informing the Professor or Registrar of anticipated absences does not convert those absences into "excused" absences. Excused absences will not affect your grade unless they are excessive and except that you are not present and cannot contribute to class discussion.

Unexcused absences will affect your class participation grade even if they do not exceed two regularly scheduled classes.

Being late for class or departures during class will also negatively affect the Professionalism component of your grade. Class begins promptly at 8:30 a.m.

Classroom Discussion

You are expected to be prepared and to participate in class when called on. If you are not prepared, please pass. Passing can have a detrimental effect on your Professionalism grade. Class participation is measured primarily by its meaningfulness and utility to the classroom discussion. While frequency of participation matters, it is the substance of your contribution that matters more. Because this class meets for three hours each session, you must be prepared to participate during every class.

Class Preparation

This is an intensive class and there is a significant amount of material to be covered in each class session. You are expected to be prepared for every class given the relatively small size of the class and the length of each class session.

You are not expected to fully understand the material prior to coming to class. If you have thoroughly prepared for class, you should participate. Others are also uncertain. You are expected to ask question when you do not understand. You can ask questions during class, after class, during office hours or appointments, and by email.

If you use a computer to take notes, do not write down everything that is said. This prevents you from listening, understanding, and participating in the discussion. The final exam is based on what happens in class, so it is important to pay attention and contribute to class discussion. Remember that the board notes and recordings will be available as soon as possible after class.

Please refrain from using your computer to check email, surf the web, play games, or do work other than take notes. It is unprofessional and distracts both you and your classmates.

Responsibility

You are responsible for enrolling in Estates Summer 2018 on TWEN and for obtaining relevant materials, including the assignments, from TWEN. All of the assigned questions and problems are available only on TWEN. You are expected to participate in every class. You are also responsible for reaching your VLS email on a daily basis. Emails may be sent from TWEN updating assignments or notifying you of postings on TWEN.

You are also responsible for obtaining relevant material from TWEN. All of the assigned questions and problems are only available on TWEN. Instructions for the quizzes will be available on TWEN. Other materials may be available only on TWEN.

Respect and Civility

You are expected to show respect for the Professor and your classmates. Please arrive on time and do not leave during class except for emergencies. Please turn off your cell phone and similar devices. Please refrain from checking email, playing games, updating Facebook, shopping, and other computer activities that distract your classmates.

Please raise your hand to be called on. Please do not engage in side conversations or make comments about the contributions of your classmates. Please respect the differing contributions of other students. If you are a frequent contributor to class discussion, you might not always be called on to speak.

Quizzes: There will be three multiple choice quizzes administered through TWEN that count for 40 percent of your final grade. Each quiz will be limited in time, but will be administered over a weekend. The quizzes will be administered: (1) June 1 to June 3; (2) June 8 to June 10; and (3) June 15 to June 17. The first quiz will count 10%; the second 15% and the third 15%. Each quiz will be available from 12 noon on Friday until 5:00 p.m. on Sunday.

Quizzes must be taken on the scheduled weekend except for extraordinary circumstances beyond the student's control. It is recommended that you not delay taking the quiz until the last possible moment as failing to manage your time effectively is not an extraordinary circumstance.

Each quiz will be timed. Once you start a quiz, you must complete it within the allotted time. If you receive accommodations for timed examinations, please consult with the Registrar. All quizzes close at 5:00 p.m. on Sunday regardless of when you started the quiz.

Instructions for the quizzes will be posted on TWEN.

The quizzes will not be graded anonymously.

Final Examination: The final examination counts for 50 percent of the final grade. It will be an in-class, modified open-book examination; you may bring into the examination only your textbook, the supplement, class handouts, material from the course web page, and any materials substantially prepared by you for this course. The exam may include essay questions, short answer questions, and/or multiple choice questions.

You are required to use a laptop computer with ExamSoft for this examination. No exceptions will be made except for accommodated students or a computer malfunction during the examination. A proctor must certify that your computer did in fact malfunction during the examination.

OFFICE HOURS

Office hours are every class day from 11:30 p.m. until 12:30 p.m. with a few exceptions; exceptions will be posted in the class notes. You can also send questions to me by e-mail at: swillbanks@vermontlaw.edu. I read my e-mail daily from Monday through Friday and will try to respond to questions within 24-36 hours unless I am off campus. I do not usually respond to e-mail over the weekend. If the question/answer would be of interest or assistance to the class, I will post the answer on the relevant discussion forum.

Please send only one question per email message. If you have multiple questions, send multiple messages. Some questions are not easily answered by email so I may suggest that you see me in person. You may also post questions in the discussion forums on the course web site. These forums are primarily for student discussion, and I do not check them on a regular basis. I do not always respond to student postings.

PRIOR EXAMINATIONS AND REVIEW SUGGESTIONS

Final exam essay questions from 2010 through spring 2017 are posted on TWEN. There is an exam review memo posted for each exam. The memo is not a model answer or an issue outline, but it does discuss the issues raised by the questions, what students did well, and what students missed.

Vermont's statutes governing intestacy and the spousal elective share were amended in 2009 and the number of witnesses required for a will in 2005. The UPC provisions governing the spouse's share in intestacy and the elective share were amended in 2008. Examinations other than those posted on TWEN may, therefore, be of limited value and may be confusing.

There are review suggestions and hypotheticals posted on TWEN. There are also review quizzes on TWEN.

COPYRIGHT

All materials (written and recorded) in this course, including those in the Supplement, on the course web site, and handed out in class, are copyrighted. This also includes any recording of the class by the professor, any student,¹ or any other person. These materials are only for the use of the individual student enrolled in this course and may not be reproduced or distributed without the express written consent of the professor.

ASSIGNMENTS

The Assignments are posted **only** on the course web site on TWEN. You are responsible for preparing the discussion questions in each Assignment prior to class.

The assignments reflect subject matter, not class days. The schedule will be announced in class from time to time and will usually appear in the board notes posted on TWEN. Generally, class will proceed through the assignments listed in this Syllabus. Some assignments will take more than one day. Some could take less. We may not discuss all the issues raised in each assignment in class. In addition, we may, upon occasion, discuss issues and problems not included in this syllabus. Any changes in the problems within an assignment will be posted on the course web page and announced in class.

Many of the problems have subparts. Read carefully and do not make unwarranted factual assumptions. Sometime the subpart will begin “same as 1.a., except” This means that you need to rely on the facts in the prior subpart. Sometimes the subpart will begin “instead,” This means that facts in prior subparts are to be ignored and you should only rely on the facts in the primary paragraph.

This is not a schedule of classes. Some assignments will take less than one day; some may take more than one day. The assignments may be revised during the course. All revisions will be posted on the course web page and announced in class. The learning objectives and questions/problems are available only on TWEN.

ASSIGNMENT #1: INTRODUCTION TO INHERITANCE AND ATTORNEY LIABILITY

Course Syllabus posted on TWEN (under Syllabus)

Text: pages 1 to 18, and 51 to 57

Suggested Reading

Course Overview posted on TWEN (under both Syllabus and Review Suggestions)

PowerPoint Presentation: Estates Administration posted on TWEN
(under Presentations)

¹ Class may not be recorded without the prior express approval of the Professor.

**ASSIGNMENT #2: INTRODUCTION TO THE PROBATE PROCESS AND
NONPROBATE TRANSFERS**

Text: pages 40 to 51, 439 to 444, 471-472, 492 to 498

Brousseau v. Brousseau (see Assignment on TWEN)

Model Rules 1.6 and 1.7 (see Assignment on TWEN
and posted on TWEN under Statutes)

UPC §§3-801, 3-803, 3-805, 6-101²

8 Vt. Stat. Ann. §§14204, 14205

14 Vt. Stat. Ann. §§1203, 1902

23 Vt. Stat. Ann. §2023

27 Vt. Stat. Ann. §2

**ASSIGNMENT #3: INTESTACY: RIGHTS OF SPOUSES, CHILDREN, AND
COLLATERAL KINDRED**

Text: pages 63 to 96

UPC §§1-201, 2-101, 2-102, 2-103, 2-104, 2-105, 2-106, 2-107, 2-113

14 Vt. Stat. Ann. §§301, 303, 311, 312, 313, 314, 331, 337, 681

ASSIGNMENT #4: MISCELLANEOUS ISSUES RELATING TO INTESTACY

Text: pages 96 to 119, 122 to 124, and 135 to 140

UPC §§2-109, 2-114 to 2-122, 2-1105, and 2-1106

14 Vt. Stat. Ann. §§315, 1723, 1951 to 1955;

15A Vt. Stat. Ann. §§1-104 to 4-105; 15 VSA §§302, 308

ASSIGNMENT #5: WILLS: EXECUTION

Text: pages 141 to 216

Blanchard v. Blanchard (see Assignment on TWEN)

In re Moon's Will (see Assignment on TWEN)

UPC §§2-502 to 2-505

14 Vt. Stat. Ann. §§5, 10, 102, 108

ASSIGNMENT #6: WILLS: MENTAL CAPACITY AND UNDUE INFLUENCE

Text: pages 263 to 309

In re Estate of Raedel (see Assignment on TWEN)

UPC §§2-501, 2-517

14 Vt. Stat. Ann. §1

ASSIGNMENT #7: WILLS: REVOCATION

Text: pages 217 to 240

UPC §§2-507 to 2-509, 2-802, 2-804

14 Vt. Stat. Ann. §§11, 320

ASSIGNMENT #8: WILLS: COMPONENTS AND CONTRACTS

Text: pages 131 to 132 (note 1), 240 to 262

² All assigned statutes are in the casebook and/or the Statutory Supplement. The Statutory Supplement is on TWEN under Statutes. UPC §6-101 is not in the current statutory supplement. It can be found in the text at page 489.

In re Estate of Gorton (see Assignment on TWEN)
UPC §§2-510, 2-512, 2-513, 2-514

ASSIGNMENT #9: WILLS: EXTRINSIC EVIDENCE

Text: pages 325 to 351
UPC §§2-805, 2-806

ASSIGNMENT #10: WILLS: DEATH OF A WILL BENEFICIARY AND CHANGES IN
PROPERTY

Text: pages 351 to 384
UPC §§ 2-605 (1969) (in the text at page 357), 2-606, 2-607, 2-609, 3-902
14 Vt. Stat. Ann. §§335, 338

ASSIGNMENT #11: TRUSTS: CREATION

Text: pages 385 to 409, 414 to 437
UTC §§401, 402, 404, 407

ASSIGNMENT #12: REVOCABLE TRUSTS

Text pages 444 to 471
UTC §§601, 602, 603
UPC §§2-511

ASSIGNMENT #13: PROTECTION OF THE FAMILY

Text: pages 519 to 553, 560 to 565, 571 to 585
Elective Share Outline (below and posted on TWEN under Review Suggestions)
UPC §§2-202 to 2-212, 2-301, 2-302, 2-402 to 2-405
14 Vt. Stat. Ann. §§316, 317, 318, 319, 321, 332, 333, 334
23 Vt. Stat. Ann. §2023;
27 Vt. Stat. Ann. §§101, 105, 107

ASSIGNMENT #14: FIDUCIARY DUTIES

Text: pages 587 to 593, 596 to 602, 610 (note 3) to 620, 624 to 626, 639 to 644,
654 to 671, 675 to 686
UTC §§801, 802, 803, 804, 807, 809, 810, 813, 815, 816, 815

ASSIGNMENT #15: TRUSTS: RIGHTS TO DISTRIBUTIONS, CREDITORS
RIGHTS, MODIFICATION, AND TERMINATION

Text: pages 695 to 714, 724-757
UTC §§405, 409, 410, 411, 412, 413, 414, 415, 416, 501, 502, 503, 504, 505, 506

ASSIGNMENT #16: CHARITABLE TRUSTS

Text: pages 759 to 781
UTC §§405, 409, 413, 414

ASSIGNMENT #17: POWERS OF APPOINTMENT

Text: pages 807 to 844

Note on Powers of Appointment and the Internal Revenue Code (see Assignment on TWEN)

UPC §§ 2-608, 2-704

ASSIGNMENT #18: CONSTRUCTION OF TRUST INSTRUMENTS

Text: pages 845 to 869

Note on the federal estate tax (see Assignment on TWEN)

UPC §2-707

IRC §2033

ASSIGNMENT #19: CLASS GIFTS

Text: pages 869 to 885

UPC §§2-705, 2-708, 2-809

ASSIGNMENT #20: THE RULE AGAINST PERPETUITIES

Text: pages 887 to 906, 916-922

27 Vt. Stat. Ann. §501

ASSIGNMENT #21: EXAM INSTRUCTIONS AND REVIEW

Materials will be posted on TWEN