

1973

## Estate and Gift Tax: Final Examination (January 6, 1973)

William & Mary Law School

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ESTATE AND GIFT TAX

Mr. Fischer

FINAL EXAMINATION

1/6/73

1. Mr. Gottitall has an expected gross estate of one million dollar value, with an annual income thereon of about 6% (\$60,000). His 3 married children are self supporting, comfortably so. He is now 55 years old, his wife 51. There is now no mortgage on their home, and they have no desire to live ostentatiously. He is in a position that permits him to take 2 months vacation per year during which they could travel if they are so inclined. His children would not be adversely affected, either income tax wise or estate tax wise, if they were to own additional income producing property. Neither Mr. nor Mrs. Gottital have made any non-charitable gifts so far. Mr. Gottital is not undisposed towards making even substantial charitable gifts (either inter-vivos or testamentary), and also quite inclined towards non-charitable gifts, with the proviso that he and his wife can continue living comfortably, which, under his view, could be maintained with an income of approximately \$30,000 per annum during their joint lives, and approximately \$20,000 after he dies. He would now like you to set up a plan (including a will) which would result in a maximum savings in future income taxes and federal estate taxes, at a minimum gift tax cost. (He expects to live at least 10 more years).

Give me an outline of such plan, giving a reason for each aspect of your plan, including a reason why you would plan a transfer to be inter-vivos as opposed to doing it testamentarily and vice-versa. 20 points

2. Father was in the habit of buying U.S. Savings Bonds as Xmas presents for his minor children, in denominations of \$1000 each, and registered in the name of father and child. As each child became 21 years old Father would give them the bonds free and clear, i.e. with no strings attached. Each child, not needing the cash, simply put them away for "a rainy day", without bothering to return them to the Treasury for reregistration in their sole name, as required by Treasury regulations. In other words, as far as Treasury is concerned, there is no way to transfer such bonds without reregistration into donee's name. The bonds have long since matured, and are merely accumulating additional interest. Eventually Father dies (more than 3 years after his last transfer to the youngest child) by which time the total value of the bonds is \$75,000. The executor did not list them in the estate tax return on the grounds that Father gave them away in fee simple. The Commissioner however added them into Father's gross estate.

Discuss all the issues involved and state what the decision of the court would be in light of the most recent case on this matter (which I mentioned in class).

Just to make sure you have the facts straight: the children still had the bonds when Father died. 5 points

3. Husband, after 30 years of marriage, decided that he wants to be free of marital obligations, to be able to roam around in happiness of pursuit. He is not a total cad however, and does in fact make the following arrangements for the benefit of his to be abandoned wife: he sets up a trust appointing his adult and capable son as sole trustee with the discretionary power to distribute or withhold both income and corpus for the maintenance of his mother. (To eliminate any speculation on your part, take it as a fact that son is not subservient to father).

The Virginia code (section 20-88) provides that a child has to support a parent in necessitous circumstances. For purposes of this problem you are to assume that son falls squarely within the provisions of this section.



The trust instrument further provides that when wife dies, the remaining assets, if any, are to be distributed to son's children (either in fee or in trust, depending upon their ages).

Thus, as you can see, Husband made a complete inter-vivos gift, so that his estate will not be involved. Husband, after making these arrangements, left for parts unknown, never to be heard of or from again. So let us also forget him.

However, I do want to hear about son. What income tax consequences (if any) will befall him if:

a) he distributes all the income to her every year. 4 points

b) he distributes only part or none of the income. 4 points

What gift tax consequences will befall him if he distributes only part or none of the income? 5 points

What estate tax consequences will befall him if he dies before his mother dies? 6 points

If son came to you within a few days after he was notified by his father's attorney about the whole matter, what would you advise him to do? 2 points

If son came to you after he has told his mother that he will undertake the trusteeship, what would you advise him to do? 3 points

4. Mr. Excessworrywart is an outstandingly accomplished person. He has an M.B.A. from Harvard, an engineering degree from M.I.T. and a law degree (oil and gas specialization) from the University of Denver. He is a high echelon executive of Gulf Oil and as such travels extensively to South America and the Near East Arab countries. The unsettled political situation in those countries makes it dangerous for Americans, so he wants to make sure that in case he gets a sudden exit visa from this world, members of his family will be taken care of. He sets up several trusts for such persons, including one for his teenbop daughter Sweetsixteensue. The provisions of this trust are simple enough. Trustee (wholly independent) is to accumulate the income from the trust property during Excessworrywart's life, and at his death to distribute the corpus and accumulated income to said daughter, but if daughter does not survive him, to return the corpus and accumulated income to him. At the same time (in the trust instrument) he gives his wife W an unrestricted power to alter, amend, or revoke the trust. Actuarially his reversion is worth more than 5%.

a) If he dies before daughter (W still being alive) what estate tax consequences flow? 5 points

b) If W dies before husband or daughter, what estate tax consequences flow? 2 points

c) What gift tax consequences arose when the trust was set up? 5 points

d) Who pays income tax on the income of the trust during father's life? 4 points

5.

5. H and W are retired, receiving a very good pension from the large corporation where H was an executive for many years. The payments will continue to W after H's death, and since the pension plan is a qualified one, the value of the annuity will not be caught under section 2039. H and W have several adult, married children to whom they made substantial gifts, so much so, that they not only used up their lifetime exemptions, but are now in the 30% (cumulative) gift tax bracket.

H still owns property worth about \$100,000 which he wants to give to his grandchildren now (because he is not convinced that his children will have anything left to leave to them). This property would be the only thing in his estate (except for his home, which is in tenancy by entirety with W and therefore non-transferable by him) if he were not to give it away.

Suggest a plan that would result in the most favorable estate-gift tax cost, bearing in mind that W is well fixed support-wise after H's death.

10 points

6. Grantor transferred property in which he retained a life interest. How can he get rid of it (the life estate), if at all, so that the property will not be caught in his estate? Discuss fully.

7 points

7. H owns all of his property (real and personal) in joint tenancy with W, and contributed 100% of the purchase price. Obviously all of it will go into his estate and then all of it into W's estate (assuming he dies first). How can you alleviate this situation?

8 points

8. a) F transfers property in trust, income to C for life, remainder to D, and retains power to revoke the trust, or to change the beneficiaries. What interest in the property (i.e. what value) will go into F's estate under 2036?; under 2038? 3 points
- b) F transfers property in trust, income prorata to C and D for life, remainder to X, and retains the power to alter the shares of income which C and D shall receive. What value will go into F's estate under 2036?; under 2038? 3 points
- c) G transferred property in trust, trustee to distribute income during G's life to whomsoever G designates (except himself), remainder to X at G's death. What value will go into G's estate under 2036?; under 2038? 4 points