

ESTATE PLANNING
PROF. BECKETT G. CANTLEY
SPRING, 2015

SYLLABUS

NOTE: THIS SYLLABUS WILL BE UPDATED FROM TIME TO TIME DURING THE SEMESTER. EACH NEW VERSION WILL BE POSTED TO TWEN, SO CHECK TWEN REGULARLY. FAILURE TO CHECK TWEN WILL NOT BE AN EXCUSE FOR BEING UPREPARED IN CLASS.

Course Description

This course includes basic instruction in estate planning law, including relevant sections of the Official Code of Georgia Annotated (“O.C.G.A.”) and the federal estate and gift taxation sections of the Internal Revenue Code (“IRC”). The course provides a working knowledge of the law applicable to the transfer of wealth between individual taxpayers, using documents such as Last Wills and Testaments (“wills”), Irrevocable Life Insurance Trusts (“ILIT”), Family Limited Partnerships (“FLPs”), Grantor Retained Annuity Trusts (“Grats”), and Charitable Remainder Annuity Trusts (“Crats”). In addition, general use estate planning documents such as Durable Financial Powers of Attorney, Durable Health Care Powers of Attorney, and Living Wills are also discussed in this course. Key O.C.G.A. topics include application of state law in the area of wills, trusts, and estates. Key federal transfer tax topics of study include concepts of gross estate, exclusions, deductions, and credits. Students also are exposed to key procedural issues, estate tax policy, and ethical issues surrounding the practice of estate planning law.

Course Overview

Estate Planning involves the study of the transfer of wealth between individuals. This is a code-based course focused on the O.C.G.A. and federal estate and gift taxation sections of the IRC. Students are expected to read, understand, and apply the relevant sections of the O.C.G.A. and IRC, as well as the Treasury Regulations, Revenue Rulings, Revenue Procedures, and case law that assist in explaining and interpreting the IRC (“Related Law”).

The appropriate assigned O.C.G.A., IRC and Related Law are listed below on this syllabus, so the students have a clear understanding of their reading and interpretation responsibility every week. The students are encouraged to tab relevant pages and take notes in their IRC books, to get them accustomed to shifting back and forth between related IRC sections and Treasury Regulations. As a reward, the students can use their marked-up and tabbed IRC books in the final examination.

In the classroom, students are assigned provisions in certain estate planning documents, and given problems arising from specific issues that are solved by a thorough reading and application of specific areas of the O.C.G.A., IRC and Related Law. In discussing the

assigned issues, students must read the appropriate O.C.G.A., IRC sections and/or Related Law out loud and explain how it applies to solve the issues in the problem. Other students also take part by adding their interpretations from the same or other section of the O.C.G.A., IRC and Related Law. The goal is to create a lively discussion on the topic and to encourage students to dig deeper into the O.C.G.A. and IRC for purposes of learning the interplay between different sections.

The course additionally incorporates a significant policy element that assists the students in obtaining a perspective on the political, economic, and social issues that contribute to the ongoing transformation of the O.C.G.A. and IRC. Policy reading assignments are generally separately assigned throughout the semester, one building on the other, and these policy arguments are brought into the discussion of how that week's assigned O.C.G.A. and IRC sections were created, amended, and are likely to be altered in the future. These "add on" topics are to give students a better understanding of estate planning law, but students are not required to know them for purposes of any written exam.

In studying the O.C.G.A. and IRC, students are taught the language that estate planning attorneys use among each other to shortcut references on topics. For example, when refereeing to an "IRC 101(a)(2)(B)(ii)" they are taught to say "101a2 cap B 2 little I". Students are also taught about the practice of estate planning law from an interpretive and litigation standpoint. This practice focus is accomplished by discussing real world recent cases that have occurred in the practice world that are very current. The goal in showing these recent applications of the law to real world case studies is to get the students viewing themselves as estate planning practitioners, and to see how practice decisions can have a real impact on client lives.

Students are also taught the ethical issues surrounding the practice of estate planning law, including certain requirements imposed by the IRS.

Course Goals

The objective of the course is to have students become familiar with and understand the legal terms and the basic legal concepts used in transfer of wealth between individuals, and have students consider the policy behind the O.C.G.A. and IRC, and the ethical issues involved in interpreting them and advising taxpayers.

Student Learning Outcomes

Evaluation for this course will entail an assessment of the following expected student learning outcomes:

1. Students should be able to explain the basic state law and federal transfer tax principles associated with estate planning.
2. Students should be able to identify relevant problems associated with estate planning.

3. Students should be able to find O.C.G.A. and transfer tax law authority relevant to estate planning transactions.
4. Students should be able to demonstrate the ability to apply relevant O.C.G.A. and transfer tax law authority through critical analysis in finding solutions to estate planning problems.
5. Students should be able to explain, through critical analysis, the resolution of estate planning problems by means of written and/or oral communications in a logical and appropriate manner.
6. Identify and explain underlying public policy and jurisprudential concerns related to specific estate planning concepts.
7. Demonstrate the ability to analyze cases and/or statutes, and differentiate cases in terms of legally relevant facts.
8. Think critically and analytically about the intersection between the law, the transfer of wealth, and public policy.
9. Identify the determinants of a taxable estate and the statutory exclusions that are permitted,
10. Become familiar with the deduction component of the basic estate planning tax model,
11. Learn various other components that relate to the theme of transfer tax liability determination,
12. Understand the purposes of the Federal transfer tax law and the legislative, administrative, and judicial sources of Federal transfer tax law, and
13. Research and report on assigned O.C.G.A. and transfer tax questions.

Required Book

Federal Estate and Gift Tax Code and Regs, CCH, ISBN 978-0-8080-3263-2 (March 2013).

Class Preparation, Attendance, & Other Class Rules

Students should be prepared to discuss statutes and problems without the use of notes during class. Subject to the law school policies, students may bring drinks. Students can take notes on their laptops, but if they are caught texting, surfing on Facebook, or talking in class, they will be asked to leave the class immediately and eventually it will result in

points off their grades. Students should respect the Professor and class enough to follow this rule.

To be fully prepared for class, students must read the assigned O.C.G.A., IRC, Related Law, and assigned documents, and use these items to write out complete answers to the assigned issues. The goal of preparing for class is to work through the primary source material by applying it to the hypothetical situations in the problems. If students have completed the assignment, including reading the assigned O.C.G.A., IRC and Related Law, and writing out answers to the problems, students are prepared for class - even if they are uncertain about the material and are unsure if they have resolved the problems correctly. If a student does not have time to completely prepare for class, it may be better not to attend.

When analyzing the problems, students should focus on: (1) the relevant legal principle(s); (2) application of the principle(s) to the particular facts; and (3) the conclusion. Students will need to be prepared to explain their analysis of the problem—the analysis is more important than the answer to it. In addition, the assigned cases (although few in number) are important in interpreting the O.C.G.A., IRC and Treasury Regulations and resolving the problems. Most students find that they need to spend approximately 3-4 hours in order to be adequately prepared for the discussion in each class session.

Mid-Term, Final Exam & Final Grade

The final examination will be the primary determinant of any student's grade. Each grade will be calculated 100% by the grade on the final examination, unless one or more of the following adjustments is applied. A student may receive a downward adjustment of ½ of 1 grade level if the student's classroom participation is unsatisfactory (a student is unprepared when called upon for a problem) or (b) a student receives a score on his or her Midterm Exam of 25% or less of all possible points. A student receives an upward adjustment of ½ of 1 grade level if he or she receives a score on the student's Midterm Exam of 75% or more of all possible points.

Class Time & Office Hours

Class meets on **Mondays** from **6:15 to 9:30 p.m.** My office-hours are on **Mondays (4:30pm-6pm)** and **Tuesdays (4:30pm - 6pm)**, although students should feel free to drop by my office anytime in the afternoons since I am often there. My office is on the 8th floor of the 1422 building. If any student is having trouble with the class work, they are highly encouraged to come talk to me and be very honest about his or her difficulties. If I don't know a student is having trouble, I cannot help the student.

Week 1 (1/12)

Introduction. OCGA §§ 53-2-1 (Intestacy); 53-2-3 (Inheritance by children born out of wedlock); 53-4-59 (Types of probate gifts); 53-4-60 (Income, profit, or increase of specific testamentary gifts); 53-1-10 (Lifetime transfers); IRC §§ 2001(a)-(c) (Tax Rate); 2010(a), (b), (c)(1)-(4), (d) (Credit); 2011(a), (b), (e) (State Death Taxes); and associated

Treasury Regulations. **Uploaded Documents:** Springing POA & Medical Directive.

Week 2 (1/26)

Will and Revocable Living Trust Documents; OCGA §§ 53-2-3 (Inheritance by children born out of wedlock); 53-4-59 (Types of probate gifts); 53-4-60 (Income, profit, or increase of specific testamentary gifts); 53-1-10 (Lifetime transfers); IRC § 2012(a) (Gift Tax Credit); and associated Treasury Regulations. **Uploaded Documents:** Bypass Will.

Week 3 (2/2)

OCGA §§ 53-4-31 (Joint or Mutual Wills Definitions); 53-3-1 (Year's support); IRC §§ 2031(a) (Gross Estate); 2051 & 2518 (Disclaimers); 2053(a)-(b) (Expenses); 2056(a) (Spousal Transfers); 2058 (State Death Taxes); and associated Treas. Regs. **Uploaded Documents:** Bypass Flow Chart.

Week 4 (2/9)

Class Participation Mid-Term

Week 5 (2/16)

ILIT Document; OCGA § 53-12-261; 53-12-80(d) (Trustee's Powers) IRC § 2042; and associated Treas. Regs. **Uploaded Documents:** ILIT Agreement.

Week 6 (2/23)

OCGA §§ 53-12-2 (Trust definitions); 53-12-201 (Want of Trustee); 53-12-20 (Express Trusts); 53-12-26 (Additions); 53-12-64 (Termination); 53-12-80 (Spendthrift); 53-12-101 (Testamentary Additions); 53-12-210 (Compensation); and 53-12-260 (Discretionary Powers); 53-12-261 (Powers of Trustees); 53-12-3 (Common law and equity); 53-12-40 (Revocation and modification generally); 53-12-82 (Creditors' claims against settlor). **Uploaded Documents:** ILIT Flow Chart.

Week 7 (3/2)

IRC §§ 2501 (Gift Tax); 2502 (Rate of Tax); 2503 (Taxable Gifts); 2505 (Gift Tax Credit); 2511 (Gift Transfers); 2514 (Powers of Appointment); 2523 (Spousal Gifts); and associated Treas. Regs. **Uploaded Documents:** 2642(c) Trust.

Week 8 (3/9)

GST Trust Provisions; IRC §§ 2601 (GST Tax); 2602 (Amount of Tax); 2611 (GST Defined); 2612 (More Definitions); 2613 (Skip Persons); 2631 (Exemption); 2632 (Special Rules); 2641 (Rate); 2642 (Inclusion Ratio); 2651 (Generation); and associated Treas. Regs. **Uploaded Documents:** Revocable GST Trust.

Week 9 (3/23)

FLP Document; IRC §§ 2036; 2703; and associated Treas. Regs. **Uploaded Documents:** Family LLC.

Week 10 (3/30)

Putting it All Together

Week 11 (4/6)

Holman v Comm., 601 F.3d 763 (2010); Estate of Samuel Black v. Commissioner, 133 T.C. No. 15 (Dec. 14, 2009)(Westlaw/Lexis 133 T.C. 340). OCGA §§ 14-8-62; 14-9-301; 14-9-701; 14-9-702; 14-9-703; and 14-9-704; 14-9A-2 (Limited partnership defined); 14-9A-24 (One person both general and limited partner)

Week 12 (4/13)

QPRT Document; Estate of Sylvia Riese, T.C. Memo. 2011-60 (2011); IRC §§ 2702; 2036; 2011(d); and associated Treas. Regs. GRAT Document; Re-review IRC §§. 2702; 2036; and associated Treas. Regs. **Uploaded Documents:** Qualified Residence Trust (QPRT) and Grantor Retained Annuity Trust (GRAT).

Week 13 (4/20)

NIMCRUT Document; IRC §§ 2055 (Charitable Transfers); 2522 (Charitable Gifts); and associated Treas. Regs. OCGA §§ 53-12-170 (Charitable Subjects); 53-12-260 (Discretionary Powers); 53-12-261 (Powers of Trustees); 53-12-172 (Cy Pres); and 53-12-173 (Duration). **Uploaded Documents:** NIMCRUT.

Week 14 (4/27)

Review