

ESTATES: SPRING 2020

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COURSE OVERVIEW

This course teaches 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 that are posted on TWEN.

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 and are collected in the Statutory Supplement that is posted only on TWEN. Other statutory provisions are included or referenced in the text.

COURSE OBJECTIVES

Doctrine

1. Students should understand the basic structure of the probate process, be able to distinguish between probate and non-probate assets, and evaluate the advantages and disadvantages of the probate process. They should be able to analyze a fact situation, determine whether assets or transfers will be subject to the probate process 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 and be able to evaluate specific provisions.
3. 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 the policies underlying these rules.

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.
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.
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.

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 obtain experience answering multiple choice questions in preparation for the bar exam.

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: 2020*

The Estates Statutory Supplement is available only on TWEN; it is not in the Bookstore. It 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 to refer to the statutory provisions during the quizzes and 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 and it will be complicated to access TWEN during class or during the quizzes. Please print your own copy of the Statutory Supplement and bring the printed copy to every class session.

CLASS PREPARATION AND EXPECTATIONS

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 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 analyze each problem prior to class. It is helpful to write down an outline of your analysis and the authority that supports your conclusion.

I do not prohibit laptops in the classroom, but I expect you to use them only for class activities. Other activities, such as checking email, playing games, engaging on social media, and the like are unprofessional and disruptive to your classmates.

If you take notes on a laptop, be aware that you might be simply transcribing material without comprehending it. The tendency is to include everything. Because I post the “board notes” (not my lecture notes) on the course web page after each class, you should not copy material in those notes. These notes usually have the critical points from the day’s class and you can download them after class. I 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.

Do not use your cell phone during class. The first time I see your cell phone, I will publicly ask you to turn it off. The second time I will confiscate it and give it to Dean Jefferson. This same rule applies to smart watches and other such devices.

GRADING POLICY

The grade in this course will be based 10 percent on professionalism, 30 percent on three quizzes, and 60 percent on the final examination.

Professionalism counts for 10 percent of the final grade and will be based on attendance, class preparation and participation, completion of one reflective essay, responsibility, civility, respect, and meeting all course obligations in a timely fashion.

Attendance

Class attendance is required. Absences will affect your grade. Unexcused absence from three (3) 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 (the same day if possible) of the absence. Informing the Professor or Registrar of anticipated absences does not convert those absences into “excused” absences. Excused absences may affect your grade if they are excessive because you are not present and cannot contribute to class discussion.

Unexcused absences may affect your grade even if they do not exceed three regularly scheduled classes. Unexcused absences are to be used for job interviews, attendance at conferences, and similar activities. If you inform the Professor of the reason for your absence by email either before or shortly after your absence and the Professor deems your reason sufficient, that unexcused absence will not affect your Professionalism grade. Again, informing the Professor of the reason for your absence does not convert your absence into an excused absence.

Being late for class may be treated as an unexcused absence if you are significantly or frequently late. Leaving in the middle of class will also negatively affect your grade. Class begins promptly at 9:00 a.m. If an emergency or other valid reason causes you to be late, let the Professor know.

If there is a delayed opening, class will begin at 9:55 a.m. on that day and end at 11:10 a.m., i.e., the regular second period class period.

You are not required to attend make-up classes except for online make-up classes. Failure to participate fully in online make-up classes will be treated as an unexcused absence.

Class Preparation and 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 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.

You are not expected to fully understand the material completely before class. If you have prepared, 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.

Reflective Essay

Each student is **required** to submit **one** reflective essay. There will be five or six opportunities, one at the end of most units to write a reflective essay. Each student may only submit one reflective essay for a unit. Each essay should address only one question.

Students may submit a second (*i.e.* one additional) reflective essay from a separate assignment for extra credit toward the class performance component of the final grade.

All reflective essay assignments will be posted on the course web site on TWEN. They will not be distributed in class. Notice will be given in class and by email through TWEN when the assignments become available and when the essays are due. Essays must be submitted on the date and by the time indicated through TWEN. Late submissions will not be accepted except in extraordinary circumstances beyond the student's control and with the advance permission of the Professor.

The purpose of this component is to provide an opportunity to **reflect** on the law. Your essay should not simply describe or analyze the law, but should include your thoughts about what the law **should** be and **why**. The focus is on policy and theory, not the rules. This is **not** a research exercise. You should consult only the textbook and course materials in writing your essay.

Responsibility

You are responsible for enrolling in Estates Spring 2020 on TWEN and for obtaining relevant materials, including the Statutory Supplement and the Assignments, from TWEN. Quiz and final exam instructions will be posted on TWEN. You are expected to participate in class, in on-line make-up classes, and in other assigned work. 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 raise your hand to be called on and 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 30 percent of your final grade. There will be three quizzes that count for 30 percent of the final grade. The quizzes will be administered through TWEN under the tab "Surveys and Quizzes." There are both ungraded review quizzes (titled) and the quizzes that count toward your grade (numbered: Quiz #1: Spring 2020; Quiz #2: Spring 2020, etc.). Be sure to take the numbered quiz. Instructions for the quizzes will be posted on 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. Once you start a quiz, you must complete it within the allotted time.

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 answer 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 5:00 p.m. on Friday to 10:00 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 10:00 p.m. on Sunday. Plan carefully and budget your time once you start the quiz.

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: Spring 2020, 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.

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. I will take the quiz alone and not with the assistance or in the presence of anyone currently enrolled in Estates or who has taken Estates in the past.

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.

Final Examination will count for 60 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 (Examplify) 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.

The general exam instructions are posted on TWEN as Assignment #21. Only the first few paragraphs will be included on the final exam. The specifics of the final exam will be provided later in the term. 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).

Prior Examinations and Exam Review Memos

Final exam essay questions from 2015 through fall 2019 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.

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.

OFFICE HOURS

Office hours are Tuesday and Thursday from 11:00 a.m. to 12:30 p.m. or by appointment. I recommend that you make an appointment even during office hours directly with me.

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.

OTHER IMPORTANT INFORMATION

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 daily 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.

READING AND PROBLEM ASSIGNMENTS

The Assignments are posted **only** on the course web site on TWEN. You are responsible for reading the assigned material and 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 and will usually appear in the board notes posted on TWEN. Generally, class will proceed through the assignments in order. 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.