1973

Estate Planning (May 1973)

William & Mary Law School
Question I

There are a number of proposals to amend the Internal Revenue Code which, if adopted, may significantly affect the continuing utility of estate planning principles and techniques that have heretofore evolved. In paragraph form indicate the nature of each of these proposals and comment on their desirability (or lack thereof) from a policy viewpoint.

Question II

Samuel J. Smith, who for 20 years has been a freelance photographer, has just moved from Tennessee to Virginia, where he has accepted employment with Prestigious Magazines, Inc. He will be permitted to continue his freelance work on a part-time basis. His salary in his new job is $35,000 a year and he expects to earn an additional $15,000 annually from freelancing.

Smith retains you to do a Estate Plan for himself and his wife. You learn the following in this interview:

Sam Smith is 52 years old and is married to Mary, age 50. Both he and Mary are in good health. They have 2 children: William, age 16 and Sally, age 9. William is an excellent student but not particularly responsible for one his age. Sally is a concedely slow learner. Living in Sam's household is his bachelor uncle, Julius, who is 69 and totally dependent upon Sam, who in addition to room and board, also gives him $22,000 a year in cash. Sam owns, in his own name, a home located in Virginia recently acquired at a cost of $70,000, but which is under a deed of trust in the amount of $50,000. In addition, Sam owns 500 shares of Polaroid stock which he inherited from his father when the stock was worth $10 a share. It is now worth $220 per share and pays annual dividends of approximately $10,000. Sam and his wife also own a vacation cottage at Hyattle Beach, South Carolina, as tenants by the entirety, and he hopes to retire there when he reaches 65. He derives no rental income from the cottage because he and his family like the freedom to go there on the spur of the moment and they spend so many weekends there that Sam has joined the Hyattle Beach Baptist Church and is a deacon there. Sam advises that he is a licensed pilot and has just bought a new plane for $15,000; which is why he can travel so readily. Sam and his wife bought the cottage 6 years ago for $25,000 and they now estimate it to be worth $35,000. Sam and Mary also own as tenants by the entirety, a home in Nashville, Tennessee, bequeathed to them by Mary's mother in 1964 when it was valued at $40,000. Its present value is $60,000 and it is being rented to tenants at a annual net rental of $5,000. Sam and Mary lived in the house prior to moving to Virginia and because Mary's brother is active in politics in Nashville, both Sam and Mary remain registered voters in Nashville and for sentimental reasons are reluctant to sell the house. Mary owns no separate property in her own name other than shares in a mutual fund worth approximately $30,000—which she just inherited from her great aunt. Mary does derive $10,000 a year in income from a trust established by Mary's father before his death. Mary has a testamentary power of appointment over the trust corpus, estimated at $200,000, which is exercisable only in favor of Mary's children or Mary's spouse. The taker in default of appointment is Mary's brother, Richard. Sam's employer maintains a fringe benefit package, which to Sam means he has a $50,000 term life insurance policy on which the premiums are paid by the employer. The policy is convertible and Sam has designated Mary as primary beneficiary. That designation at Sam's option may be changed. In addition, if Sam lives to retirement, he can expect to receive, under his employer's qualified pension plan, $10,000 per year and on his death his wife...
will receive $7,000 for life. If Sam dies before retirement, contributions made by the employer on Sam's behalf to the pension plan are payable to Sam's estate in lump sum, unless Sam, in writing, requires payment to be made in such event to a named beneficiary. Sam also has a straight life policy in the amount of $60,000, which has a cash surrender value of $20,000, and under which his children, William and Sally, are named equal primary beneficiaries. Sam discloses that in 1968 he retained the firm of Seymours, Shysters, and Crooks to prepare an estate plan for he and his wife for which service he paid the firm $600. The estate plan consisted entirely of a Will for Sam and a Will for Mary, which have been duly executed. Sam's Will provides in pertinent part as follows:

"Clause One - I direct that all of my just debts be paid.

Clause Two - My real estate I give to my wife, Mary, for life; remainder to my children living at her death.

Clause Three - I direct that all the rest and residue of my estate be divided into two parts of equal value using valuations as finally determined for federal estate tax purposes; the selection of particular assets for each part to be determined by my executor. One of such parts shall be known as 'Mary's Part' and the other shall be known as 'Children's Part'. Mary's Part I give to my trustee in trust to invest and reinvest the same and to collect the income therefrom and pay to my wife all such income annually for so long as she lives or not remarries, and upon her death or remarriage the trust shall terminate and the corpus shall thereupon be distributed as my wife's Will directs or designates if the termination be by reason of her death, but if she remarries, or not remarrying, fail to so direct or designate in her Will, then the corpus of the trust shall be distributed to 'Children's Trust' and held upon the terms thereof. Children's Part I give to my trustee, in trust, to hold as Children's Trust and to invest and reinvest the same and to pay out the income to my children in such amounts as may determine, giving due regard to their individual needs, or to accumulate the income until such time as my youngest then living child reaches the age of 21; and thereafter my trustee shall have no power to accumulate income but shall distribute the income annually in equal parts to my then living children and to the survivor of them. Upon the death of my last surviving child the trust shall terminate and the corpus be paid over unto the College of William and Mary; provided however, that my wife annually may, at her option, during her life, on July 1st of each year following my death, withdraw from the Children's Trust for her own use as she may deem fit, the sum of $15,000; the withdrawal to be chargeable to corpus and the right of withdrawal to terminate upon her remarriage.

Clause Four - In the event that my wife and I shall die under circumstances where it is impossible or impracticable to determine who was the first to die, then this Will shall be construed as if I were the first to die."

Clause Five - (Various paragraphs designating the executor and trustee and setting forth their various powers and duties are omitted for purposes of the question).

There were no other dispositive provisions in the Will.

Mary's Will provides in pertinent part as follows:

"Clause One - I direct that all my just debts be paid.

Clause Two - Any power of appointment I may possess, I exercise in favor of my children equally."
Clause Three - All the rest and residue of my estate, I leave to my husband, if he survive me.

Clause Four - If my husband predeceases me, then I leave all of my estate to my children in equal shares.

Clause Five - (Administrative provisions, etc., omitted)

Clause Six - In the event that my husband and I die under circumstances where it be impossible or impracticable to determine who was the survivor, then I direct that this will be construed as if I predeceased my husband.

There were no other dispositive provisions in her will.

Sam explains that his estate planning objectives were, and are in order of priority, care of his uncle, wife and children during their lives, minimization of tax liability, and benevolence to the College of William and Mary. He is interested in any income tax savings that careful estate planning may make possible. Sam and his wife file joint returns and on their joint federal tax return, have itemized deductions of approximately $10,000. Neither Sam nor Mary have heretofore made taxable gifts and neither anticipate receipt of further inheritances. Sam asks you to review his 1963 Will and that of his wife and to point out any technical, tax or judgemental faults that you may find and he also asks, if you conclude it to be needed, that you devise a complete estate plan for him and his family, and give such advice as may be appropriate. Sam definitely is not interested in any plan that ties up his property beyond the lives of his children. Answer fully, using your sound judgement, tax knowledge, and knowledge of estate planning techniques and principles. In answering, you may describe rather than "draft" such documents as may be involved in your analysis and recommendations. If your answer requires factual assumptions, be sure to state them.

Question III

Fred Peabody, age 62, is married to Sarah, age 50, and has retired after a successful career as an investment adviser. In addition to a nice home, several rental properties, and a "second home" at the beach, Fred owns shares of IBM worth $750,000 (which cost him $150,000 many years ago) and shares of AT&T worth $650,000 for which he paid $800,000 three years ago. His wife owns no assets. Fred's annual income from dividends exceeds $60,000 and his other income, all taxable, is approximately $20,000. Both Fred and his wife are frugal, have no children, and their personal expenditures each year are less than $25,000. Fred has just been awarded an honorary degree by his alma mater and is feeling charitable. He rightly expects that his alma mater's chief fundraiser will be calling upon him for a sizeable contribution or commitment. Fred has concluded that he can give up to $500,000 to his alma mater, but doesn't care whether he gives it inter-vivos or by Will. Fred wants his wife well provided for in the event of his death, and in addition, has a favorite nephew, age 22, whom he would like to see well provided for during the life of the nephew. Fred is perfectly agreeable to his alma mater getting everything after Fred's death, and he estimates that an annual income for his nephew, in the amount of $15,000-$20,000, adjusted periodically for inflation, would be adequate for him. Fred also is convinced that the United States is "hell-bent" on becoming a Socialist country and Fred, a political conservative, wants to avoid paying Federal taxes unnecessarily; and specifically, wants to minimize his income and other Federal taxes as a matter of conscience. In short, Fred wants an estate plan that provides for his wife, his nephew, and his alma mater with the residue, and disinherits to the extent feasible, the Federal Government. Fred and his wife have no Will, have never made taxable gifts, and, on their joint federal tax return, have itemized deductions of approximately $15,000, most of which is for property and state income taxes. Fred owns no life insurance and you may assume that if he died today, his gross estate for Federal tax purposes would be approximately $1,300,000. What would you recommend in the way of an estate plan for Fred (and his wife), using approximate
dollar amounts in your discussion and describing the dispositive instruments and clauses which you think will accomplish his objectives? You may assume that Fred has no special interest in IBM or AT&T.

**Question IV**

Jack Brown, a high income taxpayer who desires to minimize his income and other federal taxes, is considering establishing a trust containing the following provisions designed to benefit his 12 year old son. The proposed provisions entail the following:

1. Jack to convey, by deed of gift, shares of stock worth $30,000 in trust to Jack Brown, trustee, to hold as follows for 9 years; or until his 12 year old son, James, dies, whichever first occurs.

2. The trustee to collect the income and pay it to James, spend it for James' benefit, or accumulate it, as prudent consideration of James' needs may indicate.

3. The trustee, in his absolute discretion, to invade corpus for James where James' needs so require.

4. The trustee to accept future gifts to the trust from Jack, Jack's wife, and others, and hold upon the same terms unless otherwise indicated at time of gift.

5. The trustee not to invest in corporate bonds or real estate.

6. The trust to be irrevocable, and, once established, non-amendable.

7. Upon the termination of the trust the corpus to revert to the grantor.

Brown asks your advice regarding his proposals. What tax consideration would you discuss with him that are suggested in his proposals and what modifications would you recommend for his consideration in formulating a formal deed of gift in trust?

**Question V**

List all of the circumstances in which a revocable trust might be an advantageous estate planning device.