

WILLS, ESTATES, AND TRUSTS

SYLLABUS -BLAW 409 – SILVIA

"WHEN YOU GET THESE JOBS THAT YOU HAVE SO BRILLIANTLY TRAINED FOR, JUST REMEMBER THAT YOUR REAL JOB IS THAT IF YOU ARE FREE, YOU NEED TO FREE SOMEBODY ELSE. IF YOU HAVE SOME POWER, THEN YOUR JOB IS TO EMPOWER SOMEBODY ELSE."

-Toni Morrison

BLAW481

Professor Hilary Silvia, J.D.

Hilary.Silvia@csun.edu

Office hours: W 12:15-2:15 pm; TH 1:45-2:45 pm & by appt. via zoom

NO TEXTBOOK
REQUIRED READING: OPEN
SOURCE MATERIALS AND
LINKS AVAILABLE ON
CANVAS ONLY

CHECK CANVAS DAILY

COURSE DESCRIPTION

This course provides an introduction to the law of wills, estates, trusts and other areas connected with estate planning. The course will consider the nature of property, joint ownership of property, the validity and probate of wills, inheritance under the laws of interstate succession, and the laws governing the establishment and administration of trusts. The course will also consider the law of estate taxation. Prerequisites: BLAW 280 and

a passing score on the Upper Division Writing Exam.

Fall 2021

Section 13964

Th 12:30-1:45 p

(online-zoom links on canvas)

Grade Breakdown

30%: Weekly Assignments

5%: Assigned Presentation

20%: Exam 1

20%: Exam 2

25%: Final Project

Total = 100%

Grading Scale: A-/A – 90% and above

B-/B/B+ – 80% - 89%

C-/C/C+ – 70% - 79%

D-/D/D+ – 60% - 69%

The grade reached after averaging assignments will be the minimum grade you can receive in the course. Plus/minus grading is used.

COURSE OBJECTIVES:

THIS CLASS IS FULLY ONLINE AND HAS A GOAL OF DEVELOPING ANALYTICAL AND REASONING SKILLS. THIS ACTIVE LEARNING PROCESS REQUIRES STUDENTS TO ARTICULATE, DEVELOP AND DEFEND POSITIONS, TO THINK CRITICALLY AND TO ENGAGE IN PROBLEM- SOLVING. STUDENTS LEARN TO FORMULATE AN EFFECTIVE LEGAL ANALYSIS BY SYNTHESIZING INFORMATION, IDENTIFYING LEGAL ISSUES, DISTINGUISHING RELEVANT FROM IRRELEVANT FACTS, USING FACTS AND LAW TO SUPPORT ARGUMENT, REASONING BY ANALOGY AND REACHING CONCLUSIONS BASED ON ANALYSIS. IN ADDITION, STUDENTS IN ALL BUSINESS LAW COURSES STUDY ETHICAL ISSUES IN A BUSINESS CONTEXT, WITH ACTUAL TOPICS DEPENDING ON COURSE CONTENT.

YOU WILL ANALYZE HOW LAW APPLIES TO FACTUAL SETTINGS. YOU WILL READ COURT DECISIONS AND, PREPARE WRITTEN BRIEFS OF THE DECISIONS. YOU WILL LEARN TO DISTINGUISH THE APPLICATION OF RULES DEPENDING ON CHANGING CIRCUMSTANCES IN VARIOUS CASES AND HYPOTHETICALS. YOU WILL LEARN TO ARGUE ALTERNATE SIDES OF A DISPUTE REGARDLESS OF PERSONAL BELIEF. YOU WILL LEARN TO IDENTIFY THE FUNCTIONS, POLICIES, AND TRENDS IN THE LAW, AND TO CONSIDER SOCIAL, ECONOMIC AND ETHICAL INFLUENCES ON THE LAW.

ONLINE COURSE POLICIES

This hybrid course will have both an asynchronous and a synchronous component. You will be provided with interactive reading, watching, and work to be completed on your own time. We will meet once per week in a discussion format to explore course content.

Weekly Assignments: You will turn in weekly assignments on canvas. These assignments vary by topic and will include IRAC case briefs, case problems, short answer, short essay, and questions. If your weekly assignment includes a case brief, it must be briefed in "IRAC" format. If you have never prepared an IRAC, please contact me to schedule a zoom session to review this concept.

Assigned Presentation: Students will form groups, select a week and topic, and present to the class (1) a current case, and (2) why their chosen area of law matters in light of current events and other relevant factors.

IRAC Case Analysis: You will be assigned two papers that will be in the form of a thorough IRAC Case Analysis. The assignments are described in more detail on Canvas.

Final Project: For your final project, you will create an estate plan for a fictional client. You may complete this independently or in groups of 2.

Academic Dishonesty: Plagiarism and cheating will not be tolerated. Any student found to have either submitted work that was not his/her own (this includes either another student's work or information from an uncredited, on-line source) will be given an "F" on the assignment, potentially in the class, and may be referred to the office of student affairs for further discipline. Please maintain a professional tone in both online chat sessions and in emails to your professor

and classmates.

Professionalism: You are expected to show respect for your classmates, your professor, and the university, and not to engage in disruptive behavior. Improper online conduct may require a meeting with the Student Conduct Coordinator. Please maintain a professional tone in both online chat sessions and in emails to your professor and classmates.

Business Law Department Mission: Our mission is to equip students with the academic knowledge, problem solving, analytical and professional skills in the areas of business law, business ethics, and real estate necessary to achieve their personal and professional goals.

Student Learning outcomes of the Undergraduate Program: Classes are taught using the Socratic method, with its goal of participatory learning and the development of reasoning skills. This active learning process requires students to articulate, develop and defend positions, to think critically and to engage in problem-solving. Students learn to formulate an effective legal analysis by synthesizing information, identifying legal issues, distinguishing relevant from irrelevant facts, using facts and law to support argument, reasoning by analogy and reaching conclusions based on analysis. In addition, students in all BLAW courses study ethical issues in a business context, with actual topics depending on course content.

DRES. If you have a disability and need accommodations, please register with the Disability Resources and Educational Services (DRES) office or the National Center on Deafness (NCOD). The DRES office is located in Bayramian Hall, room 110 and can be reached at 818.677.2684. NCOD is located on Bertrand Street in Jeanne Chisholm Hall and can be reached at 818.677.2611. If you would like to discuss your need for accommodations with me, please contact me to set up an appointment. Due to privacy concerns, you must be the one to initiate this conversation.

Legal Advice. While I am a lawyer, I am not your lawyer. I am your professor and I am here to teach you the law, so that you will be empowered to make educated, thoroughly analyzed choices. CSUN prohibits faculty members from providing legal advice or services to students. If you need legal advice or information regarding the law, resources can be found at the Department of Business Law web page at <http://www.csun.edu/blaw/student-resources>.

Schedule of Classes

Weekly Reading: Reading, watching, and work assignments are listed below on a weekly basis. The syllabus may be updated during the semester. Any changes will be posted in writing on CANVAS. If there is a conflict between CANVAS and the Syllabus, CANVAS governs. Homework is due BEFORE class each week. Homework may be turned in late for a maximum of ½ credit, no exceptions unless discussed in advance.

Week No. / Dates	Required reading & viewing – all materials & links posted to Canvas- additional required reading may be posted to canvas- check canvas regularly Any instructional videos and lectures will be posted to canvas	Weekly assignments will be a combination of IRAC briefs, problems, short answer and multiple choice. All weekly assignments will be described and turned in on canvas
8/30/21 Intro to Wills, Trusts, and Estates	Introduction to course and expectations; review course materials and online content	Review syllabus and tour canvas class
Section 1 9/6/21 Present Estates & Future Interests	Read: 1. Text A: Estates & Future Interests (Pages 1 – 12) 2. Case Supplement – <i>White v. Brown</i> Watch: 1. Lecture/videos posted to canvas 2. Real Property Ownership: The Estate System & Future Interests 3. Estates and Future Interests	1. IRAC <i>White v. Brown</i> 2. Weekly problems posted to canvas

<p>Section 2 9/13/21</p> <p>Construing Ambiguous Grants & the Doctrine of Waste</p>	<p>Read: 1. Text A: Estates & Future Interests (Pages 12 – 20)</p> <p>Watch: 1. Lecture/videos posted to canvas 2. Restraints on Transferring Real Property</p>	<p>1. IRAC <i>In the Estate of Dalton Edward Craigen</i> (pg 13) 2. Weekly problems posted to canvas</p>
<p>Section 3 9/20/21</p> <p>Gifts</p>	<p>Read: 1. Text B: Gifts (Pages 1 – 19) 2. Inter-Vivos Gifts 3. Case Supplement - <i>Foster v. Reiss</i> (this case is also mentioned in Text B – in addition to reading content in Text B, read and IRAC the supplemental case)</p> <p>Watch: 1. Lecture/videos posted to canvas</p>	<p>1. IRAC <i>Gruen v Gruen</i> 2. Weekly problems posted to canvas</p>
<p>Section 4 9/27/21</p> <p>Gifts- Acceptance; Irrevocability of Gifts & Exceptions</p>	<p>Read: 1. Text B: Gifts (Pages 20 – 34)</p> <p>Watch: 1. Lecture/videos posted to canvas 2. Gift Tax</p>	<p>1. IRAC <i>Abinger v. Harris</i> 2. Weekly problems posted to canvas</p>

<p>Section 5 10/4/21</p> <p>Intestate Succession & special topics including: -simultaneous death -adopted/nonmarital/step-children</p>	<p>Read:</p> <ol style="list-style-type: none"> 1. CASE: <i>Chavez v. Carpenter</i> – 91 Cal.App.4th 1433 (on canvas) 2. <i>In re Estate of Duval</i> (777 N.W. 2d 380) (on canvas) <p>2. ARTICLE: California Intestate Succession (on canvas)</p> <p>Watch:</p> <ol style="list-style-type: none"> 1. Lecture/videos posted to canvas 2. Elder Law & Estate Planning: The Rules of Intestacy 	<ol style="list-style-type: none"> 1. IRAC <i>Chavez v. Carpenter</i> 2. <i>In Re Estate of Duval</i> <p>IRAC CASE ANALYSIS 1 DUE</p>
<p>Section 6 10/11/21</p> <p>Introduction to Wills: Intent, Testamentary Capacity & Challenges</p>	<p>Read:</p> <ol style="list-style-type: none"> 1. Text C: Estate Planning – Wills, Trusts, and Estates (Pages 1- 5) 2. Case Supplement: -<i>Estate of Shelley</i> -<i>Estate of Kamesar</i> <p>Watch:</p> <ol style="list-style-type: none"> 1. Lecture/videos posted to canvas 2. Wills & Provisions – Module 1 of 5 3. Requirements for a Valid Will – Module 2 of 5 	<ol style="list-style-type: none"> 1. IRAC <i>Estate of Shelley</i> 2. Weekly problems posted to canvas
<p>Section 7 10/18/21</p> <p>Will Formalities: Formation & Interpretation</p>	<p>Read:</p> <ol style="list-style-type: none"> 1. Cal. Probate Code § 6110-6113 2. CASE <i>In re Estate of Russell</i> (69 Cal.2d 200 (1968)) (on canvas) 3. Last Will and Testament of Walt Disney (on canvas) <p>Watch:</p> <ol style="list-style-type: none"> 1. Lecture/videos posted to canvas 	<ol style="list-style-type: none"> 1. IRAC <i>In re Estate of Russell</i> 2. Weekly problems posted to canvas

	2. <u>Last Wills & Testaments: Common Will Provisions and Their Purposes</u>	
Section 8 10/25/21 Wills: Revocation & Revival	Read: 1. Case Supplement: -Estate of Kaufman -Wolf v. Bollinger Watch: 1. Lecture/videos posted to canvas 2. <u>Executing and Revoking a Last Will and Testament</u>	1. IRAC Estate of Kaufman 2. Weekly problems posted to canvas
Section 9 11/1/21 Wills: Changes in Property/Beneficiaries after Execution	Read: 1. Case Supplement: -Church v. Morgan -Gianoli v. Gabaccia 2. CASE: Estate of Barrios (2017 WL 5247924) (on canvas) Watch: 1. Lecture/videos posted to canvas 2. <u>Transfer of Property by Will- Module 3 of 5</u>	1. IRAC Church v. Morgan 2. IRAC Estate of Barrios 3. Weekly problems posted to canvas
Section 10 11/8/21 Wills: Restrictions on Testation – Elective Share & Pretermitted Heirs & Will Contests	Read: 1. Case Supplement: -Estate of Shannon -Azcunce v. Estate of Azcunce Watch: 1. Lecture/videos posted to canvas 2. <u>Resolving Disputes</u>	1. IRAC Estate of Shannon 2. Weekly problems posted to canvas IRAC CASE ANALYSIS 2 DUE

<p>Section 11 11/15/21</p> <p>Will Contracts & Will Substitutes</p>	<p>Read:</p> <ol style="list-style-type: none"> 1. Case Supplement: <ul style="list-style-type: none"> -Self v. <i>Slaughter</i> -Franzen v. <i>Northwest Bank Colorado</i> -Brewer v. <i>Simpson</i> (53 Cal.2d 567 (1960)) (on canvas) <p>Watch:</p> <ol style="list-style-type: none"> 1. Lecture/videos posted to canvas 2. Estate Planning & Elder Law: Strategies for Avoiding Probate 	<ol style="list-style-type: none"> 1. IRAC <i>Self v. Slaughter</i> 2. IRAC <i>Brewer v. Simpson</i> 3. Weekly problems posted to canvas
<p>Section 12 11/22/21</p> <p>Trusts: -Creation & Uses -Modification & Termination</p>	<p>Read:</p> <ol style="list-style-type: none"> 1. Text C: (Pages 7-11) 2. Case Supplement: <ul style="list-style-type: none"> -Gurnett v. <i>Mutual Life Insurance</i> -Canal National Bank v. <i>Chapman</i> -Estate of <i>Brown</i> 3. Types of Trusts 4. Trusts and the Statute of Wills / Testamentary Trusts <p>Watch:</p> <ol style="list-style-type: none"> 1. Lecture/videos posted to canvas 2. Intro to Trusts and Trust Provisions 	<ol style="list-style-type: none"> 1. IRAC <i>Estate of Brown</i> 2. Weekly problems posted to canvas

<p>Section 13 11/29/21</p> <p>Fiduciary Administration</p>	<p>Read:</p> <ol style="list-style-type: none"> 1. Text C: (Pages 5-7, 11-12) 2. Case Supplement: -Tracy v. Central Trust Co. -Carter v. Carter -Schwan v. Permann (28 Cal.App.5th 678) (on canvas) 3. ARTICLE: Wills, Estates, and Probate (courts.ca.gov) <p>Watch:</p> <ol style="list-style-type: none"> 1. When and Where to Bring Probate Proceeding 2. The Probate Process 3. Administering the Estate 4. Fiduciaries – Module 4 of 5 	<ol style="list-style-type: none"> 1. IRAC <i>Schwan v Permann</i> 2. Weekly problems posted to canvas
<p>Section 14 12/6/21</p> <p>Federal Estate & Gift Taxation</p>	<p>Read:</p> <ol style="list-style-type: none"> 1. ARTICLE: What is Inheritance Tax (on canvas) 2. ARTICLE: Wealth Tax Design: Lessons From Estate Tax Avoidance (on canvas) <p>Watch:</p> <ol style="list-style-type: none"> 1. Creditors, Testamentary Trusts, and Tax Issues- Module 5 of 5 2. Khan Academy: Estate Tax Introduction 	<ol style="list-style-type: none"> 1. Weekly problems posted to canvas
<p>Section 15 12/13/21</p>	<p>FINAL PAPER DUE</p>	<p>FINAL PROJECT DUE (Date/Time to be posted to Canvas)</p>

How to brief a case (IRAC):

Case brief and IRAC mean the same thing. A brief has 4 sections:

- **Issue:** A good issue statement includes the party names, the name of the rule of law the brief is analyzing, and a key fact. What is the issue before the court? What Problem is the court trying to solve? The issue should be one or two sentences, state the party names and the relevant legal terms.
- **Rule:** The rule is the law that governs the outcome of the case. It should be stated as a general principle and not include any party names or facts. The rule should be stated as a list or an outline- not in paragraph form.
- **Application:** The application is a discussion of how the rule applies to the facts of a case. The application shows how you can analyze arguments on both sides and is the most important skill you will learn. The application is normally paragraphs long. It should be written debate - not simply a statement of the conclusion. Whenever possible, present both sides of any issue.
- **Conclusion:** What was the result of the case? Who wins? With cases, the text gives you a background of the facts along with the judge's reasoning and conclusion. When you brief cases, you are basically outlining the judge's opinion. With essay questions and problems, you have a summary of the facts of an actual case, and your job is to act as the judge in reasoning your way to a ruling, again using the IRAC format.

Example:

Issue: Does Weinstein hold title to the Cliff Street property owned by Hurlbert through adverse possession?

Rule:

A party claiming title by adverse possession has the burden of proving:

1. Actual and Exclusive Possession
2. Open, Visible and Notorious Possession
3. Continuous and Peaceable Possession
4. Hostile and Adverse Possession

Application:

Weinstein argues that that he is entitled to the property because he had sole physical occupancy of the property. The lawn of the Cliff Street had been maintained and mowed by Weinstein. Weinstein argues that the possession was open, visible and notorious because members of the community historically used the property for games, for children to play and for storing boats. Although most of this activity diminished in the mid-1980s, Weinstein argues that the property continues to be used for boat storing. Weinstein argues that the possession was continuous because the lawn has been kept up and used by the previous owners as well since 1984, and Hurlbert never maintained the property then. Weinstein argues that the possession was hostile and adverse because Hurlbert did not agree with such possession. A notice was posted by Hurlbert intending to prevent a prescriptive easement.

Hurlbert argues that Weinstein is not entitled to the property because the use of the property was not sufficiently hostile and notorious. During the full time of the prescriptive period, the adverse use of the property was limited to seasonal lawn mowing, planting and taking care of several bushes. There needs to be more for the possession to be adverse. Hurlbert argues that all activities that occurred on the lawn were not consistent, only seasonal and isolated. Hurlbert argues that the possession was not made aware to the public because neighbors did not occasionally use the land after the 1980s. Once again showing its inconsistency.

Conclusion: No, Weinstein does not hold title to the Cliff Street property because his use of the property was not sufficiently hostile and notorious.