

ESTATE PLANNING – LAW 6553
Spring, 2010

COURSE ASSIGNMENTS

TOPIC #1. Basic Principles of the Gratuitous Transfer of Property Ownership by Gift or at Death.

Reading assignment in Supplemental Materials¹:

- “Estate Planning Basics: Getting Started,” by Barbara R. Rowe, from *Financial Fitness Fact Sheet*, Utah State University Cooperative Extension, available at <http://extension.usu.edu>.
- “Estate Planning Basics: Wills,” by Barbara R. Rowe, from *Financial Fitness Fact Sheet*, Utah State University Cooperative Extension, available at <http://extension.usu.edu>.
- “An Introduction to Wills” from *Estate Planning FAQs*, an on-line publication of the ABA Section on Real Property, Trust & Estate Law, American Bar Association, available at www.abanet.org.
- “The Probate Process” from *Estate Planning FAQs*, an on-line publication of the ABA Section on Real Property, Trust & Estate Law, American Bar Association, available at www.abanet.org.
- “Overview of the Probate Process,” an on-line article provided by New York Life Insurance Company, available at www.newyorklife.com.
- “Selected Highlights of Common Ownership and Property Transfer Principles,” by Deborah Willard Coogan, up-dated January, 2010.

Class Exercise Problems²:

- Class Exercise Problems #1: General Principles of Property Transfer at Death.

TOPIC #2. Basic Principles of Trusts.

Reading assignment in Campfield³:

- Skim pp. 14-17 [the inter-relationship of state and tax laws, focusing on *Bosch*].

NOTE: Do not worry about the trust provisions and tax consequences in dispute in *Bosch* (we will return to this case later); focus for now on the Court holding regarding the determination of rights and interests created by wills or trusts and the determination of their federal transfer tax consequences.

Reading assignment in Supplemental Materials:

- Re-read Supplemental Materials reading assignments and class exercise problems for Topic #1.
- “Estate Planning Basics: Revocable Living Trusts,” by Barbara R. Rowe, from *Financial Fitness Fact Sheet*, Utah State University Cooperative Extension, available at <http://extension.usu.edu>; last found January, 2010.
- “Revocable Trusts” from *Estate Planning FAQs*, an on-line publication of the ABA Section on Real Property, Trust & Estate Law, American Bar Association, available at www.abanet.org; last found January, 2010.
- “Estate Planning Basics: A Vocabulary,” by Barbara R. Rowe, from *Financial Fitness Fact Sheet*, Utah State University Cooperative Extension, available at <http://extension.usu.edu>; last found January, 2010.
- “Comparison of Living Trusts and Wills,” by John A. Darden, August, 2005, from the Cooperative Extension Service of the College of Agriculture and Home Economics, New Mexico State University, available at <http://aces.nmsu.edu>; last found January, 2010.
- “Trust: Component-Based Analysis,” by Deborah Willard Coogan, up-dated January, 2010.
- “Interpreting Trusts: Definitions and Trust Basics,” by Deborah Willard Coogan, up-dated January, 2010.

¹ Supplemental Materials may be purchased at Gnomon Copy. A copy of the materials will also be in the Library.

² See the Supplemental Materials for some initial Class Exercise Problems. As described in General Information: Professor Notes to the Class (in the Supplemental Materials), throughout the course, there will be “Class Exercise Problems” which will be discussed in class. Each Class Exercise Problem may be completed in groups or individually, as each student chooses. These problems will not be turned in or graded. They are intended as study guides, and similar problems are likely to appear on the three graded papers for the course.

³ *Taxation of Estates, Gifts and Trusts* by Regis W. Campfield, Martin B. Dickinson and William J. Turnier, 23rd Edition (2006), Thomson/West Publishing Co. (American Casebook Series), ISBN-13: 978-0-314-15931-1 (ISBN-10: 0-314-15931-2).

- “Examples of Dispositive Trust Provisions,” by Deborah Willard Coogan, up-dated January, 2010.
- *In re: Lillie Odessie Green, Decedent* (Tenn. Ct. App., No. M2002-01672-COA-R3-CV, August 29, 2003).
- Will of John Winston Ono Lennon.
- Will of Elvis A. Presley.
- Will of Marilyn Monroe.
- Excerpts from the Will and Revocable Trust of Jane Doe: Samples prepared by Deborah Willard Coogan, November, 2008 and up-dated January, 2010.

Class Exercise Problems:

- Class Exercise Problem #2: (A) Preparation of a diagrammatic or outline summary describing briefly the key dispositive of the will of John Lennon and the will of Marilyn Monroe. (B) Prepare a diagrammatic or outline summary of each of trust created under the will of Elvis Presley [Hint: Think of Article IV in the Presley will as creating 3 trusts (one initially, then one when father is deceased, then one when father and grandmother are deceased)].
- Class Exercise Problem #3: Interpretation of a will and trust, and forensic estate planning.

Written Assignment⁴:

- Assignment #1 (see Class Exercise Problem #3): Preparation of a diagrammatic or outline summary describing key dispositive and fiduciary provisions of the John Doe, Jr. Trust under The Jane Doe Revocable Trust - 2008.

TOPIC #3: Introduction to Tax Theory; Federal Transfer Taxes; and the Debate over the Federal “Death Tax.”

FOREWARNING: These materials introduce basic elements of federal estate and gift (or transfer) taxes. For first-time tax students, the material may seem complicated and confusing; you will benefit from reading (and then re-reading) the material closely.

Reading assignment in Supplemental Materials:

- “Tax Policy: Tax System Components,” by Deborah Willard Coogan, up-dated January, 2010.
- Excerpts from “Tax Policy Concept Statement #1: Guiding Principles of Good Tax Policy: A Framework for Evaluating Tax Proposals,” issued by the Tax Division of the American Institute of Certified Public Accountants (AICPA), 2001, available at <http://tax.aicpa.org/Resources>.
- “Fundamentals of Federal and Massachusetts Transfer/Wealth Taxes,” by Deborah Willard Coogan, up-dated January, 2010.
- “Basic Estate Planning Principles: Chart #1 – Simple Plans with Outright Distributions,” by Deborah Willard Coogan, up-dated January, 2010.
- pp. 2-5 and pp. 9-10 of the “Introduction to Estate and Gift Taxes,” Publication 950 of the Department of the Treasury, Internal Revenue Service, revised December 14, 2009, available at www.irs.gov. Note that this publication does not address estate taxation in 2010 and thereafter.

Reading assignment in Campfield:

- *Skim for general information:* pp. 2-7 [history over-view of federal estate and gift taxes].
- *Skim for general information:* pp. 17-22 [pros and cons of taxes on wealth transfer].
- pp. 7-13 [over-view of current federal estate and gift taxes (you may skip the section on generation-skipping transfer taxes)].
- pp. 266-268 [calculation of the federal estate tax].
- pp. 708-710 [unified credit, gift tax credit, and now-repealed state death tax credit].
- pp. 712-713 [requirements for filing estate tax return and paying estate tax].

Reading assignment in Code & Regulations⁵:

⁴ As described in General Information: Professor Notes to the Class (in the Supplemental Materials), throughout the course, there will be a few formal “Written Assignments” which are to be completed individually by each student. Each of these written assignments is to be turned in on the due date, and these assignments will be evaluated.

⁵ Selected Federal Taxation Statutes and Regulations, 2010 Edition, edited by Daniel J. Lathrope, Thomson/West (for 2009 edition: ISBN 13: 978-0-314-190734).

- Reg. § 20.0-2(a) [a good general description of the federal estate tax and how it is calculated].
- Code § 2001(a), (b) and (c) [calculation of estate tax].
- Code § 2010(a), (c) and (d) [unified credit = applicable credit amount – that is, the applicable exclusion amount translated into a credit].
- Code § 2031(a) [definition of gross estate].
- Reg. § 20.2031(a) and (b) [definition of gross estate and valuation of property]. *NOTE:* Section (a) of this regulation is an excellent summary of the property interests includible in the gross estate for estate tax purposes under Code §§ 2033-2044.

TOPIC #4: Fundamentals of Federal Gift Tax and Gift Tax Analysis.

Reading assignment in *Campfield*:

- pp. 26-31 [gift tax mechanics and basis of gift assets for capital gains tax purposes].
- pp. 111-116 [unified credit and the annual exclusion].
- p. 69 [exclusions for contributions to political organizations].
- pp. 159-162 [exclusions for educational and medical expenses, marital deduction and charitable deduction].
- pp. 163-165 [gift tax return filing requirements and spousal gift splitting].
- pp. 30-31 [basis of gifted property for income tax/capital gains tax purposes].

Reading assignment in *Code and Regulations*:

- Code § 2501(a)(1) [imposition of gift tax].
- Code § 2511(a) [transfers subject to gift tax].
- Reg. § 25.2511-1(a) [gift tax = excise tax on transfer of property].
- Code § 2501(a)(4) [exclusions for contributions to political organizations].
- Code § 2503(e) [educational and medical expense exclusions].
- Reg. § 25.2503-6 [educational and medical expense exclusions: requirements].
- Code § 2501(a)(4) [exclusion for transfers to certain political organizations].
- Code § 2503(b)(1) and (2) [“annual exclusion” for gift tax purposes].
- Reg. § 25.25.2503-3(b) [present interest requirement for annual exclusion].
- Code § 2512(a) and (b) [valuation: value of gift less consideration paid].
- Reg. § 25.2512-1 [fair market value determination].
- Code § 2503(a) [definition of taxable gifts].
- Code § 2522(a) [charitable deduction].
- Code § 2523(a) [marital deduction].
- Code § 2513(a) and (b) [“gift-splitting” by spouses].
- Code § 2502(c) [donor liability for any gift tax payable].
- Code § 2502(a) [gift tax computation and tax payment].
- Reg. § 25.2502-1(a) [tax computation steps].
- Code § 2504(a)(1) and (2) [inclusion of prior taxable gifts in calculation of gift tax].
- Code § 2505(a) [“unified credit” or “applicable credit amount” for gift tax purposes].
- Code § 6075(b)(1) [general rule that a gift tax return must be filed by April 15th of the calendar year after the year in which a “transfer by gift” occurred]. Code § 6151(a) has a similar rule for payment of gift tax.
- Code § 6019 [exceptions to the gift tax return filing requirement].

Reading assignment in *Supplemental Materials*:

- *Re-read* pp. 2-5 and *read* pp. 5-8 of the of “Introduction to Estate and Gift Taxes,” Publication 950 of the U.S. Department of the Treasury, Internal Revenue Service, revised December 14, 2009, available at www.irs.gov.
- “Federal Gift Tax: Component-based Analysis and Tax Calculations,” by Deborah Willard Coogan, updated January, 2010. This is a checklist of important gift and estate tax considerations for the analysis of a gift problem.
- Federal DOMA: Defense of Marriage Act (1996), 115 U.S.C. § 1738C, and 1 U.S.C. § 7.

Class Exercise Problems:

- Class Exercise Problems #4: Introductory Gift Tax Problems for a Single Donor, and an accompanying Gift Analysis Grid for a Single Donor.
- Class Exercise Problems #5: Introductory Gift Tax Problems for a Married Couple⁶, and an accompanying Gift Analysis Grid for a Married Couple

STUDY GUIDE: “Annotations for Selected Federal Gift and Estate Tax Code and Regulations,” by Deborah Willard Coogan (prepared for *Estate Planning* 2331 and 2553), up-dated November, 2007. This sets out the statutes and general topics we will be covering during the course.

TOPIC #5. Specific Gift Tax Issues: What Constitutes a Transfer? When is a Transfer a Gift? What is given? Identification of Donor, and Identification of Donee. When is a Gift Effective? When is a Gift Incomplete?

Re-read materials assigned for Topic #4.

Reading assignment in Campfield:

- pp. 70-75 [release of dominion and control, focusing on *Sanford*].
- p. 81 [informal reservation of control].
- pp. 84-87 [time of completion of gifts by check, and gifts by creation of co-ownership].
- pp. 46-49 [gifts of services, help and advice, focusing on *Revenue Ruling 66-167*].
- pp. 57-59 [indirect gifts].
- pp. 32-35 [donative intent and adequate and full consideration, focusing on *Wemyss*].
- pp. 35-45 [interest-free and low-interest loans and gifts to family members, focusing on *Dickman*].
- p. 62 [¶ 3097 – consideration generally].
- pp. 66-68 [support obligation satisfaction as consideration].

Reading assignment in Code and Regulations:

- Reg. § 25.2511-2(a) [gift tax = an excise tax based upon the value of property passing from donor (and not on what a donee receives or when)].
- Reg. § 25.2511-2(h) [effective date of gifts involving stock certificates].
- Reg. § 25.2511-1(h) – Examples (4) and (5) [effective date of gifts involving joint property].
- Reg. § 25.2511-2(b) [cessation of dominion and control as determinative of when a gift is complete].
- Reg. § 25.2511-2(c) [examples of incomplete gifts, including donor’s reservation of the power to revest property in self, and donor’s reservation of power to name new beneficiaries or to change interests of beneficiaries (unless subject to an ascertainable standard)].
- Reg. § 25.2511-2(d) [gift complete even if donor reserves power to change the manner or time of enjoyment].
- Reg. § 25.2511-1(h) – Examples (2) and (3) [indirect gifts].
- Reg. § 25.2511-1(g)(1) [business transactions; and gift tax impact of donative intent].
- Reg. § 25.2512-8 [insufficient consideration].
- Code § 2516 [certain divorce property settlements = not gifts].

Reading assignment in Supplemental materials:

- Massachusetts Gen. Laws Chapter 208, § 28.
- *Skim for general information:* Massachusetts Gen. Laws Chapter 209C, § 9; and Massachusetts Gen. Laws Chapter 215, § 6.
- *Eccleston v. Bankosky*, 438 Mass. 428, 780 NE2d 1266 (2003).
- Re-read Federal DOMA: Defense of Marriage Act (1996), 115 U.S.C. § 1738C, and 1 U.S.C. § 7.

Class Exercise Problems:

- Class Exercise Problems #6: Gift tax problems regarding identification of donor, identification of donee, effective date of gifts, what constitutes a gift, and consideration.

Class discussion note: Consider whether the authors of the *Campfield* text are correct at ¶ 3125 [p. 67]. Also

⁶ In this example, a “married couple” is as defined for federal tax purposes. See Defense of Marriage Act.

consider whether *Wemyss* is correct that donative intent is not required for gifts.

Written Assignment: Assignment #2: Take-home gift tax problems. This assignment will be distributed in class (and by email), and a due date will be announced.

TOPIC #6. The Role of the Tax Return Preparer and Tax Advisor: *What to say to clients about gift tax rules?*

Reading assignment in Campfield:

- pp. 712-713 [requirements for filing returns and paying tax due].
- pp. 717-719 [penalties for failing to file and underpayment of tax].

NOTE: Since the time that *Campfield* was up-dated (in 2006), penalty provisions have become stricter – both on the taxpayer and the tax preparer.

TOPIC #7. Gift Tax: Practical Options for Giving to Minors; and Gift Tax Implications of the Present Interest Rule for the Gift Tax Annual Exclusion.

Reading assignment in Campfield:

- pp. 113-116 [present interest requirement for the § 2503(b) annual exclusion].
- pp. 122-123 [gifts to minors, including outright gifts, focusing on *Revenue Ruling 54-400*].
- p. 145 [the classic § 2503(c) “minor’s trust”].
- pp. 148-152 [Uniform Transfers to Minors Act, focusing on *Revenue Ruling 59-357* and § 529 educational programs].
- pp. 152-156 [sham and reciprocal transfers, focusing on *Sather*].

Reading assignment in Code and Regulations:

- Re-read Code § 2511(a); Code § 2503(a); Code § 2503(b); and Code § 2503(e).
- Reg. § 25.2503-3 [future interests in trusts].
- Code § 2503(c) [the classic “minor’s trust”].

NOTE: § 2503(c) refers to a trust even though the word “trust” is not used in the statute. To obtain the benefit of § 2503(c), a trust agreement is needed to create a “minor’s trust.” § 2503(c) is not applicable to other gift-giving vehicles for minors (such as a UTMA or UGMA account).

- Code § 529(c)(2) and § 529(c)(4)(A) [§ 529 educational plan rules regarding gift tax and estate tax].
- Skim for general import: Other excerpts from Code § 529 [§ 529 educational plan exclusion].

Reading assignment in Supplemental Materials:

- “The Annual Gift Tax Exclusion: A way to provide significant tax savings,” published in *CPA/Client Bulletin* (a publication sent by CPAs to clients), November, 2003 – origin unknown.
- Skim for general import and general information: Massachusetts General Laws Chapter 201A (the Massachusetts Uniform Transfers to Minors Act).
- “Grow Your Savings for College with a 529 Plan or Prepaid Tuition,” by Katy Marquardt, *US News & World Report*, April 21, 2008, available at www.usnews.com/articles/business/paying-for-college-for-parents/2008/04/21/...
- “Saving estate taxes with a 529,” by Joe Hurley, from *College Savings 101* at *Savings for College*, available at www.savingforcollege.com.
- Excerpts from the Will of Jerry Garcia.

Class Exercise Problems. Class Exercise Problems #7: Problems regarding the Gift Tax Annual Exclusion, Gifts to Minors, and Gifts to Trusts.

TOPIC #8. Introduction to Powers of Appointment, and Estate Taxation of General Power of Appointment Property.

Reading assignment in Campfield:

- Re-read: pp. 266-268 [calculation of the federal estate tax]; pp. 708-711 [unified credit, gift tax credit, and now-repealed state death tax credit]; and pp. 712-713 [requirements for filing estate tax return and paying estate tax].
- pp. 488-491 [powers of appointment for estate tax purposes].

- pp. 497-499 [general and special powers of appointment, focusing on *Revenue Ruling 69-342*].
- pp. 508-513 [competency of holder of power of appointment, focusing on *Alperstein*].
- *Re-read*: pp. 148-150 [UTMA account, focusing again on *Rev. Rul. 59-357*].

Reading assignment in Code and Regulations:

- *Re-read*: Reg. § 20.0-2(a) [description of the federal estate tax and how it is calculated].
- *Re-read*: Code § 2001(a), (b) and (c) [calculation of estate tax].
- *Re-read*: Code § 2010(a), (c) and (d) [unified credit = applicable credit amount which is the applicable exclusion amount translated into a credit].
- *Re-read*: Code § 2031(a) [definition of gross estate].
- *Re-read*: Reg. § 20.2031(a) and (b) [definition of gross estate and valuation of property].
- Code § 2041(a)(2) [estate tax includibility of general power of appointment property].
- Code § 2041(b)(1) [definition of general power of appointment for estate tax purposes].
- Reg. § 20.2041-1(b)(1) [definition of estate tax power of appointment].
- Reg. § 20.2041-1(c)(1) [definition of general power of appointment for estate tax purposes].

Reading assignment in Supplemental Materials:

- “Examples of Power of Appointment Clauses,” by Deborah Willard Coogan, up-dated December, 2007.
- Will of John F. Kennedy.
- Excerpts from the Will of Jacqueline Kennedy Onassis.
- Excerpts from the Will of Joseph P. DiMaggio.

Class Exercise Problem. Class Exercise Problems #8: Introduction to Powers of Appointment.

TOPIC #9. The “Crummey” Insurance Trust: Gift tax annual exclusions for a donor with the creation of powers of appointment (withdrawal rights), AND gift taxation of a trust beneficiary upon the release or lapse of a power of appointment (withdrawal right).

Reading assignment in Campfield:

- *Re-read*: pp. 111-116 [unified credit and annual exclusions for gift tax purposes].
- *Re-read*: pp. 27-29 [gift tax mechanics].
- pp. 98-99 [powers of appointment for gift tax purposes – gift tax implications for the donor creating the power of appointment, and gift tax implications for the holder of the power].
- pp. 123-124 [availability of annual exclusions for certain gifts in trust, such as trust provisions for mandatory income distribution, and trust provisions for withdrawal rights].
- pp. 124-133 [availability of annual exclusions for minors with withdrawal rights in trusts, focusing on *Crummey* and *Private Letter Ruling 8004172*].
- pp. 133-142 [limitations on the availability of annual exclusions with withdrawal rights in trusts, focusing on *Cristofani* and *Technical Advice Memorandum 9731004*].
- pp. 143-144 [the classic *Crummey* trust planning to permit the donor annual exclusions for a gift to a trust and to avoid trust beneficiaries having taxable gifts upon the lapse of withdrawal rights].
- pp. 312-315 [life insurance].
- pp. 326-327 [incidents of ownership of life insurance].
- p. 331 [the basic mechanics of a “Crummey” insurance trust].
- pp. 526-533 [3-year rule for transfers of life insurance and payment of gift tax].

Reading assignment in Code and Regulations:

- *Re-read*: Code § 2503(a) and (b); Code § 2041(a)(2); and Code § 2041(b)(1).
- Code § 2514(b) [Exercise or release of general power of appointment = transfer for gift tax purposes].
- Reg. § 25.2514-1(b)(1) [Definition of power of appointment for gift tax purposes, with examples].
- Code § 2514(c) [Definition of general power of appointment for gift tax purposes].
- Reg. § 25.2514-1(c)(1) [General power of appointment for gift tax purposes].
- Code § 2514(e) [Lapse of power of appointment = release, but subject to the 5&5 rule].
- Reg. § 25.2514-3(c)(4) [Definition and examples of a release or lapse of power].
- Code § 2041(a)(2) [Un-lapsed 5&5 withdrawal power at death = general power of appointment for estate

tax purposes].

- Code § 2042 [Life insurance proceeds].
- Reg. § 20.2042-1(c)(2) [Examples of common incidents of ownership re life insurance].
- Code § 2035(a) [Estate tax inclusion of life insurance if transfer or release of policy incidents of ownership occurs within 3 years of death].

Reading assignment in Supplemental Materials:

- “Planning with Life Insurance” and “Irrevocable Life Insurance Trust” (flowchart) from *Wealth Management Planning*, on-line informational materials of Credit Suisse/First Boston, New York, New York, available at www.csfb.com.
- Excerpts from “Giving Birth to, Caring for, and Feeding the Irrevocable Life Insurance Trust,” by Donald O. Jansen, *Real Property, Probate and Trust Journal* (published by the Section of Real Property, Probate and Trust Law of the American Bar Association), fall, 2006.

Class Exercise Problem. Problems #9: The “Crummey” Insurance Trust.

Written Assignment: Assignment #3: Based on a given fact situation, prepare an explanatory law firm memorandum to describe the classic “Crummey” insurance trust planning technique, analyzing gift consequences with the funding of the trust and estate tax consequences upon the donor’s death, and describing gift and estate tax consequences for trust beneficiaries with withdrawal powers. This assignment will be distributed in class (and by email), and a due date will be announced.

TOPIC #10. Fundamentals of the Federal Estate Tax, and Introduction to the Kinds of Property Interests which are subject to Estate Tax.

Reading assignment in Supplemental materials:

- *Re-read:* “Basic Estate Planning Principles: Chart #1 – Simple Plans with Outright Distribution” – a flowchart by Deborah Willard Coogan, up-dated January, 2010.
- *Re-read:* “Introduction to Estate and Gift Taxes,” Publication 950 of the U.S. Department of the Treasury, Internal Revenue Service, revised December 14, 2009, available at www.irs.gov.
- *Re-read:* “Fundamentals of Federal and Massachusetts Transfer/Wealth Taxes,” by Deborah Willard Coogan, up-dated January, 2010.

Reading assignment in Campfield:

- *Re-read:* pp. 266-268 [calculation of the federal estate tax]; pp. 708-711 [unified credit, gift tax credit, and now-repealed state death tax credit]; and pp. 712-713 [requirements for filing estate tax return and paying estate tax].
- pp. 266-272 [property subject to estate tax under Code § 2033].
- pp. 274-277 [property interests which can be subject to estate tax under Code § 2033].
NOTE especially ¶ 15,037 [Beneficial interests under trusts which terminate at a decedent’s death are not subject to estate tax under Code § 2001 and Code § 2033 because the decedent died possessing no interest which he/she could transfer].

Reading assignment in Code and Regulations:

- *Re-read:* Reg. § 20.0-2(a) [Description of the federal estate tax and how it is calculated].
- *Re-read:* Code § 2001(a), (b) and (c) [Calculation of estate tax].
- *Re-read:* Code § 2010(a), (c) and (d) [Unified credit = applicable credit amount which is the applicable exclusion amount translated into a credit].
- *Re-read:* Code § 2031(a) [Definition of gross estate].
- *Re-read:* Reg. § 20.2031(a) and (b) [Definition of gross estate and valuation of property].
- Code § 2033 [Includibility of property in which decedent had an interest].
- Reg. § 20.2033-1 [Examples of property in which decedent had an interest]. *Note:* This regulation gives good examples of the applicability of Code § 2033.

TOPIC #11. Introduction to State Estate and Inheritance Taxes, including the Massachusetts estate tax; and the Impact of Federal Transfer Tax Reform in 2001 on States.

Reading assignment in Campfield:

- pp. 13-14 [federal estate tax deduction for state death taxes, and current state death tax systems].
- *Re-read* pp. 708-710 [unified credit and now-repealed state death tax credit].

Reading assignment in Code & Regulations:

- Code § 2051 [definition of taxable estate for federal estate tax purposes].
- Code § 2058(a) [estate tax deduction of transfer taxes actually paid to any state or the District of Columbia].

Reading assignment in Supplemental Materials:

- *Re-read* “Fundamentals of Federal and Massachusetts Transfer/Wealth Taxes,” by Deborah Willard Coogan, up-dated January, 2010.
- “State Estate Taxes: Understanding Federal-State Dynamics,” by Gayllis R. Ward, *Tax Alert* (on-line articles of Fiduciary Trust International, New York, New York), January, 2007, available at www.ftci.com.
- “State Estate Tax Chart: Current Estate Tax Exemptions for 15 States and D.C.,” by Julie Garber, at About.com Guide, available at <http://wills.about.com>.
- “Estate Taxes by State – Understanding Massachusetts Estate Taxes,” by Julie Garber, at About.com Guide, available at <http://wills.about.com>.
- Massachusetts General Laws Chapter 65C, § 2A [the current Massachusetts estate tax].
- pp. 1-2 of “Directive 03-2: Issues Arising from Decoupling the Massachusetts Estate Tax”, issued by Alan LeBovidge, Commissioner of Revenue, Massachusetts Department of Revenue February 19, 2003; available at <http://www.mass.gov>. Focus for now only on the introductory Background section (pp. 1-2).
- *Skim for general information:* p. 1 and pp. 8-11 of “A Guide to Estate Taxes (Applicable to dates of death on or after January 1, 2003)” – a publication of the Massachusetts Department of Revenue; revised December 31, 2009; available at www.mass.gov. Also note the definitions of common estate planning terms at pp. 2-3.

NOTE: It is likely that the following assignments will be modified once it is clear how quickly the course is progressing. Any modification will be sent to all students by email.

TOPIC #12. “Credit shelter trust” (or “by-pass trust”) planning.

Reading assignment in Campfield:

- *Re-read:* pp. 266-268 [calculation of the federal estate tax]; pp. 708-711 [unified credit, gift tax credit, and now-repealed state death tax credit]; and pp. 712-713 [requirements for filing estate tax return and paying estate tax].
- *Re-read:* pp. 160-162 [introduction to the marital deduction for gift tax purposes].
- pp. 614-616 [introduction to the marital deduction for estate tax purposes].

Reading assignment in Supplemental Materials:

- *Estate of Earl C. Koester v. Commissioner of Internal Revenue*, Tax Court Memorandum 2002-82 (March 28, 2002). NOTE: *Koester* was affirmed by the Ninth Circuit *per curiam* (February 19, 2003).
 - **Class discussion notes:** When reading the *Koester* case, keep in mind that for an individual dying in 1988 or 1996, the applicable exclusion amount (or “unified credit equivalent”) was \$600,000. Is the Tax Court correct in *Koester*?
- “Credit Shelter or By-Pass Trusts” – informational articles from Brown Brothers Harriman Trust Companies, New York, New York, dated 12/2002, available at www.bbh.com; last found spring, 2004 (or possibly earlier).
- “Using a Bypass Trust to Provide for Children from Prior Marriage” – an informational article from MontGuide/Montana State University Extension, 11/05, available at www.montana.edu/publications; last found spring, 2006.
- “Basic Estate Planning Principles: Chart #2 – Plan for Opposite-Sex Couple with Shelter Trust & Outright Distribution” – a flowchart by Deborah Willard Coogan, up-dated January, 2010.
- “Sample Flow Chart #1: Massachusetts Brother & Sister with \$2M in Total Assets – Outright Distribution

- at 1st Death” – a flowchart by Deborah Willard Coogan, May, 2007.
- “Sample Flow Chart #2: Massachusetts Brother & Sister with \$2M in Total Assets – Shelter Trust Plan” – a flowchart by Deborah Willard Coogan, May, 2007.
- “Sample Flow Chart #3: Massachusetts Married Couple with \$2M in Total Assets – Outright Distribution at 1st Death” – a flowchart by Deborah Willard Coogan, May, 2007.
- “Sample Flow Chart #4: Massachusetts Married Couple – Each with \$1M in Assets – Shelter Trust Plan” – a flowchart by Deborah Willard Coogan, May, 2007.
- “Sample Flow Chart #5: Massachusetts Married Couple – 2nd Marriage for Each and Each with \$1M in Assets – Shelter Trust Plan” – a flowchart by Deborah Willard Coogan, May, 2007.
- “Sample Flow Chart #6: N.H. Married Couple Each with \$2M in Assets – Shelter Trust Plan” – a flowchart by Deborah Willard Coogan, May, 2007.

TOPIC #13. Basics of Marital Deduction Planning for Federal Estate Tax Purposes, including simple “credit shelter trust” planning for a married couple (the classic “A/B” plan).

Reading assignment in Campfield:

- *Re-read*: pp. 160-162 [introduction to the marital deduction for gift tax purposes].
- pp. 614-616 [introduction to the marital deduction for estate tax purposes].
- pp. 616-621 [marital deduction requirements].
- pp. 628-629 [nondeductible terminable interests].
- pp. 637-639 [survivorship requirement exception to the nondeductible terminable interest rule].

Reading assignment in Code and Regulations:

- Code § 2056(a) [marital deduction].
- Code § 2056(b)(1) and (b)(3) [marital deduction terminable interest rule, and exception for survivorship requirement].
- Code § 2056(c) [definition of “passing” requirement].

Reading assignment in Supplemental materials:

- *Re-read*: Federal DOMA: Defense of Marriage Act (1996), 115 U.S.C. § 1738C, and 1 U.S.C. § 7.
- *Re-read*: “Basic Estate Planning Principles: Chart #1 – Simple Plans with Outright Distributions” – a flowchart by Deborah Willard Coogan, up-dated January, 2010.
- *Re-read*: “Basic Estate Planning Principles: Chart #2 – Plan for Opposite-Sex Couple with Shelter Trust & Outright Distribution” – a flowchart by Deborah Willard Coogan, up-dated January, 2010.
- “Credit Shelter Trust” – a flowchart from *Wealth Management Planning*, on-line informational materials of Credit Suisse/First Boston, New York, New York, available at www.csfb.com.
- *Re-read*: Will of John Winston Ono Lennon.

TOPIC #14. Coupling a Shelter Trust with a Marital Trust for testamentary purposes: “A/B” trust planning for a married couple for federal estate tax purposes.

Reading assignment in Campfield:

- p. 634 [the “estate trust”].
- *Re-read*: pp. 628-629 [nondeductible terminable interests].
- pp. 639-650 [§ 2056(b)(5) “life estate/power of appointment” (LEPA) trust, focusing on *Wisely* and *Technical Advice Memorandum 9147065*].
- pp. 14-17 [reformation to claim the marital deduction, focusing on *Bosch*].
- pp. 651-667 [§ 2056(b)(7) “QTIP trust”, focusing on *Nicholson* and *Technical Advice Memorandum 8943005*].
- pp. 667-668 [comparison of the general power of appointment trust and the QTIP trust; and the partial QTIP election].
- pp. 696-699 [combining of marital deduction and shelter trust planning, including need for division of spousal assets, avoiding “over-maritalizing” and estate equalizing techniques].

Reading assignment in Code and Regulations:

- *Re-read:* Code § 2056(b)(1) [federal estate tax marital deduction].
- Code § 2056(b)(5) [“general power of appointment trust”].
- Reg. § 20.2056(b)-5(a) [general requirements for the “GPA trust” or “LE/PA trust”].
- Code § 2056(b)(7)(A) and (B) [“QTIP trust”].
- Reg. § 20.2056(b)-7(h)(Examples 1, 2, 4, 5 and 6) [examples of the general requirements for a QTIP trust].
- Code § 2044(a) and (b)(1)(A) [estate tax inclusion of QTIP trust property upon death of second spouse].

Reading assignment in Supplemental materials:

- *Re-read:* Will of John F. Kennedy and Excerpts from the Will of Jacqueline Kennedy Onassis. **Class discussion notes:**
 - Determine the types of trusts were used by John Kennedy in his A/B estate plan, and consider the pros and cons of the options chosen. What was the reason for choosing the marital trust that he used?
 - Why do you think that, when the John Kennedy will was filed in Court (and became public), many people thought Jackie Kennedy would soon re-marry?
- “Examples of various Marital Deduction Gifts” for estate tax purposes – original unknown.
- “Marital Deduction and ‘QTIP’ Trust” – an on-line informational article from Brown Brothers Harriman Trust Companies, New York, New York, dated 1/2003, available at www.bbh.com.
- “Qualified Terminable Interest Property Trust” – a flowchart from *Wealth Management Planning*, on-line informational materials of Credit Suisse/First Boston, New York, New York, available at www.csfb.com.
- “Sample Flow Chart #7: N.H. Married Couple One with \$4M in Assets – QTIP/Shelter Trust Plan” – a flowchart by Deborah Willard Coogan, May, 2007.
- “Sample Flow Chart #8: N.H. Married Couple Each with \$4M in Assets – QTIP/Shelter Trust Plan” – a flowchart by Deborah Willard Coogan, May, 2007.
- *Re-read* “Basic Estate Planning Principles: Chart #2 – Plan for Opposite-Sex Couple with Shelter Trust & Outright Distribution” – a flowchart by Deborah Willard Coogan, up-dated January, 2010.
- “Basic Estate Planning Principles: Chart #3 – Plan for Opposite-Sex Couple with Shelter Trust & QTIP Trust” – a flowchart by Deborah Willard Coogan, up-dated January, 2010.
- pp. 1-8 of the *Estate Planning Basics Brochure 20097*, Edwards Angell Palmer & Dodge LLP, Boston, Massachusetts, available at www.eapdlaw.com.

TOPIC #15. Coupling a shelter trust with a marital trust for optimum federal and state estate tax results: State-tax variations on the classic “A/B” trust plan.

Reading assignment in Campfield:

- *Re-read:* pp. 696-699 [combining of marital deduction and shelter trust planning, including need for division of spousal assets, avoiding “over-maritalizing” and estate equalizing techniques].
- *Re-read:* pp. 13-14 [now-repealed federal estate tax deduction for state death taxes, and current state death tax systems].

Reading assignment in Supplemental Materials:

- *Re-read:* Massachusetts Gen. Laws Chapter 65C, Section 2A [Massachusetts estate tax for decedents dying on or after January 1, 2003].
- *Re-read:* pp. 1-2 of “Directive 03-2: Issues Arising from Decoupling the Massachusetts Estate Tax,” issued by the Massachusetts Department of Revenue February 19, 2003 – focusing on Issue 1 (the “Massachusetts QTIP election”).
- *Re-read* “Fundamentals of Federal and Massachusetts Transfer/Wealth Taxes,” by Deborah Willard Coogan, up-dated January, 2010.
- “Sample Flow Chart #9: Massachusetts Couple – 2nd Marriage for Each and Each with \$2M in Assets – Shelter Trust Plan” – a flowchart by Deborah Willard Coogan, May, 2007.
- “Sample Flow Chart #10: Massachusetts Married Couple Each with \$2M in Assets – QTIP/Shelter Trust Plan” – a flowchart by Deborah Willard Coogan, May, 2007.
- “Basic Estate Planning Principles: Chart #4 – Massachusetts Plan for Shelter Trust & QTIP Trusts for Opposite-Sex Couple” – a flowchart by Deborah Willard Coogan, up-dated January, 2010.

- “Flow of Assets Upon the Death of Spouse One” – a flowchart by Andrea M. Danner, Esq., Morrissey, Hawkins & Lynch. December, 2007. *NOTE: Andrea Danner took Estate Planning 2331 when she attended Northeastern University School of Law.*

TOPIC #16. Special Estate and Gift Tax Problems for Same-Sex, Married Couples, Non-Married Couples, and Non-Married Joint Tenants.

I. “A/B” trust planning for Massachusetts same-sex, married couples but with different tax results.

Reading assignment in Supplemental Materials:

- *Re-read:* “Basic Estate Planning Principles: Chart #4 – Massachusetts Plan for Shelter Trust & QTIP Trusts for Opposite-Sex Couple” – a flowchart by Deborah Willard Coogan, up-dated January, 2010.
- *Re-read:* “Flow of Assets Upon the Death of Spouse One” – a flowchart by Andrea M. Danner, Esq., Morrissey, Hawkins & Lynch. December, 2007.
- “Basic Estate Planning Principles: Chart #5 – Massachusetts Plan for Shelter Trust & QTIP Trusts for Same-Sex Couple” – a flowchart by Deborah Willard Coogan, up-dated January, 2010.

II. Other federal transfer tax issues for unmarried couples and same-sex, married couples.

Reading assignment in Campfield:

- *Re-read:* pp. 84-87 [time of completion of gifts by check, and gifts by creation of co-ownership].
- pp. 299-303 [federal estate taxation of joint tenancies, including whether services constitute contributions to joint tenancies].
- pp. 307-311 [more on determining contributions to joint tenancies, and community property].

Reading assignment in Code and Regulations:

- *Re-read:* Code § 2511(a) [transfers subject to gift tax].
- *Re-read:* Reg. § 25.2511-1(h)(Examples 4 and 5) [effective date of gifts involving joint property].
- *Re-read:* Reg. § 25.2511-2(a), (b), (c), (d) and (h) [release of control, with examples; and time gift occurs].
- Code § 2040 [includibility of joint property for estate tax purposes].
- Reg. § 20.2040-1 [estate tax consequences of jointly-held property, including examples].

Reading assignment in Supplemental Materials:

- *Re-read:* Federal Defense of Marriage Act of 1996, 1 U.S.C. § 7.
- “Unmarried But Protected,” by Shari A. Levitan and Ellen S. Berkowitz, *Trusts & Estates*, September, 2003.
- “Same-Sex Marriage & Cohabitation: When Couples Are Same Sex – Drafting Considerations Differ,” by Peter F. Zupcofska, *Family Advocate*, a publication of the American Bar Association, Winter, 2010.

TOPIC #17. Planning for Annuities and Retirement Accounts – real-life big assets.

Reading assignment in Campfield:

- *Read for general import:* pp. 463-468 [§ 2039 estate taxation of annuities].
- pp. 485-487 [income taxation of retirement plan benefits].

Reading assignment in Code and Regulations:

- Code § 2039 [estate taxation of annuities, including retirement accounts].
- *Re-read:* Code § 2033 [which is sometimes considered applicable to retirement plans].
- *Re-read:* Code § 2038 [which is sometimes considered applicable to retirement plans].
- Code § 1014(a) and (c) [“step-up” in basis of all property passing from a decedent but not for “income in respect of a decedent” items such as retirement accounts].
- Code § 691(a)(1) [income taxation on recipients of “income in respect of a decedent” items such as retirement accounts or salary payments made after death].
- Code § 691(c)(1)(A) [income tax deduction for estate tax paid on “income in respect of a decedent” items].

Reading assignment in Supplemental materials:

- “Selected Highlights of Retirement Plans and Rules,” by Deborah Willard Coogan, up-dated February, 2008.
- “Benefit of Early Funding of a Roth IRA,” prepared by Kristin Person for *Estate Planning 2331* (when a

student at Northeastern University School of Law), spring, 2004 [slightly revised by Deborah Willard Coogan August, 2004].

- “Benefit of Regular Lifetime Contributions to an IRA Account,” prepared by Kristin Person for *Estate Planning* 2331 (when a student at Northeastern University School of Law), spring, 2004 [slightly revised by Deborah Willard Coogan August, 2004].
- “The ‘Uniform Lifetime Table’ for Individual Retirement Account Distributions” – a client advisory memorandum provided on-line by the Matsumura Law Firm, 2006, found at www.mm-estateplanning.com.
- “Common Errors in IRA Planning – The Baker’s Dozen,” by Mark LaVangie and Beverly DeVeney, *Journal of Retirement Planning* (a journal published by CCH Incorporated), 2004; article sent by email to interested attorneys 2005.
- “Retirement 101,” by Keith A. Herman, *Probate & Property* (a magazine publication of the American Bar Association’s Real Property, Probate & Trust Law Section), January/February, 2006.

TOPIC #18. Planning Opportunity for the Holder of a Power of Appointment subject to an Ascertainable Standard for Gift and Estate Tax Purposes.

Reading assignment in Campfield:

- *Re-read*: pp. 488-491 [powers of appointment for estate tax purposes].
- *Re-read*: pp. 497-499 [general and special powers of appointment].
- pp. 502-507 [powers of appointment subject to “ascertainable standard”, focusing on *Revenue Ruling 77-60* and *Sowell*].

Reading assignment in Code and Regulations:

- *Re-read* Code § 2041(a)(2) [Estate tax includibility of general power of appointment property].
- *Re-read* Code § 2041(b)(1) [Definition of general power of appointment for estate tax purposes].
- Code § 2514(c)(1) [Ascertainable standard defined for gift tax purposes].
- Code § 2041(b)(1)(A) [Ascertainable standard defined for estate tax purposes].
- Reg. § 20.2041-1(c)(2) [Definition and examples of ascertainable standard for transfer tax purposes].

Reading assignment in Supplemental materials:

- *Re-read* Will of Jerome F. Garcia, Will of Elvis A. Presley, and Excerpts from the Will of Joseph P. DiMaggio.

Class discussion note: When re-reading these wills, consider: (i) whether there has been effective use of qualified ascertainable standards, and (ii) whether ascertainable standards were actually necessary for transfer tax purposes.

TOPIC #19. Estate Taxation of Transfers Benefiting the Donor and Donor-Retained Interests or Powers: §§ 2036, 2037, 2038 & 2035. NOTE: We may not get to these materials or this topic may be condensed.

I. Formal and Informal Reservation of Interests or Powers by the Donor -- § 2036(a)(1).

Reading assignment in Campfield:

- pp. 345-355 [history of Code § 2036; and informal reservation of interest or power, focusing on *Maxwell*].
- p. 362 and pp. 366-370 [identification of the decedent-transferor and reciprocal trusts, focusing on *Grace*].
- *Re-read*: pp. 152-156 [reciprocal and sham transfers for gift tax purposes, focusing on *Sather*].

Reading assignment in Code and Regulations:

- Code § 2036(a) [Estate tax includibility of transfers with retained life estate except in the case of a *bona fide* sale].
- Reg. § 20.2036-1(a) and (b) [Definitions applicable to § 2036 transfers].

Class discussion note: Consider whether the *Grace* reciprocal trust doctrine should be applicable to irrevocable life insurance trusts created by a couple.

II. Transfers Benefiting the Donor: Trusts for the Support of Dependents -- § 2036(a)(1).

Reading assignment in Campfield:

- pp. 371-383 [support of dependents, focusing on *Chrysler*, *Gokey* and *Private Letter Ruling 9235032*].

Reading assignment in Code & Regulations:

- Code § 2516 [Certain divorce property settlements constituting consideration for gift tax purposes].

- Code § 2043(b)(1) and (b)(2) [Certain divorce property settlements or trusts constituting consideration for estate tax purposes].

III. Retention of Control for purposes of § 2036(a)(2).

Reading assignment in Campfield:

- pp. 404-410 [retained administrative powers, focusing on *Byrum*].

Reading assignment in Code & Regulations:

- Code § 2036(b) [Legislative answer to *Byrum*].

IV. Ascertainable Standards for Purposes of § 2036(a)(2).

Reading assignment in Campfield:

- pp. 400-404 [ascertainable standards for purposes of § 2036, focusing on *Old Colony Trust Co.*].

V. § 2038 Powers to Alter, Amend, Revoke or Terminate.

Reading assignment in Campfield:

- pp. 419-423 [§ 2038 powers to alter, amend, revoke or terminate, focusing on *Lober*].
- pp. 434-437 [ascertainable standards for purposes of § 2038, focusing on *Jennings*].
- pp. 437-440 [§ 2038 implications with UTMA accounts and powers to substitute trustees].

Reading assignment in Code & Regulations:

- Code § 2038 [Revocable transfers].
- Reg. § 20.2038-1(a) [Extensions of and limitations on § 2038 application].

VI. § 2036 and § 2038 Over-view.

Reading assignment in Supplemental materials:

- “‘Having Your Cake and Eating It, Too’ - Parental Control over Irrevocable Trusts for Children”, by Stuart B. Dorsett, *Probate & Property* (a magazine publication of the American Bar Association’s Real Property, Probate & Trust Law Section), November/December 2002.

NOTE: This is a good, readable summary of §§ 2036-2038 limitations and opportunities for donors as beneficiaries and/or trustees of irrevocable trusts.

VII. § 2035 3-year Rule.

Reading assignment in Campfield:

- Re-read pp. 526-533 [§ 2035 3-year rule and life insurance trusts].

Reading assignment in Code & Regulations:

- Re-read Code § 2035(a) [3-year rule for lifetime transfers of property interests otherwise includible under §§ 2036, 2037, 2038 or 2042 (life insurance)].
- Code § 2035(b) [Inclusion of gift tax paid on gifts made within 3 years of death].

TOPIC #20. Generation-Skipping Transfer Tax: Special tax on trusts; and planning for the disabled beneficiary who is receiving needs-based governmental assistance.

NOTE: We will not go into the generation-skipping transfer tax in depth, and you should focus on broad, general GST tax concepts.

Reading assignment in Campfield:

- pp. 726-736 [generation-skipping transfer (“GST”) tax].
- Read and answer the problems at pp. 736-738; we will work on these and other problems in class if and as time permits.

Reading assignment in Code and Regulations: *Skim these sections.*

- Code § 2601 [Imposition of GST tax on each GST transfer].
- Code § 2602 [GST tax calculation = taxable amount times applicable rate].
- Code § 2641 [GST tax applicable rate = inclusion ratio times maximum Federal estate tax rate].
- Code § 2642(a)(1)-(2) [Determination of inclusion ratio in calculation of GST tax].
- Code § 2611(a) [Definition of GST transfer].
- Code § 2612 [Definitions of taxable termination, taxable distribution and direct skip].
- Code § 2613 [Definition of skip person and non-skip person].
- Code § 2642(c)(1) and (3) [Exclusion from GST tax of § 2503(b) annual exclusion gifts and § 2503(e)

educational or medical exclusion gifts].

- Code § 2642(c)(2) [Application of GST tax to typical *Crummey* withdrawal rights].
- Code § 2631 [GST exemption amount and automatic adjustments to that amount in the future].
- Code § 2632(a) [Time and manner of allocation of GST exemption].

Reading assignment in Supplemental materials:

- *Re-read*: Excerpts from the Will of Joseph P. DiMaggio.
- “Effective Generation Skipping – The Dynasty Trust” – a flowchart from *Wealth Management Planning*, on-line informational materials of Credit Suisse/First Boston, New York, New York, available at www.csfb.com; last found summer, 2005.

TOPIC #21. Real life: “Opps, I made a mistake” – Disclaimers and Post-Mortem Planning. *NOTE*: We may not get to this materials or this topic may be condensed.

Reading assignment in Campfield:

- pp. 105-109 [disclaimers].
- pp. 621-627 [marital deduction requirements and the *post mortem* efforts to obtain marital deduction treatment].
- *Re-read*: pp. 14-17 [reformation to claim the marital deduction, focusing on *Bosch*].

Reading assignment in Code and Regulations:

- Code § 2518(a)-(b) [Qualified disclaimer not treated as a gift].

Reading assignment in Supplemental materials:

- Excerpts from the Will and Codicil of Diana Princess of Wales and the Court Order which “reforms” the will.

Class discussion; Focus on the provisions of the original will and codicil and then compare them to the reformed will authorized by the Court. What was the royal family trying to accomplish here? If Diana had been a U.S. citizen, would this reformation have been considered effective by the IRS given the *Schroeder* and *Brandon* cases?

Take-home examination: Putting it all together. Written Assignment #4: This take-home exam will be handed out at the end of class on Thursday, May 13, 2010. Extra copies will also be available at the Office of Academic & Student Affairs. Your paper should bear your student number only (and not your name).

If there are any questions about the exam during exam week, please contact me. I prefer to receive questions by email (dwc@cooganlaw.com) but I can also be reached by phone if needed. Any question which pertains to the exam generally will be answered by me in an email sent to all students in the class. So, please check your emails in case I am in contact with the class during the week.

DUE DATE: The take-home examination is to be handed in to the Office of Academic & Student Affairs by: Noon on Thursday, May 20, 2010.

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