

Professor Larry A. Bakken
Law/Grad Bldg. - Room 220E
Office: 651-523-2189
Home: 763-521-6011
E-mail: lbakken@hamline.edu

Office Hours:
Mon. Wed. 9:00 a.m.- 10:00 a.m.
Friday 1:00 p.m. – 2:00 p.m.
other times by appointment
Students are welcome

Syllabus
WILLS AND TRUSTS
Fall 2013 - Room LAW 101
8:00-9:00 a.m. Monday, Wednesday, Friday

REQUIRED TEXT: Wills, Trusts And Estates, Jesse Dukeminier, Robert Sitkoff, and Jane Lindgren, 8th Ed. Lindgren, Wolters, Kluwor (2009) ISBN-978-0-7355-7996-5

RECOMMENDED READING: Wills and Trusts In A Nutshell Robert Mennell and Sherri Burr, 3rd Ed. Thomson-West (2007). ISBN 978-0-314-18013-1

WESTLAW TWEN SITE: Register before first day of class.

COURSE DESCRIPTION: Studies property descent as governed by statute and court decisions relating to testate and intestate succession. Private express and charitable trusts are considered.

PURPOSE: Wills and Trusts will introduce students to the basic rules, principles and issues related to wills, trusts and estates. The course will address issues in terms of controversies which may end in litigation. It will focus on issues connected to distribution of one's assets before and after death. Questions of tax avoidance and the ethics of distributions and succession will also be discussed. Particular attention will be given the essentials of estate planning and avoiding related dispute. The course will also provide students an opportunity discuss and evaluate current law and related public policy.

COVERAGE: Wills and Trusts examines rights and powers one has in controlling the final distribution of their property. The basis for passing wealth will be examined and what if any limitations are imposed on individuals who exercise their right to allocate property to those who remain after a descendant's death. Special attention will be given to the formalities of will drafting, what property can or cannot be distributed and the purpose and use of trusts. Special attention will be given the role of the trustee and their fiduciary responsibilities. Some attention will be given to the use of charitable trusts and their role in society. Finally, the issues of taxation and wealth transfer will be addressed.

CLASS FORMAT: Lectures, group participation, questions/answers, class discussion, case studies and study of appropriate statutes and case law. Includes reading assignments, preparation of an agency comment, optional research paper and a final exam.

OBJECTIVES: Wills and Trusts will provide students with an introduction to gratuitous transfers, administration of estates and trusts, judicial perspectives and procedures and the professional responsibility of lawyers who practice in the area of wills and trusts. Attention will be given to the doctrines and practices related to intestate successor and testamentary transfers. This will include requirements for the execution of wills, drafting problems and potential

problems caused by donor intent. The course will also cover lifetime transfers, donor incapacity, the use of wills and trusts. Sometime will be spent discussing the process of appointment, regulation of fiduciary obligations and estate taxation.

FINAL EXAMINATION AND GRADING POLICY: Three-hour final examination, closed book self-schedule.

OPTIONAL: Students may submit a research paper for a portion of their final grade. If the paper is C+ quality or better, the final course grade **will be raised one-half grade. The topic of the paper and a brief description (1 page) must be approved by the instructor and submitted to him in class by October 23, 2013.** The paper should be a typed, double-spaced, and 15-18 pages in length. Text should be in a 12-point font Margins should be 1" on the right side and top; bottom, and left margins should be 1/2". The paper should include a table of contents, footnotes, bibliography and a separate two page executive summary. **The extra credit paper must be submitted to TWEN by 12:00 Midnight Nov. 22, 2013.** The final copy will not be returned.

ATTENDANCE: Students are expected to attend class and be prepared each day. According to school policy, students may miss six hours of class. When students miss the seventh hour of class a ten-page paper must be submitted to the instructor. If an eighth hour of class is missed, a second ten-page typed paper will be turned in. On the ninth hour missed, the name of the student will be submitted to the Dean's office and the student will be dropped from the class. Remember each session is three hours. This policy becomes operational after you miss the two days of classes.

COMPUTER POLICY - You may use laptop computers or other electronic devices in class to take notes and access course related materials. You should not use your laptop or electronic devices for other purposes.

In addition to the usual courtesies due to your classmates, refrain from text-messaging and email, using cell phones, pagers, or any other communication device. Refrain also from displaying wallpaper, screen savers, or other material on your computer screen that can reasonably be expected to distract your classmates.

Drafting Assignment: Mandatory Exercise – draft will be for hypothetical client. Handout will be given in class. Due September 9, 2013.

Class Schedule

Date	Assignment	Page
August 21	Introduction -Section A. The Power to Transmit Property at Death - <i>Hodel v. Irving</i> - <i>Shaw Family Archives v. CMG Worldwide</i>	1-26 3 10
August 23	Introduction -The Problem of the Dead Hand - <i>Shapiro V. Union National Bank</i> -Section B. Transfer of the Decedent's Estate -Section C. An Estate Planning Problem -The Clients Letter and its Enclosures -Last Will and Testament of Howard Brown	27-51 28 38 49 49 50
August 26	Introduction/Intestacy -Section D. Professional Responsibility - <i>Simpson v. Calivas</i> -A. v B. -Intestacy an Estate Plan By Default -Section A. The Basic Scheme -Drafting Assignment Handout	51-79 58 58 64 Chapter 2 71 71
August 28	Ken Swift – Will Drafting Advice	
August 30	Open	
Sept. 2	Labor Day Holiday	
Sept. 4 and 6	Guest Speaker – Susie Scheller	
Sept. 9	Intestacy - <i>Janus V. Tarasewicz</i> -Section B. Transfers to Children - <i>Hall V. Vallandingham</i> - <i>Minary V. Citizens Fidelity Bank & Trust Co.</i>	79-107 80 97 97 103
Sept. 11	Intestacy - <i>O' Neal v. Wilkes</i> - <i>Woodward v. Commissioner of Social Security</i> - <i>In re Martin B.</i>	107-130 107 118 126
Sept. 13	Intestacy -Section C. Bars to Succession - <i>In re Estate of Mahoney</i> - <i>Drye V. United States</i>	130-157 145 145 155

Sept. 16	Intestacy/Wills: Capacity and Contests -Section A. Mental Capacity - <i>In re Estate of Washburn</i> - <i>Wilson v. Lane</i> - <i>In re Strittmater</i> - <i>Breeden V. Stone</i>	159-180 159 159 161 171 171
Sept. 18	Wills: Capacity and Contests -Section B. Undue Influence - <i>Estate of Lakatosh</i> - <i>In re Will of Moses</i> - <i>In re Kaufmann's Will</i> - <i>Lipper v. Weslow</i>	180-207 180 182 186 191 193
Sept. 20	Wills: Capacity and Contests -Section C. Fraud - <i>Puckett v. Krida</i> -Section D. Duress - <i>Latham v. Father Divine</i> -Section E. Tortious Interference with and Expectancy - <i>Schilling v. Herrera</i> Wills: Formalities and Forms -Section A. Execution of Wills - <i>In re Groffman</i> - <i>Stevens v. Casdorff</i>	207-233 207 209 210 210 215 215 223 229
Sept. 23	Wills: Formalities and Forms - <i>Estate of Morea</i> - <i>In re Pavlinko's Estate</i> - <i>In re Snide</i> - <i>In re Will of Ranney</i>	233-258 239 226 250 253
Sept. 25	Wills: Formalities and Forms - <i>In re Estate of Hall</i> - <i>Kimmel's estate</i> - <i>Estate of Gonzales</i> - <i>In re Estate of Kuralt</i>	259-285 259 269 274 280
Sept. 27	Wills: Formalities and Forms -Section B. revocation of Wills - <i>Harrison v. Bird</i> - <i>Thompson v. Roy all</i> - <i>LaCroix v. Senecal</i> - <i>Estate of Alburn</i> -Section C. Components of a Will	286-309 286 287 290 295 300 307
Sept. 30	Wills: Formalities and Forms - <i>Clark v. Greenhalge</i> - <i>Simon v. Grayson</i> - <i>Johnson v. Johnson</i> -Section D. Contracts Relating to the Wills - <i>Via v. Putnam</i>	310-334 310 315 317 325 329

Oct. 2	Construction of Will -Section A. Mistaken of Ambiguous Language in Wills - <i>Mahoney v. Grainger</i> - <i>Arnheiter v. Arnheiter</i> - <i>Estate of Gibbs</i> - <i>Erickson v. Erickson</i> - <i>Flemming v. Morrison</i> -Section B. Death of the Beneficiary Before Death of the Testator - <i>Estate of Russell</i>	335-363 335 336 343 344 345 346 356 359
Oct. 4	Construction of Will - <i>Ruotolo v. Tietjen</i> - <i>Dawson v Yucus</i> -Section C. Changes in Property After Execution of Will - <i>In re Estate of Anton</i>	364-392 367 376 380 380
Oct. 7	Nonprobate Transfers and Planning for Incapacity -Section A. An Introduction to Will Substitutes -Section B. Will Substitutes and the Wills Act - <i>Farkas v. Williams</i> - <i>Linthicum v. Rudi</i> - <i>In re Estate of Atkinson</i> -Section C. Will Substitutes and the Subsidiary Law of the Wills - <i>In re Estate and Trust of Palafas</i> - <i>State Street Bank and Trust Co. V. Reiser</i>	393-418 393 397 398 403 407 413 414 416
Oct. 9	Nonprobate Transfers and Planning for Incapacity - <i>Cook v. Equitable Life Assurance Society</i> - <i>Egelgoff v. Egelhoff</i> - <i>Varela v. Bernachea</i> -Section D. Pour-Over Wills and Revocable Trusts in Modern	418-444 420 426 432 444
Oct. 11	Nonprobate Transfers and Planning for Incapacity - <i>Clymer v. Mayo</i> -Section E. Joint Tenancies in Realty -Section F. Planning for Incapacity - <i>In re estate of Kurrelmeyer</i> - <i>Bush v. Schiavo</i>	445-468 445 447 448 449 459
Oct. 14	Open	
Oct. 16 and 18	Midterm Break	
Oct. 21	Restrictions of the Power of Disposition -Section A. Rights of the Surviving Spouse - <i>In re Estate of Cross</i> - <i>Sullivan v. Burkin</i> - <i>Bongaards v. Millen</i>	469-496 469 484 488 492
Oct. 23	Restrictions of the Power of Disposition - <i>Reece v. Elliot</i> - <i>In re Estate of Prestie</i>	497-521 503 516

	-Section B. Rights of Descendants Omitted from the Will	519
Oct. 25	Restrictions of the Power of Disposition/ Protection of the Spouse and Children Trusts: Introduction and Creation - <i>Lambeif v. Farmers Co-operative Executors & Trustees Ltd.</i> - <i>Gray v. Gray</i> - <i>Kidwell v. Rhew</i>	522-539 522 528 536
Oct. 28	Trusts: Introduction and Creation -Section A. Introduction -Section B. Creation of a Trust - <i>Lux v. Lux</i> - <i>Jimenez v. Lee</i> - <i>The Hebrew University Association v. Nye (1961)</i> - <i>The Hebrew University Association v. Nye (1966)</i> - <i>Unthank v. Rippstein</i> - <i>Brainard v. Commissioner</i> - <i>Speelman v. Pascal</i>	541-572 541 557 557 558 563 566 569 572 572
Oct. 30	Trusts: Introduction and Creation - <i>Clark v. Campbell</i> - <i>In re Searight's estate</i> - <i>In re Estate of Fournier</i> - <i>Olliffe v. wells</i>	572-596 579 582 589 593
Nov. 1	Rights to Distributions from the Trust Fund -Section A. Rights of the Beneficiary to Distributions - <i>Marsman v. Nasca</i> -Section B. Rights of the Beneficiary's Creditors	597-613 597 598 598 609
Nov. 4	Rights to Distributions from the Trust Fund - <i>Scheffel v. Krueger</i> - <i>Shelley v. Shelley</i> - <i>Federal Trade Commission v. Affordable Media, LLC</i> - <i>In re Lawrence</i> -Section C. Modification and Termination of trusts	613-641 616 618 628 634 641
Nov. 6	Rights to Distributions from the Trust Fund - <i>In re Trust of Stuchell</i> - <i>In re Riddell</i> - <i>Clafin and Material Purpose</i> - <i>In re Estate of Brown</i> - <i>Davis v. U.S. Bank National Association</i>	641-666 643 645 653 653 660

Nov. 8	Trust Administration: The Fiduciary Obligation -Section A. Introduction -Section B. The Duty of Loyalty - <i>Hart-man v. Hartle</i> - <i>In re Gleeson's Will</i> - <i>In re Rothko</i> -Section C. the Duty of Prudence	667-693 667 675 675 679 688
Nov. 11	Trust Administration: The Fiduciary Obligation - <i>In re estate of Janes</i> - <i>Wood v. U.S. Bank, N.A.</i>	694-720 702 712
Nov. 13	Trust Administration: The Fiduciary Obligation -Section D. Impartiality and the Principal and Income Problem - <i>Howard v. Howard</i> - <i>In re Matter of Heller</i> -Section E. Subrules Relating to the Trust Property -Section F. Duty to Inform and Account - <i>Fletcher v. Fletcher</i> - <i>National Academy of Sciences v. Cambridge Trust Co.</i>	721-750 725 726 731 736 738 739 745
Nov. 15	Charitable Trusts -Section A. Introduction -Section B. Nature of Charitable Purposes - <i>Shenandoah Valley National Bank v. Taylor</i> -Section C. Modification of Charitable Trusts: Cy Pres - <i>In re Neher</i> -Section D. Supervision of charitable Trusts - <i>Carl J. Herzog Foundation, Inc. V. University of of Bridgeport</i> - <i>Smithers v. St. Luke's Roosevelt Hospital Center</i>	751-787 751 751 752 760 761 776 776 776
Nov. 18	Charitable Trusts	788-802
Nov. 20	Power of Appointment: Building Flexibility into Trusts -Section A. Introduction - <i>Irwin Union Bank 7 Trust Co. v Long</i> -Section B. Creation of a Power of Appointment -Section C. Exercise of a Power of Appointment - <i>Beals v. State Street Bank & Trust Co.</i> -Section D. release of a Power of Appointment - <i>Sidel v. Werner</i>	803-831 803 803 806 812 813 813 826

Nov. 22	<p>Power of Appointment/ Construction of Trusts: Future Interests</p> <ul style="list-style-type: none"> -Section E. Failure to Exercise a Power of Appointment -<i>Loring v. Marshall</i> Construction of Trusts -Section A. Introduction -Section B. Classification of Future Interests -Section C. Construction of Trust Instruments -<i>In re estate of Gilbert</i> -<i>First National Bank of Bar Harbor v. Anthony</i> -<i>Clobberie's Case</i> Construction of Trusts: Future Interests/ Rule Against Perpetuities and Trust Durations -<i>Dewire v. Havels</i> 	<p>832-857</p> <p>832 832 837 837 838 845 847 853 857</p> <p>857-883</p> <p>863</p>
Nov. 25	<ul style="list-style-type: none"> -<i>Estate of Woodworth</i> -<i>Lux v. Lux</i> Rule Against Perpetuities and Trust Durations -Section A. Introduction -Section B. The Orthodox Rule Against Perpetuities -Section C. Perpetuities Reform Other readings if time permits 	<p>869 880</p> <p>885-910</p> <p>885 888 897</p>