

UNIVERSITY OF VICTORIA

FACULTY OF LAW

LAW 320 – SUCCESSION AND ESTATE PLANNING

Fall 2011 (1.5 units)

Instructor Contact Information

Claude Marchessault, Barrister & Solicitor, Sessional Instructor, Faculty of Law
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You are invited to schedule an appointment with me at any time by calling my office or sending me an e-mail. In addition, I will be available for consultation before and after most classes.

Course Schedule

Room: FRA 142 – Murray and Anne Fraser Building
Tuesdays and Thursdays, 1:30 to 3:00 p.m.

Course Moodle Site

Please check Moodle and your UVic e-mail on a regular basis; especially before class in the event of a cancellation. I will strive to send out a general notice on Moodle in the event of a last minute cancellation. Cancelled classes will be rescheduled promptly following sufficient notice to all students.

Course Description

Law 320 offers an overview of common law principles applicable to succession and estate planning as well as relevant statutes relating to wills, powers of attorney, estate planning and estate administration. It also touches on trust law and taxation issues as they relate to estates and estate administration. Law 320 offers students a practical side to succession and estate planning through in-class exercises, discussions and simulated client encounters. Significant emphasis is placed on will drafting using precedents and techniques which will be discussed and developed in class. A significant portion of your final grade will be based on a will drafting assignment. Class attendance, while not mandatory, is important.

General topics to be covered include: intestate succession; wills and variation thereof by a Court; equitable doctrines relating to gifts and succession; aboriginal succession; incapacity planning; joint tenancies; beneficiary designations; *inter-vivos* gifting and trusts; incapacity planning, representation agreements and living wills.

Course Objectives

- To explore the common law and statutory issues and requirements relating to succession and estate planning and the estate dispute resolution process.
- To consider the role and professional responsibility of solicitors (including ethical questions) involved in estate planning, estate administration and will preparation.
- To become familiar with general principles and processes relating to estate planning and estate administration.
- To develop the knowledge and skill needed to draft a basic legal will and to apply that knowledge.

Teaching Methodology

Law 320 will be taught using a variety of techniques including basic lectures, small group work, in-class exercises and class discussions. Students are expected to come to class having read assigned materials and ready to discuss relevant issues identified in the readings in the context of succession and estate planning. Lectures are designed to outline general principles and to serve as a framework for organizing the detailed subject matter in the coursepack. Class discussions and in-class exercises are designed to stimulate critical thought and to offer students an opportunity to apply knowledge from the readings and lectures to real life problems.

Classroom Climate

To create a positive learning environment, an inclusive and respectful classroom atmosphere is crucial. To ensure that all participants feel welcome and comfortable participating in class discussions, we must all be respectful in the use of our language and the manner in which we conduct our classroom business. We all have an obligation to support this kind of learning environment. The University of Victoria and the Faculty of Law are committed to promoting, providing and protecting a positive, supportive and safe learning and working environment for all its members. I expect all aspects of this class to be conducted with this commitment firmly in mind. Should you ever have concerns about the classroom atmosphere, please speak to me. For further information, I encourage you to refer to the University of Victoria's Discrimination and Harassment Policy <http://web.uvic.ca/uvic-policies/pol-1000/1150HPP.html> .

Communication and other Administrative Matters

Electronic Communications: Moodle will be used for purposes of communication with students. Please check your UVic e-mail account regularly for notices from me about class cancellations, reading assignments or other matters. Also, be sure to regularly check the "News forum" on Moodle. Please feel free to e-mail me to ask questions of a general nature or to make an appointment to meet with me. As I do not answer substantive questions by e-mail, please see me before or after class if you have such a question.

Academic Accommodation: If you would like to discuss classroom, assignment or exam accommodation necessitated by a disability or other reason, please arrange to meet with the Associate Dean Academic and Student Relations. The Associate Dean will speak to me where necessary and appropriate.

Electronic Recordings: As a general rule I do not permit lectures to be recorded, however, I do make exceptions in special circumstances. If you would like to record a lecture, please speak to me beforehand.

Laptops Computers: If you choose to take notes relating to the lecture portion of the class on a laptop computer, please do so in a quiet manner that is respectful of those seated around you. I expect you to avoid displaying material on your laptop computer that is not related to the class.

Required Materials and Assigned Readings

The required course materials for this class are contained in the **Coursepack** which was revised for Spring 2010. The reading list for this course is posted on Moodle and includes statutes, regulations, practice directions, Rules of Professional Conduct and Professional Responsibility, cases, commentary, reports and proposals for reform. Excerpts from most cases, statutes, regulations etc. referred to on the reading list are contained in the **Coursepack**. Materials on the reading list which do not appear in the **Coursepack** are generally accessible via links in Moodle or through commercial databases such as Quicklaw. **Rules of Professional Conduct** are available on the Law Society of British Columbia website. Articles, papers, proposals for reform and other commentary as well as reference materials are at the Reserve Desk in the Priestly Law Library or accessible via links in Moodle. Time limits will invariably prevent an in-depth discussion about everything on the reading list. Students are nevertheless expected to be familiar with all of the assigned readings which are all examinable.

Method of Evaluation

The final grade for this course will be based on **three** components, as follows:

A mid-term exam will comprise 20% of the final grade in this course. The exam is scheduled for Tuesday, October 18, 2011, during regular class hours (subject to change). It is your responsibility to confirm the date, time and location of the mid-term exam. The exam will be “qualified open-book” which means that you may only bring your notes, summary/outline and the required course materials (Coursepack) into the examination room. No library materials or electronic devices (other than a laptop to write exam) are permitted in the examination room.

A will drafting assignment will be distributed at the end of class on Tuesday, November 1, 2011. It is due at 1:30 p.m. on Tuesday, November 15, 2011, (in-class). This mid-term will drafting assignment will comprise 30% of the final grade in this course.

A final exam will comprise the remaining 50% of the final grade in this course. The exam is scheduled for Friday, December 9, 2011 at 9 a.m. – location TBA (subject to change). It is your responsibility to check the final exam schedule for the date, time and location of the exam. The exam will be “qualified open-book” which means that you may only bring your notes, summary/outline and the required course materials (Coursepack) into the examination room. No library materials or electronic devices (other than a laptop to write exam) are permitted in the examination room.

Code names will be used on the mid-term exam, will drafting assignment and final exam. Please obtain your will drafting, mid-term and final exam code names from the Main Office in advance.

Penalties for Failure to Write Final Exam, Complete the Assignment or Meet Deadlines

A student who fails to meet a deadline without prior approval from the course instructor will be penalized by reducing that student’s grade for the assignment by one letter grade for every day, or part of a day, that the assignment is late. The will drafting assignment must be completed. Failure to complete that assignment or to write the final exam will result in a grade of “N” (incomplete).

Grading

The mid-term exam, will drafting assignment and final exam will be graded by numerical percentage. The final grade for this course will be calculated by adding the weighted numerical grades of all evaluation components and determining the equivalent letter grade for the total of those weighted components as in the following example:

	Percentage		Weight	Marks
Mid-Term Exam	80%	x	20%	16.0
Will Assignment	80%	x	30%	24.0
Final Exam	78%	x	50%	39.0
 Final Grade			 =	 79.0 = B+ (Final Grade)

University of Victoria – Faculty of Law - Relevant Equivalencies

The following are the relevant equivalencies between numerical and letter grades at the University of Victoria, Faculty of Law:

Letter Grade	Grade Point Value	Percentage Value	Narrative Description
A+	9	90-100%	Exceptional, outstanding, and excellent performance, normally achieved by a minority of students. These grades indicate a student who is self-initiating, exceeds expectation, and has an insightful grasp of subject matter.
A	8	85-89%	
A-	7	80-84%	
B+	6	75-79%	Very good, good, and solid performance, normally achieved by the largest number of students. These grades indicate a good grasp of subject matter or excellent grasp in one area balanced with satisfactory grasp in the other area.
B	5	70-74%	
B-	4	65-69%	
C+	3	60-64%	Satisfactory or minimally satisfactory performance. These grades indicate a satisfactory performance and knowledge of subject matter.
C	2	55-59%	
D	1	50-54%	Marginal performance. A student receiving this grade demonstrates a superficial grasp of subject matter.
F	0	49 and below	Unsatisfactory performance.

Academic Integrity

Academic integrity is expected of all participants in the university community. It is a serious academic offence to engage in plagiarism or other forms of academic dishonesty, or to assist others in doing so. You should familiarize yourself with the University's Policy on Academic Integrity which is set out in the University Undergraduate Calendar. The policy is available online at: <http://web.uvic.ca/calendar2010/FACS/UnIn/UARe/PoAcI.html>. I recommend you review the policy.

If you have any questions about what constitutes paraphrasing, plagiarism or cheating or if you have any concerns or questions about the University's policy, please speak to me or to the Associate Dean Academic and Student Relations or send me an e-mail.

For convenience, the definition of plagiarism is included here:

“Plagiarism

A student commits plagiarism when he or she:

- 1 submits the work of another person as original work*
- 2 gives inadequate attribution to an author or creator whose work is incorporated into the student's work, including failing to indicate clearly (through accepted practices within the discipline, such as footnotes, internal references and the crediting of all verbatim passages through indentations of longer passages or the use of quotation marks) the inclusion of another individual's work*
- 3 paraphrases material from a source without sufficient acknowledgement as described above*

Students who are in doubt as to what constitutes plagiarism in a particular instance should consult their course instructor.”

Reference Materials

The following are some of the materials on reserve for this course accessible at the Reserve Desk in the Priestly Law Library. Other materials may be added to the reserve list as needed.

-Coursepack (Fall 2011)

-Feeney's Canadian Law of Wills (4th Ed),
James MacKenzie, Butterworths

-Bogardus & Hamilton:
Wills Precedents (CLE)

-Probate and Estate Administration
Practice Manual (CLE)

-Wills and Estates (Cases, Text and Materials)
Howard S. Black, (2009) Emond Montgomery (1st Edition)