

ESTATE PLANNING
Professor Johnny Rex Buckles
Fall 2021
Problem Set 6

A

What are the transfer tax consequences to Peony in each of the following scenarios?

1. Rose creates a trust in 2002 with income payable to Peony for life, remainder to such person as Peony may appoint by will. Should Peony fail to appoint any property by will, the property shall pass to the children of Peony. Peony dies in 2014, leaving a will which leaves “all the rest, residue, and remainder of my estate” to her niece, Petunia.
2. Same facts as in 1, except that Peony’s appointment shall be effective only with the consent of Rose’s sister, Daisy.
3. Same facts as in 1, except that Peony’s appointment shall be effective only with the consent of Rose.
4. Same facts as in 1, except that Peony’s appointment shall be effective only with the consent of one of her children.
5. Same as in 1, except that Peony’s power may be exercised only in favor of the issue of Rose, and Peony is not one of Rose’s issue.
6. Pinky creates a trust with income payable to William for life, remainder to William’s issue. In addition, the trustee may distribute principal to Peony in its absolute discretion. The trustee may be removed by Peony, who may appoint any person that she may choose as successor trustee.
7. Same facts as in 6, except that the trustee may distribute principal to Peony only if necessary for her reasonable education or support.
8. Same facts as in 6, except that the trustee may distribute principal to Peony only if necessary for her welfare, comfort and happiness.
9. Kim creates a trust with income payable to Brenda for life, remainder to Miranda. In addition, Peony is given the inter vivos power to appoint such trust property as she may so desire to whomever she wishes prior to Miranda’s 21st birthday. Miranda turns 21, and then Peony dies, never having exercised the power.
10. Lu creates a trust (by transferring to an independent trustee property valued at \$100,000) with income payable to Peony for life, remainder to Miranda. In addition, Peony is given the inter vivos, non-cumulative right to withdraw \$20,000 of principal each year.

11. Avery creates a trust with income payable to Roscoe for life, remainder to the issue of Roscoe. In addition, Peony shall have the power to appoint trust corpus by deed or will to her adult issue. Peony thereafter appoints \$15,000 to her son, Matthew.

B

Review section 2056 of the Internal Revenue Code before answering the following question. Your client, Boris, comes into your office. He is married to Anna and has assets (his own) worth about \$10 million. She has assets worth about \$50,000. They have two children, Leonard and Leo. Boris would like you to draft a will that leaves property so as to provide mainly for his wife upon his death, but also something to charity and to the sons. Boris does not think that Anna would remarry, but he certainly wants none of his fortune to go to any new husband of Anna. Boris is thinking about the following:

1. Conveying all of his property to Anna outright.
2. Creating a trust to benefit Anna, or Anna and the two sons. Boris is interested in considering the following provisions, or those that accomplish similar results:
 - * Giving Anna a general power of appointment, exercisable during her life or at her death
 - * Giving Anna a special power of appointment, exercisable in favor of the two sons and/or charity
 - * Giving Anna income for life, subject to the discretion of the trustee (which may or may not be subject to an ascertainable standard)
 - * Providing that the remainder of the trust property pass to charity, or, in the alternative, to either Anna's estate or to the two boys
 - * Giving the sons the right to withdraw principal from the trust, subject to an ascertainable standard
 - * Giving the trustee broad powers over investments, allocations of receipts and disbursements to income and principal, and distributions of principal to Anna
 - * Providing that Anna must survive six months after the date that the executor of Boris' estate distributes the property funding the marital trust in order to receive any beneficial interest in the trust
 - * Including a savings clause like that appearing on page 10-82
3. Doing nothing with respect to his house (his separate property), because of Anna's homestead rights in the house upon his death.

What advice do you have for Boris?

C

Harry and Wilma, husband and wife, have two children. Wilma's assets comprising her separate property are substantially more valuable than Harry's separate property. Because the

couple has recently moved to Texas (from a common law state), they have little community property. Harry is fifteen years older than Wilma. They come to you for some general advice about their estate planning. What, in brief (i.e., “in a nutshell”), do you tell them? Concentrate on issues arising from marital status.

D

Niles’ will provides that all of his corporate stock (valued at his death at \$3 million) shall be placed in trust, income to be paid to his wife Daffny for life, remainder to Niles’ son, Martin. Niles’ executor elected to treat the property transferred in trust as QTIP. Two years later, when the value of the trust corpus is \$10 million and the value of her life interest is \$1 million, Daffny sells her income interest to her daughter, Lil, for its fair market value. What are the transfer tax consequences of these events?

E

Discuss the various forms of a marital deduction clause in a will and the funding of marital gifts. (NOTE: Just do the best you can on the basis of what is assigned in the reading materials. As you probably have come to expect, we will cover this subject more comprehensively in class.)

F

Discuss the effect of the *Hubert* decision and its aftermath (concerning the payment of various expenses incurred by an executor from estate income).