

CONTEMPORARY ESTATE PLANNING

TEXT AND PROBLEMS

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CONTEMPORARY ESTATE PLANNING

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TO SUZANNE, JOHN, AND STEVEN

PREFACE

This book is intended primarily for use in a problem oriented course or seminar on estate planning; however, it can be used successfully by lawyers for self study and reference purposes. It reflects my belief that a mix of text, examples, and problems is the most flexible, effective and economical way to teach a basic or an advanced estate-planning course to law students in their second or third years or to practicing lawyers. Ideally the course would be taken by students after ones on trusts and estates, personal income tax, and estate and gift tax. However, the text has been used successfully by students who have had none, or less than all, of those courses. Some other students have taken estate planning and one or more of the other courses concurrently. Because the text includes extensive references to the provisions of the Internal Revenue Code of 1954 and Treasury Regulations, a reader should have ready access to a suitable pamphlet edition or other compilation of the Code and Regulations.

The approach and coverage of the book allow it to be used in courses of varying length and sophistication, depending on the instructor's individual preferences. For example, the manuscript has been used in courses ranging from 30 to 60 classroom hours in length, including estate-planning courses or workshops; estate-planning seminars; and a combined course on the federal taxation of trusts and estates and estate planning. The organization of the book into chapters that deal with more or less discrete subjects enables the instructor to consider them out of sequence or to narrow the course coverage by omitting one or more of them.

The book is a product of my combined experiences as a lawyer specializing in estate planning and administration in a large law firm and as a teacher of those subjects for the past dozen years. Overall it expresses my concern that an estate planner provide clients with high quality personal services and comprehensive, fully integrated estate plans (what might be called "holistic" estate planning). At appropriate points the text includes references to practical planning and ethical considerations. Given the demand that lawyers be more efficient and the burgeoning interest in the ethical responsibilities of lawyers, it is particularly desirable to consider those dimensions of an estate-planning practice. Be-

cause of the migrant character of our population and the growing interest in community property and similar marital property regimes, the text includes discussions of community property considerations.

The book opens with an examination of the lawyer's role in estate planning (Chapter 1) and concludes with a review of the increasingly important post-mortem phase of estate planning (Chapter 12). In between, consideration is given to a wide range of important estate-planning problems and techniques, extending from nontax topics, such as the use of durable powers of attorney and living wills, to sophisticated tax devices, such as the private annuity and the charitable remainder trust. Considerable attention is devoted to life insurance, which is not adequately understood by most clients and receives little, if any, attention in most law school courses. Constraints of time and space required some hard choices regarding coverage. Thus, the text does not include a separate consideration of annuities or employee benefits, but the topics are discussed at various points, particularly in connection with private annuities and post-mortem planning.

A teacher's manual is available that discusses various ways of using the text, suggests solutions to problems contained in it, and offers a list of cases that might be assigned or used for discussion and analysis. The manual also includes some lengthy problems that might be assigned in lieu of, or in addition to, a final examination. Students have reacted favorably to the two or three long planning problems I usually assign instead of an examination or a research paper. Each of the long problems is based on an extensive set of facts concerning a fictional family at successive stages of development. For example, stage one may be set when the husband and wife are relatively young and have minor children; stage two when they are older, more affluent, and the children are in college; and stage three following the death of one or both of them. The problems are excellent learning tools that combine the advantages of simulation with those of take home examinations. They approximate the work of a lawyer in practice and require a careful analysis and discussion of complex factual and legal issues.

June, 1982
Seattle, Washington

John R. Price

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A large and varied group contributed directly or indirectly to the completion of this book. First, and foremost, are my wife, Suzanne, and our 2 sons, John and Steven, all of whom were a continual source of love, support, and encouragement. Second is my brother, Professor H. Douglas Price, of the Department of Government, Harvard University, who very early in our lives established a pattern of support, affection, and high scholarly achievement.

Over the years I have benefited from the valuable counsel, assistance, and encouragement of many colleagues at the University of Washington Law School and practicing lawyers in Seattle and elsewhere. I am particularly grateful to Ron Hjorth, Jack Huston, Bob Mucklestone, Gordon Schaller, John F. Sherwood, and Ken Schubert, all of whom read portions of the manuscript at various stages. My former deans, Dick Roddis and George Schatzki, and my colleague Don Chisum also gave me important support and encouragement.

Friends at a number of other schools also provided valuable inspiration, help, and encouragement. Doug Kahn of the University of Michigan Law School and Ed Halbach of the University of California at Berkeley read and made helpful suggestions regarding the content and organization of early versions of some chapters. More recently, Professors Joel Dobris and Bruce Wolk of the University of California at Davis used the manuscript in the class they taught together and gave me additional helpful suggestions and welcome encouragement. Finally, correspondence and conversations with several other teachers helped shape the content and scope of the book.

Students in my estate-planning classes and seminars since 1970 helped in the development and refinement of the manuscript as a teaching and research tool. Their comments while students and following graduation have been useful and reassuring. I am particularly grateful to James A. Harris, a 1982 graduate of the University of Washington Law School, for his superb help as a research assistant. During the winter term 1982 I was a visiting professor at the University of Michigan Law School, where I received outstanding research assistance from a third year law student, Bruce Boruszak.

The manuscript was prepared by several cheerful, cooperative, and very talented word processors: Jeri Miles and Bill Herman at the University of Washington and Chris Moulton at the Perkins law firm in Seattle. Throughout the protracted gestation period of this book the editors and staff of Little, Brown & Company have been most cooperative, encouraging, and patient — especially my manuscript editor, Elizabeth Collins; the assistant editor of the Law Division, Rick Heuser; and his predecessor, Jerry Stone.

Some of the discussion of life insurance trusts in Chapter 6 is based on a paper I wrote for the University of Miami's 14th Estate Planning Institute in 1980. The paper is copyrighted by the University of Miami and is used with permission of the University of Miami, Fourteenth Institute on Estate Planning (1980) published by Matthew Bender & Company. The graph at §6.3, which shows the risk and investment elements of a cash value life insurance policy, is reproduced from S. S. Huebner and Kenneth Black, Jr., *Life Insurance* 8 (9th ed. 1976), with permission from Prentice-Hall, Inc., Englewood Cliffs, N.J. An excerpt from Professor Sheldon Kurtz's article, *Allocation of Increases and Decreases to Fractional Share Marital Deduction Bequest*, 8 *Real Prop., Prob. & Tr. J.* 450, 460 (1973), is reprinted with the permission of the Real Property, Probate and Trust Section of the American Bar Association.

CITATION FORM AND REFERENCES

Citation form. Most citations follow widely used and perfectly orthodox forms, but for sake of brevity some short forms are used. Thus, sections of the Internal Revenue Code of 1954 are referred to by citing the section number alone (*e.g.*, §267). Similarly, references to sections of the Treasury Regulations are made by citing “Reg.” followed by the numbers of the sections. Private letter rulings and technical advice memoranda are cited “LR” followed by the documents’ 7-digit numbers. Each LR is assigned a 7-digit number, the first 2 of which indicate the year of its publication, the next 2 the week of its publication, and the final 3 the order of its publication in that week. Thus, LR 8235001 is the first document of the set published in the thirty-fifth week of 1982. Also for brevity and convenience, several recent tax acts are cited simply by reference to the year of their enactment. In particular, the Tax Reform Act of 1969 is the “1969 Act”; the Tax Reform Act of 1976 is the “1976 Act” and the Economic Recovery Tax Act of 1981 is the “1981 Act.” References throughout the text regarding ethical issues are made to the Code of Professional Responsibility (Disciplinary Rules are cited DR and Ethical Considerations EC); the content of the proposed Model Code of Professional Responsibility is essentially the same.

Books, periodicals, and loose-leaf services. Each chapter includes a bibliography that cites helpful books, articles, and other resource materials. Nonetheless, at this point it may be helpful to mention some of the books, periodicals, and services with which an estate planner should have some familiarity.

A number of valuable texts and treatises are available that deal with various tax and nontax aspects of estate planning. They include the following:

- T. Atkinson, *Wills* (2d ed. 1953)
- A. J. Casner, *Estate Planning* (4th ed. 1980)
- J. Farr & J. Wright, *An Estate Planner’s Handbook* (4th ed. 1979)
- J. K. Lasser, *Estate Tax Techniques* (1955 with annual supplements)
- C. Lowndes, R. Kramer & J. McCord, *Federal Estate and Gift Taxes* (3d ed. 1974)

- J. Mertens, Federal Gift and Estate Taxation (1959 with annual supplements)
- R. Powell, Real Property (rev. ed. 1975 with annual supplements)
- W. Reppy & W. de Funiak, Community Property Law in the United States (1975)
- R. Rice, Family Tax Planning (1960 with annual supplements)
- A. Scott, Trusts (3d ed. 1967 with annual supplements)
- R. Stephens, G. Maxfield & S. Lind, Federal Estate and Gift Taxation (4th ed. 1978)
- L. Waggoner, Future Interests (West Nutshell Series 1981)

Papers presented at various tax institutes are also helpful in research and planning. Fortunately, the papers from the major institutes are reprinted each year, including those from the University of Miami's Institute on Estate Planning, New York University's Institute on Federal Taxation, and the University of Southern California's Tax Institute.

Current developments are discussed and articles of interest to estate planners appear regularly in a number of periodicals, including Estate Planning; Journal of Taxation; Real Property, Probate and Trust Journal; Tax Lawyer; Tax Advisor; Taxes; Tax Law Review; and Trusts and Estates. In addition, the BNA Tax Management portfolios include a number of very helpful volumes (*e.g.*, S. Simmons, Personal Life Insurance Trusts, 210-2d, BNA Tax Mgmt. Portfolio (1980) and W. Streng, Estates, Gifts and Trusts — Planning, 11-8th BNA Tax Mgmt. Portfolio (1979). Finally, the statutes, regulations, rulings, and cases relating to estate and gift tax laws are compiled in loose-leaf services published by Commerce Clearing House and by Prentice-Hall, Inc., both of which also publish similar compilations of federal income tax laws.

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