

Trust and Estates

Spring Semester 2022

Monday/Wednesday 10:50-12:20

Remote/Zoom (1/10, 1/12 and 1/19)

After 1/24 in person instruction: Room TBA

Professor Susan P. Cook

E-mail: spcook@willamette.edu

Office Hours: Monday 1:45-2:45, 3:45-4:45, via Zoom

Learning Objectives

To become familiar with basic principles of the laws of succession planning through the use of wills, trusts and probate substitutes.

To support students in developing analytical skills and doctrinal basics necessary to pursue advanced coursework in estate planning (including bar exam preparation) and to develop the passion and confidence to pursue the practice area.

Students will learn about the following topics:

- intestacy laws;
- will formation and components including but not limited to:
 - execution formalities,
 - capacity,
 - revocation,
 - undue influence,
 - fraud and duress;
 - trust creation,
- types of trusts including charitable trusts;
- fiduciary duties;
- non-probate transfers;
- planning for incapacity and
- limits on freedom of disposition.

Required Texts

- Dukeminier & Sitkoff, Wills, Trust and Estates (10th Edition).
- We will regularly refer to Title 12 of Oregon Revised Statutes (<http://www.oregonlaws.org/ors/volume/3>).
- Additional readings, videos, in class exercises and multiple-choice problems will be posted on WISE throughout the term.

Classes and Reading

<p>1. Mon 1/10</p> <p>(remote via Zoom)</p>	<p>Chapt 1: Introduction: Freedom of Disposition</p> <p>Pages 1-16, 40-41, 43-62</p> <ul style="list-style-type: none">A. The Power to Transmit Property at DeathB. The Mechanics of SuccessionC. Professional ResponsibilityD. Duties to Intended BeneficiariesE. Joint Representation<ul style="list-style-type: none">1. <i>Shapira v. Union National Bank</i>2. <i>Simpson v. Calivas</i>3. <i>A v. B</i> <p>Discuss probate problem #1 (page 50 of text)</p> <p>Discuss bar questions for Lecture #1 (WISE)</p>
<p>2. Wed 1/12</p> <p>(remote via Zoom)</p>	<p>Chapt 2: Intestacy: An Estate Plan by Default</p> <p>New Intestacy Chapter 2 (on WISE) Pages 1-23</p> <ul style="list-style-type: none">A. An Estate Plan by DefaultB. The Structure of Intestate Succession<ul style="list-style-type: none">1. Surviving Spouse<ul style="list-style-type: none">* 5-minute basic math <p>Discuss bar questions for Lecture #2 (WISE)</p>

<p>Mon 1/17</p>	<p>Martin Luther King Day – class rescheduled to Monday, 4/19</p>
<p>3. Wed 1/19</p> <p>(remote via zoom)</p>	<p>Chapt 2: Intestacy: An Estate Plan by Default</p> <p>New Intestacy Chapter 2 (on WISE) Pages 23-38</p> <p>B. The Structure of Intestate Succession</p> <ol style="list-style-type: none"> 2. Descendants <ul style="list-style-type: none"> * 5-minute basic math (if necessary) 3. Ancestors, Collaterals, and Others 4. Disinheritance by Negative Will <p>Discuss bar questions for Lecture #3 (WISE)</p>
<p>4. Mon 1/24</p> <p>(return to in person instruction for the remainder of the term)</p>	<p>Chapt 2: Intestacy: An Estate Plan by Default</p> <p>New Intestacy Chapter 2(on WISE) Pages 38-84</p> <p>ORS §112.175</p> <p>C. Transfers to Children</p> <ol style="list-style-type: none"> 1. Adopted Children <ol style="list-style-type: none"> A. <i>Hall v. Vallandingham</i> B. <i>Minary v. Citizens Fidelity Bank & Trust Co.</i> C. <i>O’Neal v. Wilkes</i> 4. <i>Reproductive Technology and</i> <ol style="list-style-type: none"> A. <i>Woodward v. Commissioner of Soc. Sec.</i> <p>Discuss bar questions for Lecture #4 (WISE)</p>
<p>5. Wed 1/26</p>	<p>Chapt 2: Intestacy: An Estate Plan by Default</p> <p>New Intestacy Chapter 2(on WISE) Pages 84-87</p> <p>Pages 127-139</p> <p>ORS §§ 112.135, 112.455 & 112.465</p> <p>C. Transfers to Children</p> <ol style="list-style-type: none"> 1. Advancements and Hotchpot <p>D. Bars to succession</p> <ol style="list-style-type: none"> 1. In re Estate of Mahoney 2. Drye v. US

Wed. 1/26 cont..	<p>Chapt. 3: Wills: Formalities and Forms</p> <p>Pages 141 -170</p> <p>Execution of Wills</p> <p><i>Stevens v. Casdorph</i></p> <p><i>In re Pavlinko's Estate</i></p> <p><i>In re: Snide</i></p> <p>Discuss bar questions for Lecture #5 (WISE)</p>
6. Mon 1/31	<p>Chapt. 3: Wills: Formalities and Forms</p> <p>Pages 170-199</p> <p>Execution of Wills (substantial compliance/HER)</p> <p>Will Execution Ceremony Handout (Wise)</p> <p><i>In re Estate of Hall</i></p> <p><i>In re Probate of Will and Codicil of Macool</i></p> <p><i>In re Estate of Javier Castro</i></p> <p>Discuss bar questions for Lecture #6 (WISE)</p>
7. Wed 2/2	<p>Chapt. 3: Wills: Formalities and Forms</p> <p>Pages 199-217</p> <p>Execution of Wills (holographic wills)</p> <p><i>In re Kimmel's Estate</i></p> <p><i>In re Estate of Gonzalez</i></p> <p><i>In re Estate of Kuralt</i></p> <p>Discuss bar questions for Lecture #7 (WISE)</p>
8. Mon 2/7	<p>Chapt. 3: Wills: Formalities and Forms</p> <p>Pages 217-245</p> <p>Revocation of Wills</p> <p><i>Thompson v. Royall</i></p> <p><i>Harrison v. Bird</i></p> <p><i>In re Estate of Stoker</i></p> <p><i>LaCroix v. Senecal</i></p> <p><i>In re Estate of Rigsby</i></p> <p>Discuss bar questions for Lecture #8(WISE)</p>

<p>9. Wed 2/9</p>	<p>Chapt. 3: Wills: Formalities and Forms</p> <p>Pages 245-262</p> <p>Revocation of Wills <i>Clark v. Greenhalge</i> <i>Keith v. Lulofs</i></p> <p>Chapt. 4: Wills: Capacity and Contests</p> <p>Pages 263-276</p> <p>Capacity to Make a Will and Undue Influence <i>In re Wright's Estate</i> <i>Wilson v. Lane</i> <i>In re Stittmater's Estate</i></p> <p>Discuss bar questions for Lecture #9 (WISE)</p>
<p>10. Mon 2/14</p>	<p>Chapt. 4: Wills: Capacity and Contests</p> <p>Pages 276-310</p> <p>Capacity to Make a Will and Undue Influence <i>Breeden v. Stone</i> <i>In re Estate of Shari</i> <i>In re Will of Moses</i> <i>Lipper v. Weslow</i></p> <p>Discuss bar questions for Lecture #10 (WISE)</p>
<p>11. Wed 2/16</p>	<p>Chapt. 4: Wills: Capacity and Contests</p> <p>Pages 310-324</p> <p>Duress, Fraud, Tortious Interference with an Expectancy <i>Latham v. Father Divine</i> <i>Schilling v. Herrera</i></p>

<p>Wed 2/16 cont...</p>	<p>Chapt. 5: Wills: Construction</p> <p>Pages 325-340</p> <p>Mistaken or Ambiguous Language in Wills <i>Mahoney v. Grainger</i> <i>In re Estate of Cole</i> <i>Arnheiter v. Arnheiter</i> <i>In re Gibbs' Estate</i></p> <p>Discuss bar questions for Lecture #11 (WISE)</p>
<p>12. Mon 2/21</p>	<p>Chapt. 5: Wills: Construction</p> <p>Pages 340-372</p> <p>Mistaken or Ambiguous Language in Wills <i>In re Estate of Duke</i></p> <p>Death of a Beneficiary Before Death of Testator <i>In re Estate of Russell</i> <i>Ruotolo v. Tietjen</i> <i>Dawson v. Yucus</i></p> <p>Discuss bar questions for Lecture #12 (WISE)</p>
<p>13. Wed 2/24</p>	<p>Chapt. 5: Wills: Construction</p> <p>Pages 372-384</p> <p>Changes in Property After Execution of Will <i>In re Estate of Anton</i></p> <p>Chapt. 6: Trusts: Characteristics and Creation</p> <p>Pages 385-400</p> <p>The Trust in American Law</p> <p>Discuss bar questions for Lecture #13 (WISE)</p>

<p>14. Mon 2/28</p>	<p>Chapt. 6: Trusts: Characteristics and Creation</p> <p>Pages 401-429</p> <p>Creation of a Trust</p> <p><i>Lux v. Lux</i></p> <p><i>Jiminez v. Lee</i></p> <p><i>Hebrew University Ass'n v. Nye</i></p> <p><i>Hebrew University Ass'n v. Nye</i></p> <p><i>Unthank v. Rippstein</i></p> <p><i>Clark v. Campbell</i></p> <p><i>In re Searight's Estate</i></p> <p>Discuss bar questions for Lecture #14 (WISE)</p>
<p>15. Wed 3/2</p>	<p>Chapt. 6: Trusts: Characteristics and Creation</p> <p>Pages 429-437</p> <p>Creation of a Trust</p> <p><i>In re Estate of Fournier</i></p> <p><i>Olliffe v. Wells</i></p> <p>Chapt. 7: Nonprobate Transfers and Planning for Incapacity</p> <p>Pages 439-443</p> <p>The Rise of Nonprobate Succession</p> <p>Pages 444-462</p> <p>Revocable Trusts</p> <p><i>Fulp v. Gilliland</i></p> <p><i>Patterson v. Patterson</i></p> <p><i>State Street Bank and Trust Co. v. Reiser</i></p> <p>Discuss bar questions for Lecture #15 (WISE)</p>

<p>16. Mon 3/7</p>	<p>Chapt. 7: Nonprobate Transfers and Planning for Incapacity</p> <p>Pages 462-471 Revocable Trusts <i>State Street Bank and Trust Co. v. Reiser</i> <i>Clymer v. Mayo</i></p> <p>Pages 471-492 The Other Will Substitutes <i>Cook v. Equitable Life Assurance Society</i> <i>Nunneman v. Estate of Grubbs</i> <i>Egelhoff v. Egelhoff</i></p> <p>Discuss bar questions for Lecture #16 (WISE)</p>
<p>17. Wed 3/9</p>	<p>Chapt. 7: Nonprobate Transfers and Planning for Incapacity</p> <p>Pages 493-498 The Other Will Substitutes <i>Varela v. Bernachea</i></p> <p>Pages 498-517 Planning for Incapacity (end of life) <i>In re Estate of Kurrelmeyer</i></p> <p>Oregon's Advance Directives and worksheets Wise ZDogg MD – YouTube Video Discuss bar questions for Lecture #17 (WISE)</p>

<p>18. Mon 3/14</p>	<p>Chapt. 8: Limits on Freedom of Disposition: Protection of the Spouse and Children</p> <p>Pages 519-544, 574-585</p> <p>Protection of the Surviving Spouse <i>Sullivan v. Burkin</i> <i>In re Estate of Myers</i></p> <p>Protection Against Unintentional Omission <i>Gray v. Gray</i> <i>In re Estate of Jackson</i></p> <p>Discuss bar questions for Lecture #18 (WISE)</p>
<p>19. Wed 3/16</p>	<p>Chapt. 9: Trusts: Fiduciary Administration</p> <p>Pages 540-544, 587-588, 591-594, 596-602, 612-618, 624-625, 632-642, 644-649</p> <p>Duties of Loyalty and Prudence <i>Hartman v. Hartle</i> <i>In re Gleeson's Will</i> <i>Marsman v. Nasca</i> <i>In re Estate of Janes</i> <i>Wood v. US Bank</i></p> <p>Discuss bar questions for Lecture #19 (WISE)</p>
<p>March 21-25</p>	<p>SPRING BREAK</p>
<p>20. Mon 3/28</p>	<p>Chapt. 9: Trusts: Fiduciary Administration</p> <p>Pages 654-661, 667-693</p> <p>Duties of Impartiality and Duty to Inform and act <i>Howard v. Howard</i></p>

<p>Mon 3/28 cont....</p>	<p><i>In re Heller</i> <i>Wilson v. Wilson</i> <i>Allard v. Pacific National Bank</i> <i>National Academy of Sciences. V.</i> <i>Cambridge Trust Co.</i></p> <p>Discuss bar questions for Lecture #20 (WISE)</p>
<p>21. Wed 3/30</p>	<p>Chapt. 10: Trusts: Alienation and Modification</p> <p>Pages 695-714, 720-742, 750-757</p> <p>Alienation of the Beneficial Interest (spendthrift trusts)</p> <p>Modification and Termination (Claflin Doctrine)</p> <p>Trustee Removal</p> <p><i>Scheffel v. Krueger</i> <i>In re Estate of Brown</i> <i>In re Riddell</i> <i>Davis v. US Bank National Association</i></p> <p>Discuss bar questions for Lecture #21 (WISE)</p>
<p>22. Mon 4/4</p> <p>Guest Speaker:</p> <p>Jeffrey C. Thede, Shareholder and Attorney</p> <p>Thede, Culpepper, Moore, et al.</p>	<p>Chapt. 11: Trusts: Charitable Purposes, Cy Pres and Supervision</p> <p>Pages 759-772, 782-792</p> <p>Charitable Purposes</p> <p>Cy Pres and Deviation</p> <p><i>Shenandoah Valley Nat. Bank v. Taylor</i> <i>In re Neher's Will</i> <i>Smithers v. St. Luke's-Roosevelt Hosp. Cent.</i></p>

23. Wed 4/6	<p>Chapt. 12: Trusts: Powers of Appointment</p> <p>Pages 807-829</p> <p>Purposes, Terminology and Types of Powers <i>Irwin Union Bank & Trust Co. v. Long Beals v. State Street Bank & Trust Co.</i></p> <p>Discuss bar questions for Lecture #23 (WISE)</p>
24. Mon 4/11	<p>Chapt. 12: Trusts: Powers of Appointment</p> <p>Pages 830-844</p> <p>Exercise of a Power of Appointment <i>Timmons v. Ingrahm</i> <i>Brown v. Miller</i></p> <p>Discuss bar questions for Lecture #24 (WISE)</p>
25. Wed 4/13	<p>Chapt. 14: Rule Against Perpetuities and Trust Duration; Digital Assets</p> <p>Page 42</p> <p>Pages 887-916</p> <p>Discuss bar questions for Lecture #25 (WISE)</p>
26. Mon 4/18	<p>Review for exam</p>

Class Policies and Procedures

1. Attendance and Participation

Students are expected to attend class regularly and participate in class discussions. This class is designed to be interactive, both with me and with your fellow classmates. For each class, a rotating panel of students will be “on call” and should be ready to discuss details of assigned materials. If you are not officially on call for a particular class, you are nonetheless encouraged to ask questions and share your perspective on the assignments. Exceptional class participation is likely to factor into your final grade. Due to the large class size, please do not e-mail me regarding future absences unless exceptional circumstances require that you be reassigned to a different panel.

2. Zoom and Technology

Willamette College of Law is committed to making sure that everyone is able to participate fully in our courses. If you have particular needs for access to this course please contact Dean Mac Alpine mjmacalpine@willamette.edu or Sue Minder, Director of Accessible Education Services, at sminder@willamette.edu or (503)370-6737.

3. Grading/Final Exam

Your grade is based upon a 3-hour, open-book examination consisting of both multiple choice and essay questions. A student’s grade may be adjusted up or down by one gradation based upon attendance and participation.

4. Communication/E-mail

You are welcome to contact me via e-mail me at spcook@willamette.edu. I would love to schedule times to communicate with any of you on an individual basis.

WISE will be my primary mode of communication throughout the term.

I value student input and feedback throughout the term. I look forward to getting to know you and working with you this semester.

5. Classroom conversations

In this class it is possible that we will discuss issues of class, gender, race --- and possibly others. It is important that we strive to be thoughtful and deliberate when we express our views in the hope that we do not cause unnecessary harm to any classmates. This does not mean that we cannot engage in a legitimate debate of issues. I want to encourage a meaningful exchange which includes all of your individual experiences, viewpoints, and perspectives. My hope is to focus our discussions on the impact of the cases and laws rather than the personal level in order to avoid unnecessary harm. It is always possible that we may not effectively communicate our point (myself included). If you find a particular comment/behavior inappropriate or offensive, please approach the person in a professional manner, always assuming good faith in our community.