

REVISED NOVEMBER 3, 2021
TRUSTS AND ESTATES
LAW A 519
Autumn 2021
Professor Boxx

Course Objectives:

The law of intestacy, wills, gifts and trusts is a fundamental legal subject with a long history. It affects everyone and combines longstanding traditional concepts with the need to reflect and accommodate social change. My purpose in teaching this class includes not only teaching you the black letter law in this area (which you will need to know for the bar exam and which is necessary knowledge for any legal practice) but also using the subject matter to teach you some general lawyering skills and understanding of the law in general. Because of its effect on personal relationships, this area is a good one to demonstrate how practicing lawyers can affect social policy. Because estate planning involves many different family members, ethics issues are unavoidable and many of the cases we will read present opportunities to consider the ethical responsibilities shared by all lawyers. One very important aspect of this class is that it covers fiduciary duty. The role of the fiduciary is extremely complex, and is one that you will have to understand in order to practice law, because an attorney is considered a fiduciary of her clients. Also, many of the cases in the casebook ended up as reported cases because of how the lawyer initially handled the matter, and therefore give us a chance to discuss practical lawyering skills.

Finally, to a large extent this is a “statutory course.” In general, many of the problems that arise (particularly in the law of wills and intestate succession) are answered **FIRST** by reference to the statutes, and **SECOND** by reference to case law if statutes are unclear or nonexistent. Most states have codified a great deal of the law in this area, so it is important for you to be familiar with a statutory form of the general rules we will be covering. We will be using the Washington statutes as an illustration of a complete state statutory system. However, in class we will cover the primary variations in how the different states have resolved particular issues as well as the major provisions of the Uniform Probate Code (“UPC”), which has been adopted in several states. The purpose of using Washington statutes is to train you in reading statutes in this area and give you a sense of what may be governed by statute. If any of you know you will be practicing in a state other than Washington, let me know early in the quarter and as time allows I will try to use that state’s statutes as another example of statutory resolution of probate issues. I also encourage you to look for that state’s statutes on your own, and feel free to raise the state’s variation in class if I do not. On the final exam, to the extent the issue would be resolved by a **statute**, you will be expected to use the applicable Washington statute. I do this only because we will have covered the Washington statutes in class. The casebook gives the relevant sections of the UPC, but those sections are not convenient to use in an exam setting, because they are scattered throughout the book and in some instances there are alternate versions of the UPC. This does not mean this is a class about Washington law: you will find that most of the principles are universal, and the variations among states are in the details. Although I will use Washington cases as examples in class discussion (because I have practiced in Washington for over 20 years and am most familiar with those cases), **unless a case is assigned on the syllabus, you are not responsible for knowing Washington case law!**

The emphasis on statutes also achieves another course goal: learning to work with statutes generally. Statutes are difficult to read and apply, and you will likely find in practice that you spend much more time dealing with statutes than with case law. You should see this course as an important opportunity

to learn to do that, since so much of the reading in law school focuses on case law instead of statutes.

Course Learning Objectives:

- (a) Develop the ability to identify major legal issues with respect to rights and duties in U.S. inheritance, testamentary and trust law;
- (b) Master the general concepts of U.S. law governing wills, trusts and inheritance in order to pass a state bar examination;
- (c) Engage in analysis and reasoning needed for problem solving with respect to wills, trusts and inheritance issues;
- (d) Develop an understanding of fiduciary duty;
- (e) Learn to read and apply state statutes; and
- (f) Communicate effectively in writing and orally on wills, trust and inheritance issues.

Required Materials:

CASEBOOK: Dukeminier & Sitkoff, Wills, Trusts & Estates (10th Ed. 2017)(DS).

WEBSITE: Some supplemental cases are assigned, as well as some supplemental materials and, as mentioned above, supplemental statutes will be assigned. Those will be linked from the syllabus posted on the class website.

Also, certain Rules of Professional Conduct will be assigned. The ABA version of the RPCs are found at http://www.abanet.org/cpr/mrpc/mrpc_toc.html

We will be using Poll Everywhere, a system for class participation questions that requires you to have either a laptop or cellphone with you in class. We will be using it in class every day for class participation, and for measuring your participation for points towards your final grade.

NOT REQUIRED BUT HELPFUL: Andersen, Understanding Trusts & Estates. This study aid is organized to be used with the Dukeminier book and is very helpful.

FOR THOSE OF YOU TAKING THE CALIFORNIA BAR: there is an excellent book on California Wills and Trusts law that is coordinated with the Dukeminier book: Susan French, [A California Companion for the Course in Wills, Trusts, and Estates](#) (Aspen). You may want to get a copy of it to follow along, because California law is somewhat unique.

Class Participation and Use of Audience Polling:

Class participation will be measured primarily by use of audience polling. During each class (beginning on Monday, October 4), there will be a few questions asked to which you will be able to respond with your laptop or phone (with a time limit). You will get 1 class participation point for each class where you are present and responding. Every day, there will be three straightforward questions based on the class reading and/or lecture, and you will be able to get an extra point for the right answer. Very often, questions will relate to statutes that I have assigned for you to read.

Class participation points count for 10% of the grade.

As a general rule, I do not allow any make-up work for audience polling question points when you miss class. My expectation is that everyone needs to miss class from time to time, and that should have no significant effect on your grade if you have overall good attendance and preparation. I have made exceptions for students who have had very serious illnesses or family circumstances but otherwise, there are no exceptions, even for clinic-related absences and travel for moot court or other law school related activities.

You can also earn class participation points by participating in the King Lear production, or by presenting a short (no longer than 15 minute) “Ted talk” to the class. More detail on those opportunities will be given in class on the first day.

Attendance:

In general, regular class attendance is required. I don't expect perfect attendance, but if you disappear from class for a significant number of days, I may invoke the class attendance policy, which is triggered when you attend “fewer than 80 percent of class session” by the mid-point of the course. See <http://www.law.washington.edu/Students/Academics/Rules.html>.

If you have a personal emergency that requires extended absences from class, please let me know.

Reading Assignments:

In addition to the pages in the text, I have also assigned Washington statutes where relevant. As I explained above, I think that it is very important for you to get a sense of how statutory this area of the law is, and to learn to find your way around a set of statutes. Usually the statutes will not take much additional time to read. Where the statutes on an issue are lengthy, and reading them carefully is impossible, try at least to familiarize yourself with their basic thrust. We will discuss the Washington statutes to the extent class time allows. **If the statutory assignments are in italics and are marked “reference,” I do not expect you to read them thoroughly. I only expect that you skim them briefly to see generally what they cover.**

The reading assignments are in one hour blocks, so for each two hour class, prepare two units. Each week (unless a class time is cancelled) we will cover 5 units.

Asynchronous instruction

We will not meet on Fridays. Instead there will be Panapto videos assigned each week, which will cover the black letter material for the coming week. We have extra time scheduled, so those videos will vary from one to two hours.

Contact Information:

Office: Room 407
Phone: 616-3856
email kboxx@uw.edu

Feel free to make an appointment with me; the best times in my fall schedule are immediately after class on Mondays, Wednesdays and Fridays. I also encourage you to communicate with me by email. This is an easy way to ask questions or make comments and may give you faster and more considered feedback than trying to see me after class. I've even gotten email from students that were sent during class, when they had a question that they didn't want to raise in class, and I think that's a great use of email. When questions seem to be of general interest, I may send it to the entire class.

Exam information:

Midterm exam. On **November 1**, there will be an in-class multiple choice midterm exam on the material covered by that point in the course. The midterm will count for 15% of your grade. The reason for the midterm is to assist you in keeping up with the material. We cover a significant amount of material over the course of the quarter, even for a 5 credit class, and it can be extremely difficult to study for the final if you have not been reviewing periodically. The midterm will be closed book.

Final exam. The exam is open-book and will be a three hour essay exam covering the entire course (not just what has been covered since the midterm). To the extent specific state statutes are necessary to answer a question, you will be expected to refer to Washington statutes unless the questions specifies otherwise. The final exam will be 75% of the course grade.

You will be required to use the law school exam taking software if using a computer to take the exam. You will be permitted to use one computer on the final. I do not permit the use of more than one computer by one student during the exam.

**TRANSMISSION OF WEALTH
LAW A 519 A
PROFESSOR BOXX
ASSIGNMENTS
Fall 2017**

ASSIGN NO.	TOPIC	READINGS
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I. INTRODUCTION: THE ESTATE PLANNING CONTEXT

1-2 Sept 27	A. INHERITANCE AND ITS LIMITS	DS 1-39 Williams v. Ash, 42 U.S. 1
3 Sept 29	B. QUESTIONS OF PROFESSIONAL RESPONSIBILITY	DS 51-62 DS 303-305 (Bequest to Attorneys) DS 161 (Safeguarding a Will) RCW 11.12.265 RPC 1.1-1.10, 1.14, 2.2, 5.3-5.5 (RULES OF PROFESSIONAL CONDUCT). I have provided links for you to the Washington and ABA versions on the webpage. You can also use any other version. The particular version you use is not critical.)
4 Sept. 29	C. THE PROBATE PROCESS a. The purposes of probate and the probate process	 DS 40-51 Sample pleadings posted on website. <i>REFERENCE:</i> <i>RCW 11.28.237¹</i> <i>RCW 11.20.010-.020</i> <i>RCW 11.28.010, .120, .170, .185, .237</i> <i>RCW 11.44.015</i> <i>RCW 11.62.010</i>
	b. Creditors	 <i>REFERENCE:</i> <i>RCW 11.18.200</i> <i>RCW 11.40.010-.140</i> <i>RCW 11.42.010, .090</i>

¹ The Washington statutes associated with this assignment are pretty extensive. FOR THIS ASSIGNMENT 4, I DO NOT EXPECT YOU TO MASTER THEIR DETAIL. I include them just to show you what a statutory scheme regulating probate looks like. Try to read enough of each statute to understand its purpose and general effect. If an assignment lists statutes but labels them as “Reference,” and they appear in italics, you only need to skim them.

c. Supervising Probate

REFERENCE:2
RCW RCW 11.48.010
RCW 11.68.011-.041
RCW 11.68.090, .110
RCW 11.04.250

d. Will Contests

REFERENCE
RCW 11.24

e. Lost Wills

DS 224 (Probate of Lost Wills)
RCW 11.20.070

Oct 1: Panapto videos for assignments 5-9

5 D. THE SYSTEM OF DEATH TAXES:
AN OVERVIEW

DS 929-931, 934-936, 943-949, 967-970,
972-976

Oct 4

(basically, I just want you to read the
introductory materials, skipping cases and
problems)

6 E. Introduction of Trusts
Oct 4

DS 385-400

II. INTESTACY AS AN ALTERNATIVE TO A WILL

7 A. BASIC SCHEME

Oct 6

DS 63-90
RCW 11.04.015
RCW 11.05.010-.040
Estate of Morgan

REFERENCE
RCW 11.02.00
RCW 26.16.010-.030
RCW 11.04.035

8-9 B. PROBLEM AREAS

Oct 6 1. Adoption

DS 90-127
REFERENCE
RCW 11.04.85
RCW 26.33.260

2. Children born outside marriage

REFERENCE
RCW 11.04.081
RCW 26.26.101
RCW 26.26.500

3. Inheritance & Reproductive Technology

REFERENCE
RCW 26.26.700-.740
RCW 26.26.210-.260
(surrogate parenting)

4. Advancements

RCW 11.04.041

5. Minors

REFERENCE
RCW 11.88.010
RCW 11.92.040, .140 (Guardians)
RCW 11.76.080, .095

10. C. BARS TO SUCCESSION

Oct 11

DS 127-140

1. Homicide

RCW ch. 11.84

2. Disclaimers

REFERENCE
RCW 11.86

3. Escheat

REFERENCE
RCW 11.08.140-.300
RCW 11.04.095

III. WILLS: FORMALITIES & FORMS

11 A. EXECUTION

Oct 11

1. Formal Requirements

DS 141-161
RCW 11.02.005(8) & (9)
RCW 11.12.020-.030, 11.12.160

2. Recommended Methods

12 3. Curative Doctrines

Oct 13

DS 162-197

4. Notarized and Holographic Wills

DS 197-216

5. Digital Wills

Materials on Uniform Digital Wills Act
(on Canvas)

13 B. REVOCATION

Oct 13

DS 217-240
RCW 11.12.040, 11.12.080
RCW 11.12.051
RCW 11.07.010

October 15: Panapto videos for assignments 14-18

14 C. WILL COMPONENTS DS 240-255
Oct 18 RCW 11.02.0005(9)
RCW 11.12.255
RCW 11.12.260

15 D. WILL CONTRACTS DS 255-262
Oct 18 McKinnon v. White, 40 Wn.App. 184

IV. WILLS: CAPACITY

16 A. MENTAL CAPACITY DS 263-281
Oct 18 Estate of Watlack, 88 Wn. App. 603

17 B. UNDUE INFLUENCE DS 281-310
Oct 20

18 C. FRAUD AND DURESS DS 310-324
Oct 20

October 22: Panapto videos for assignments 19-23

V. CONSTRUCTION & INTERPRETATION OF WILLS

19 A. MISTAKEN OR AMBIGUOUS WILLS DS 325-351
Oct 25

20 B. DEATH OF BENEFICIARY DS 351-373
BEFORE TESTATOR
Oct 25 RCW 11.12.110-.120

21 C. CHANGES IN PROPERTY AFTER WILL DS 373-384
EXECUTED: SPECIFIC & GENERAL GIFTS
Oct 25 RCW 11.12.060-.070

V. TRUSTS. CREATION

22 1. Intent DS 401-418
Oct 27 2. Property REFERENCE: RCW 11.114

23 3. Beneficiaries DS 418-438
Oct 27 4. Writing?

November 1: Midterm exam

VI. WILL SUBSTITUTES

24 A. INTROD. & REVOCABLE TRUSTS DS 439-470
Nov 3

REFERENCE:
RCW 19.36.020
RCW 11.12.250
RCW 11.18
RCW 11.02.091

November 5: Panapto videos for assignments 26-30

25 B. OTHER WILL SUBSTITUTES DS 471-498
Nov 8

1. POD Contracts

RCW 11.07.010
REFERENCE:
RCW 21.35
RCW 26.16.120
RCW 48.18.410, .452
RCW 11.02.130

2. MULTI-PARTY BANK ACCOUNTS

RCW 11.11
REFERENCE: RCW 30.22

3. JOINT TENANCIES & DEEDS

REFERENCE:
RCW 64.28
RCW 64.04.020

26 C. PLANNING FOR INCAPACITY DS 498-518
Nov 8

VII. PROTECTION OF THE FAMILY

27-28 A. SURVIVING SPOUSE DS 519-520, 553-564
Nov 10

1. Introduction DS 519-520

2. Homestead & Support DS 560-564
REFERENCE
RCW 6.13.010-.080
RCW 11.54

3. Community Property DS 553-560
REFERENCE:
RCW 26.16.010-.030
RCW 26.16.220-.250

29 4. Elective Share DS 520-553
Nov 10

November 12: Panapto videos for assignments 30-34

30 B. OMITTED FAMILY MEMBERS DS 564-586
Nov 15 RCW 11.12.095
RCW 11.12.091

IX. TRUST ADMINISTRATION

31 A. Duty of Loyalty DS 588-614
Nov 15

REFERENCE:
RCW 11.97.010, 11.98.070, 11.98.078
RCW 11.98.016

32 B. DUTY OF PRUDENCE DS 611-657
Nov 15 DS 611 – 623
Nov. 17 DS 623-657

33 D. DUTY OF IMPARTIALITY DS 667-674

Nov 17 DUTY TO ACCOUNT DS 675-694
RCW 11.100.140

X. TRUSTS: RIGHTS OF BENEFICIARIES

34-35 RIGHTS OF BENEFICIARIES DS 695-727
& THEIR CREDITORS

Nov 22

REFERENCE:
RCW 6.32.250
RCW 11.96A.190
RCW 19.36.020

NOV 24: No class; Panapto videos for assignments 36-40
NOVEMBER 25: Thanksgiving

36 MODIFICATION & DS 727-758
Nov 29 TERMINATION OF TRUSTS

1. TEDRA RCW 11.96A.020-.320

37 CHARITABLE TRUSTS
Nov 29

1. Creation and Modification DS 759-782

38 2. Enforcement DS 782-806
Dec 1

XI. CONSTRUCTION OF TRUSTS

39 A. INTRODUCTION DS 845-869
Dec 1 B. FUTURE INTERESTS *REFERENCE*
RCW 11.12.180-.185
C. CONSTRUCTION

REFERENCE:
RCW 11.12.180-.185
RCW 26.33.260
RCW 11.02.005

40 D. RULE AGAINST PERPETUITIES DS 887-900
Dec 1

E. PERPETUTIES REFORM DS 900-916
RCW 11.98.130.-.160.

LAST CLASSES RESERVED FOR KING LEAR AND REVIEW