

ESTATES: FALL 2018
Professor Stephanie J. Willbanks

WHY SHOULD I TAKE THIS COURSE?



The topics covered are on the bar exam. Students studying for the bar exam say one of two things:

1. I am **so** glad I took this course. I could not imagine learning all this material during the bar review course. [After all, it IS called bar “review.”]
2. I should have taken Estates. There is **so** much to learn.

This course is one of the required bar courses. You must take two of the six. Why not this one?

The topics are something that every lawyer should know something about. Your family will expect you to help them with their wills and other estate planning issues. Be prepared.

The course overview and objectives, *i.e.*, the specifics of what will be covered in this class are detailed in Appendix A. Appendices A and B are the “tour brochure.” Appendices C, and D are the “maps.” They are your guides to this course.

HOW CAN I PREPARE FOR CLASS?

- ✓ Register for Estates: Fall 2018 on TWEN.
- ✓ Read the assigned texts listed in Appendix B.
- ✓ Read Appendix C: Class Preparation.
- ✓ Review Appendix D: Reading Assignments.
Specific reading assignments are also detailed at the beginning of each assignment.
- ✓ Download and work through each assignment on TWEN.



WHAT GRADE WILL I RECEIVE?

Your grade depends on your engagement with the material. The grading policy is explained in Appendix E. You are responsible for know what is in the policy.



WHAT WILL THE FINAL EXAM BE LIKE AND HOW CAN I PREPARE FOR IT?



The final examination reflects the material actually covered in the course. See Appendix F for detailed information about what is allowed in the exam and how to prepare for it.

WHAT WILL THE QUIZZES BE LIKE?

There will be four quizzes that count for 40 percent of your final grade. See Appendix G for detailed information about the quizzes.



WHAT ABOUT MY QUESTIONS?



Ask your questions:

- During class
- After class
- During office hours
- By Email.

Office hours are Mondays from 10:00 a.m. to 11:30 a.m. and Wednesdays from 2:00 p.m. to 5:00 p.m. or by appointment. I recommend that you make an appointment even during office hours either directly with me or through Trista Kellman, tkellman@vermontlaw.edu or 831-1211.

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..

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.

WHERE CAN I FIND THE PROFESSOR?

Waterman Hall #317

My office is at the far end of the third floor hallway.
Keep going until you see the sign for Narnia.
My office is to the left of Narnia.



WHAT ELSE DO I NEED TO KNOW?

PREREQUISITE

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

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. Course emails are sent through TWEN so you are also required to check whatever email you listed on Westlaw on a daily 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 Syllabus tab.

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, 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.



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

HENRY

Henry is a rescue dog that lives with us. He loves to sit or sleep on the chairs, particularly on our deck. He also loves to sleep on the stairs so that we can trip over him.

APPENDIX A: COURSE OVERVIEW AND OBJECTIVES

OVERVIEW

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. Learning objectives for each assignment are included in the assignments.

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.

OBJECTIVES

Doctrine

1. Students should understand the basics of the probate process and 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, reading and analyzing cases, and problem solving.
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 and written communication skills through class participation, projects, 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.

APPENDIX B: REQUIRED TEXTS AND MATERIALS

1. Jesse Dukeminier and Robert Sitkoff, *WILLS, TRUSTS & ESTATES*, (10th ed. 2017)



2. Stephanie Willbanks, *ESTATES STATUTORY SUPPLEMENT: 2019*
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 need the statutory provisions during the quizzes and final examination. You will not have access to TWEN or your computer files during the final examination.

IMPORTANT: Vermont amended some provisions in title 14 and added new title 15C. Do not use a prior statutory supplement (e.g., 2017) as the provisions are not accurate.

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

APPENDIX C: 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 to three hours of preparation for every hour of class.

The assignments are posted only on TWEN. Each assignment includes learning objectives, problems, statutes, and text. 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.

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MY COURSES

Drop Course



[Estates Summer 2018: Willbanks](#)

Summer 2018 [WILLBANKS, Kellman, Ziai](#)

The focus will be on the Uniform Probate Code (UPC), the Uniform Trust Code (UTC) and the Vermont statutes. 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 amended some provisions in 2018 so do not use a prior version of the statutory supplement. Vermont also adopted its own version of the 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.

APPENDIX D: READING 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.

This is not a schedule of classes. The assignments reflect subject matter, not class days. The schedule will be announced in class 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 in each assignment. 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.

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 (tabs: Syllabus and Review Suggestions)

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

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, 6-101

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, 621-624, 681

15A Vt. Stat. Ann. §§1-104, 1-105, 4-102, 4-104

15C Vt. Stat. Ann. §201

ASSIGNMENT #4: MISCELLANEOUS ISSUES RELATING TO INTESTACY

Text: pages 96 to 119, 122 to 124, and 127 to 140
UPC §§2-109, 2-114 to 2-122, 2-803, 2-1105, and 2-1106
14 Vt. Stat. Ann. §§315, 322, 1723, 1971, 1951 to 1955
14A Vt. Stat. Ann. §418
15A Vt. Stat. Ann. §§1-104 to 4-105
15C Vt. Stat. Ann. §§ 201, 401, 501, 609, 702, 703, 704

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
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



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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 528, 540-548, 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, 323, 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: Powers of Appointment & 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

APPENDIX E: GRADING POLICY

The grade in this course will be based 10 percent on professionalism, 40 percent on 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 four (4) 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.

Class Preparation

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 Fall 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. Quiz and final exam instructions will be posted on TWEN. You are expected to participate in class. You are also responsible for reading your school-related email on a daily basis.

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. 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 will count for 40 percent of your final grade. There will be four multiple choice quizzes administered through TWEN. Each quiz will be limited in time, but will be administered over a weekend. Quizzes must be taken at the scheduled time except for extraordinary circumstances beyond the student's control. Do 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. Instructions for the quizzes will be posted on TWEN.

The quizzes will not be graded anonymously.

Final Examination will count 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.

APPENDIX F: THE FINAL EXAMINATION

GENERAL INFORMATION

The specifics of the final exam will be provided later in the semester. The final exam reflects the materials covered in class discussion. The focus is on identifying the issues, understanding and applying the appropriate rules, and providing a detailed explanation (analysis).

The final exam will focus primarily on Vermont law and the Uniform Probate Code. In some areas, such as powers of appointment and class gifts, the relevant rules are the “majority” rules.

PRIOR EXAMINATIONS AND EXAM REVIEW MEMOS

Final exam essay questions from 2015 through summer 2018 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. Vermont modified some sections of title 14 and adopted a new parentage act (title 15C) in 2018. 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.

PREPARING FOR THE FINAL EXAMINATION

More detailed suggestions are posted on TWEN. The best advice is:

- ✓ Be prepared for each class.
 - Do not fall behind as it is difficult to catch up.
- ✓ Create an outline.
 - Use the Course Overview (found on TWEN) as your scaffolding.
- ✓ Take the review quizzes on TWEN at the end of each unit and periodically throughout the semester.
- ✓ Read the review suggestions posted on TWEN.
- ✓ Work through some of the review hypotheticals posted on TWEN.
- ✓ Ask questions when you don’t understand.

Most importantly:

- ✓ Look at the prior examinations and review memos.
- ✓ Practice taking one or two of the prior examinations.
 - This means writing out your analysis in a timed setting.

SAMPLE EXAMINATION INSTRUCTIONS

Note: The actual instructions for the final examination will be distributed in class and posted on TWEN.

Materials Allowed

This is a modified open book examination. You may have with you in the examination room only the textbook, the statutory supplement, handouts (including materials from the TWEN site), and any materials prepared by you for this course. You may use a simple calculator, but not one that can be programmed. You may not have a cell phone, an iPod, iPad, tablet, or any other type of communication device available during the examination. You may not have any other materials with you, and you may not consult any person, other than the Professor, the Registrar (or representative), or a computer room proctor, or any other materials or device, including any and all electronic devices during the examination.

Nature of the Examination

This examination is XX hours counts for 50% of your final grade in this course. There are XX points on this examination. Points and suggested times are indicated for each question. Budget your time so that you answer every question. There is no penalty for wrong answers.

Write your VLS identification number on the top of the first page of the examination in the space provided. You must turn in the examination questions with your VLS identification number on the exam to receive credit.

There are XX parts to this examination:

- Part I consists of XX essay questions of varying length.
- Part II consists of a separate Honor Code Statement. You must sign your name and turn this form in separately from the examination.

You are expected to use a laptop computer with ExamSoft/Exemplify for this examination. Answer each question in a separate question window in ExamSoft/Exemplify. You must have completed all the steps of the ExamSoft/Exemplify registration process prior to the day of the examination. No exceptions will be made except for accommodations granted by Deputy Vice Dean McCormack or computer malfunction during the examination. A proctor must certify that your computer did in fact malfunction during the examination.

If you handwrite the exam, please write only in blue or black ink. Write on every other line and only on one side of the page. Please begin each question in a new blue book.

General Directions and Assumptions

Read the questions carefully. Think before you answer. Organize your answers before you write. Write in complete sentences. Minimal credit will be given for answers in outline format. Do a complete analysis; explain why you reach the result that you do. USE THE FACTS. Be detailed, specific, and explicit. Remember, I cannot read what you do not write!

You do not need to include everything you know. Answer the question that is asked. Be concise but complete. There are no space limitations; but it is the quality of your answer that matters, more than the quantity. Do not, however, merely state conclusions. That will receive minimal credit.

Discuss all the issues that are reasonably raised by the facts, but do not create or eliminate issues by making assumptions. It is sometimes necessary to make assumptions because not every detail is included in the fact pattern. (See “Examination Conventions” below.) Be extremely careful about assumptions. They must be reasonable in light of the stated facts and the issues that are raised by the stated facts. Often students make assumptions that create issues they want to discuss or assume away issues that I intend students to discuss. Answer the question that I am asking, not the one that you want to answer!

If the answer is “no,” then be sure to say so. Often students conclude that a document is not a valid will or trust, but fail to state that. Or they might simply state that the document is not a valid will, but fail to explain how they reached that conclusion. This is, of course, only appropriate if the facts raise that issue.

Sometimes it is appropriate to provide alternative analyses. For example, assume that the issue is whether or not a particular document is a valid will. You decide that the best answer is that this document is not a valid will. State that conclusion, but explain in detail, using the facts, how you decided that it was not a valid will. Then tell me how the property will be distributed because the will is not valid. You decide that this is the critical issue and you think there is a good argument that it might be a valid will. Then tell me that, assuming the will is in fact valid, how the property would be distributed. In other words, provide both (alternate) analyses. Not every question or every issue requires an alternate analysis.

You do not need to tell me everything you know about intestacy wills, trusts, etc. You receive no credit for extraneous material. Only discuss issues that are reasonably raised by the facts. Not all issues are of equal weight. Some are more important than others. Some issues are more difficult than others, but the questions are not designed to be tricky.

The facts in the questions are important. They create the issues that I expect you to analyze. I do not include extraneous facts to serve as “red herrings.” I may include facts to test your knowledge of what is, or is not, relevant. For example, I may include a premarital will and the surviving spouse’s property in a fact pattern where the issue is the surviving spouse’s elective share rights in Vermont. Vermont does not have an omitted (or pretermitted) spouse statute, and the survivor’s property is not relevant to the elective share (although it is relevant to the issue of support under 14 Vt. Stat. Ann. §316). I have included those facts to test your understanding of those points. It is appropriate to indicate that you understand this.

Examination Conventions

I try to keep the amount of reading to a minimum required. There are, therefore, some “conventions” that apply. The word “executed” means just that, *i.e.*, that the testator properly executed the document in question. If the document is a will, the word “executed” means that the testator signed the will at the end of the document and that the requisite number of

individuals signed as witnesses. This means that you do not need to discuss the validity of this document as a will.

The symbol /s/ indicates a signature. If there are only first names, do not draw any conclusions from the lack of a last name. Assume that the witnesses were in the line of sight or conscious presence of each other and the testator unless you are given specific facts about how the document was signed. While an attestation clause creates a prima facie case that the will was properly executed, the failure to include one does not create a prima facie case that the will was not properly executed.

If individuals are designated by name or a capital letter (T, A, X, etc.), you should assume that these are real, living individuals. Unless the problem specifically states that the individual has died, they are still living. You may abbreviate individuals' names by using initials (the first letter of the name capitalized) in answering essay questions. Assume that all individuals who are mentioned in the facts and who would have a non-frivolous claim have in fact made a claim for their share of the property.

Applicable Law and Citations

In most cases the question will designate a jurisdiction. Apply the law of that jurisdiction. If no jurisdiction is designated, then apply the general majority (traditional) rules.

If the UPC applies, assume the jurisdiction has adopted §2-605 on page 357 of the textbook (not §2-603) as the anti-lapse statute and has not adopted §2-707. You may assume that any jurisdiction that has adopted the UPC has also adopted the UTC.

If Vermont law applies, remember that Vermont has adopted the UTC. Assume that current Vermont law, including the UTC, applied to every year in every question. Vermont follows many basic wills doctrines, such as incorporation by reference, acts of independent significance, and the like, even though there are no statutes on these topics. If Vermont does not have a statutory provision, assume that majority rules apply.

You may refer to sections of the UPC, UTC, and Vermont statutes by section number. While citation to authority is important, do not use such citation as a shortcut. It is your analysis written out in detail that is important. The two major mistakes that students make are failure to (1) explicitly refer to relevant facts and (2) state in detail how they reached their conclusion. It is not necessary to cite cases. While citation to statutes is helpful, do not spend valuable time searching for statutory numbers. State the doctrine (e.g., incorporation by reference) and apply it.

There are XX pages in this examination (including these instructions). Before you begin, please make sure you have all of the pages.

APPENDIX G: QUIZZES

There will be four quizzes that count for 40 percent of the final grade. All quizzes will be administered through the course TWEN page under the tab “Surveys and Quizzes.” There are both ungraded review quizzes (titled) and the quizzes that count toward your grade (numbered: Quiz #1: Fall 2018; Quiz #2: Fall 2018; etc.). Be sure to take the numbered quiz.

The quizzes will not be graded anonymously. This will facilitate review of your quizzes and ensure that the Professor does not know your VLS ID number. You must use your VLS ID number on the final exam.

Each quiz will be multiple choice questions. Choose the **best answer**. This means the most correct or, if you think all answers are incorrect, the least incorrect answer. There is a helpful article on taking multiple choice quizzes that is posted on TWEN under the tab: Review Suggestions.

Each quiz will be available from 12 noon on Friday to 5:00 p.m. on Sunday. You must complete the quiz within this time frame. Each quiz will also have a time limit. The dates and time limits for each quiz will be included in the class notes prior to the date of the quiz. You will automatically be closed out of the quiz at the end of the allotted time or at 5:00 p.m. on Sunday. Plan carefully and budget your time once you start the quiz. You will have only three minutes per question.

If you receive accommodations for examinations, you will be given additional time for the quizzes. That is, there will be a password protected identical quiz for you. (Quiz #1A: Fall 2018, etc.) The Registrar’s Office will provide you with the password. Do not take the quiz that is not password protected. If you take both quizzes, neither score will count.

No extensions will be granted except in the rarest of extraordinary circumstances beyond your control. You must contact the Vice Dean (Beth McCormack), the Registrar (Maureen Moriarty), the Assistant Registrar (Tammie Johnson), or Professor Stephanie Willbanks prior to the quiz period.

If you experience technical problems during the administration of the quiz, please email either the Professor, the Registrar, or the Assistant Registrar **immediately**. While we may be unable to help you at the time, your email or other contact will serve as notice that you encountered a problem. Without that notice, you will not be given the opportunity to make up the quiz.

Honor Code

When taking each quiz, you will be reminded of the VLS Honor Code. You should see the following message:

By clicking the “accept” button, I certify that I have abided by the Vermont Law School Honor Code and the Professor’s instructions in taking this quiz. I have neither given nor received unauthorized assistance. I have not consulted any source not

allowed by the Professor. The answers that I have submitted are solely my own work product. I have not discussed and will not discuss the contents of this quiz with anyone before or after the quiz.

When taking the final exam, you will be asked to sign an Honor Code form containing the same information.

Permitted Materials

The following paragraph describes the permitted materials for the quizzes and the final exam. You may only access the materials designated. Because the quizzes are timed in TWEN, if you exit the quiz you will not be able to re-enter it. If you have more than one window open during the quiz, you may only access the designated materials.

This is a modified open book quiz or examination. You may have with you during the quiz or in the examination room only the textbook, the statutory supplement, handouts (including materials from the TWEN site), and any materials prepared by you for this course. You may use a simple calculator, but not one that can be programmed. You may not have a cell phone, an iPod or iPad, or any other type of communication device available during the quiz or examination. You may not have any other materials with you, and you may not consult any person, other than the Professor, the Registrar, the Assistant Registrar, or a Dean or a computer room proctor, or any other materials or device, including any and all electronic devices during the examination.

Warning: You will not have time to look up many (perhaps any) answers during the quiz and limited time during the final exam. Please be sure that you are prepared before beginning any of the quizzes.