

A complete listing of the proceedings and speakers is available on [the Institute's Web site](#)

Introduction, Pt.2

As we have done in January for the last eight years, and again with the permission of the University of Miami School of Law Center for Continuing Legal Education, we will be posting daily Reports to this list containing highlights of the proceedings of the 39th Annual Philip E. Heckerling Institute on Estate Planning that is being held January 10-14, 2005 at the Fontainebleau Hilton Resort and Towers in Miami Beach, Florida. A complete listing of the proceedings and speakers is available on the Institute's Web site. The URL for that site is <http://www.law.miami.edu/heckerling>.

Our on-site local reporters who are present in Miami this year are Gene Zuspann Esq. of Zuspann & Zuspann in Denver, Colorado, Shelly Merritt Esq., a solo practitioner in Denver, Colorado, Connie T. Eyster Esq. of Hutchinson, Black & Cook LLC in Boulder, Colorado, Jason Havens Esq. of Havens & Miller PLLC in Dustin, Florida, Bruce Stone of Goldman, Felcoski & Stone, PA of Coral Gables, Florida, Herbert L. Braverman Esq. of Walter & Haverfield LLP in Cleveland, Ohio, and Jeffrey L. Weiler of Benesch, Friedlander, Coplan & Aronoff LLP of Cleveland, Ohio. The editor again this year will be Joseph G. Hodges Jr. Esq, a solo practitioner in Denver, Colorado who is the Chief Moderator of the ABA-PTL List.

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In Introduction Part I we summarized the Scope of the Institute, introduced the Faculty for 2005, and listed the Institute's Director and the members of the Advisory Committee.

In this Introduction Part II we are listing the Substantive Program Schedule and Highlights so everyone will know what sessions will be presented next week and when and approximately when the various Reports on the same can be expected to appear on the ABA-PTL discussion list. The below Schedule was prepared and formatted by Reporter Gene Zuspann.

2005 HECKERLING SUBSTANTIVE PROGRAM SCHEDULE AND HIGHLIGHTS:

Monday, January 10

9:00 – OPTIONAL PRE-CONFERENCE FUNDAMENTALS PROGRAM –
12:15 p.m./ FLPs and LLCs from A to Z

Louis A. Mezzullo

A practical discussion of choosing the right entity for estate planning purposes; forming, operating and dissolving the entity; income and transfer tax issues; non-tax considerations; and drafting the agreement.

2:00 – Introductory Remarks

2:10 p.m.

Tina Portuondo, Institute Director

2:10 – Recent Developments in Estate, Gift and Income Taxation – 2004

5:15 p.m.

Steve R. Akers

Pam H. Schneider

Jonathan G. Blattmachr

Materials by Richard B. Covey and Dan T. Hastings

6:00 – Complimentary Reception for Registrants 7:00 p.m. Fontainebleau Hilton Resort

Tuesday, January 11

9:00 – Current Valuation Issues Involving FLPs and LLCs

9:45 a.m.

John W. Porter

A discussion of current transfer tax issues (including Section 2036) involving the valuation of interests in closely held businesses, including family limited partnerships and limited liability companies. The discussion will include an analysis of current Internal Revenue Service positions, defenses to those positions, audit issues, recent case law, and tips to help prepare for or avoid a dispute with the Internal Revenue Service regarding these entities.

9:45 – Asset Protection Other Than Self-Settled Trusts: Beneficiary 10:30 a.m. Controlled Trusts, FLPs, LLCs, Retirement Plans and Other Creditor Protection Strategies Steven J. Oshins This presentation will focus on using Beneficiary Controlled Trusts as the centerpiece in the creditor protection plan and discuss discretionary trusts versus support trusts, including Uniform Trust Code issues. The presentation will also include FLPs, LLCs, retirement plan strategies, as well as cases such as Craft and Drye.

10:45 – Funding Bypass and QTIP Trusts with Retirement Plan Assets:

11:30 a.m. What's the Use of Happiness If It Can't Buy You Money?

Christopher R. Hoyt

Funding bypass trusts and QTIP trusts with retirement assets requires an estate planner to integrate three distinct sets of laws: income tax laws, estate tax laws and ERISA mandatory distribution laws. This program will examine how these laws interact to create special problems for bypass and QTIP trusts and will explore solutions.

11:30 a.m. – Deference and the End of Tax Practice

12:15 p.m.

Mitchell Gans

Standards of deference in administrative law have recently undergone substantial change. While effective tax counseling may often depend on the validity or meaning of a regulation or revenue ruling, many in the tax community have not appreciated how the administrative law landscape has shifted and how this threatens conventional notions of tax practice.

The presentation will explore these issues.

2:00 – Death, Estate Taxes, and Liquidity Needs – Three Strikes for the

2:45 p.m. Family Business?

Dennis I. Belcher

Many large private businesses face significant liquidity needs to pay estate taxes upon the owner's death. Selling the business for fair value may not be possible and life insurance may not be a complete solution.

This presentation will present other solutions to meet the liquidity needs of the private business owner's estate, including an analysis of federal estate tax deferral and redemptions under Internal Revenue Code Sections 6166 and 303.

2:45 – The Care and Feeding of GRATs

3:30 p.m.

Carlyn S. McCaffrey

The advisor's responsibility for the grantor retained annuity trusts she has helped create will not always end with creation. This program will explore different ways of helping to assure a GRAT's transfer tax success by monitoring investment performance to lock in gains and reduce losses, by arranging for annuity distributions from property with undiscounted values, by enhancing investment return through the use of puts and calls and related strategies, and by reducing mortality risks.

3:45 – I Fell and My HIPPA is Broken

4:30 p.m.

Michael L. Graham

HIPPA regulations create an entirely new layer of complication for the estate planning process. Powers of Attorney (whether for property or health care) will not typically solve the problem. Determination of trustee competency becomes even more difficult without access to medical information.

4:30 – How to Succeed In the Life Insurance Business Without Really

5:15 p.m. Dying

Michael I. Frankel

The rapidly growing secondary market in life insurance policies can offer the insured (or the beneficiaries of his or her trust) significantly more than the cash value of an unwanted policy. This program will explore the legal, fiduciary and tax issues involved in such life insurance policy sales.

Wednesday, January 12

9:00 – We're Sorry, Your GST and Gift Tax Exemptions Have Been

9:45 a.m. Temporarily Disconnected. Please Check the Numbers and Plan Again Ellen K. Harrison

The gift tax exemption is less than the GST tax exemption, presenting an impediment to full lifetime use of the GST tax exemption. This program will propose techniques to take optimum advantage of the GST tax exemption without incurring gift tax, including the ETIP rules; the reverse QTIP election; differences in annual exclusion rules; and differences in gift splitting rules. The program will also review whether and when to allocate GST tax exemption and timing the occurrence of a GST tax transfer.

9:45 – The 15% Tax for Dividends and Capital Gains – Use It or Lose It 10:30 a.m.

Richard B. Robinson

Whether the 15% tax rate for qualified dividends and capital gains sunsets or is repealed, odds are against it lasting very long. This session will discuss ideas for maximizing the benefits of these low-income tax rates while they last, with an emphasis on closely-held businesses.

10:45 a.m. – Question & Answer Session

12:15 p.m.

Steve R. Akers

Catherine Veihmeyer Hughes
Jonathan G. Blattmachr
Pam H. Schneider

2:00 – FUNDAMENTALS PROGRAM – Income Taxation of Trusts, Estates, 3:30 p.m. / Grantors and Beneficiaries (Runs concurrently with the Special Sessions)

3:45 – 5:15 p.m.

Jeffrey N. Pennell

The income taxation of trusts, estates, grantors, and beneficiaries (Subchapter J of the Internal Revenue Code) is the tax mess that Congress did not purport to repeal in 2001. It applies to every fiduciary entity but it has no true analog elsewhere in the tax law. It is not very easy to learn on your own, yet it is taught in few schools or CLE programs.

This introduction to the general landscape of Subchapter J will orient you and reveal that the system need not be daunting. Roughly two hours will be devoted to the heart of Subchapter J (Subparts A-D) and the final hour to the grantor trust rules (Subpart E).

2:00 – Special Sessions I

3:30 p.m.

I-A – Stacking the Deck So the Other Side Will Fold Bruce S. Ross Bruce M. Stone When we know our client's estate plan will be litigated, how do we stack the deck so that when all the cards are dealt and on the table, we'll hold the winning hand?

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I-B – Valuation of Closely-Held Interests – Practical Issues John W. Porter Alex W. Howard An analysis of valuation issues involving closely-held entities from the perspective of a tax litigator and appraiser who have been in the trenches on many transfer tax cases. The discussion will focus on issues related to the valuation of closely-held interests for transfer tax purposes, the application of various tools and studies in determining lack of control and lack of marketability discounts, dealing with appraisers, privilege issues, and recent cases addressing the valuation of closely-held interests.

I-C – Funding Trusts in the Crossfire of Conflicting Estate Tax, Income Tax and ERISA Laws Christopher R. Hoyt This session will walk through the challenges of funding trusts with retirement assets. Will the trust qualify as a "look-through" trust that can use the beneficiaries' life expectancies? What planning strategies will work if there is a large age span among the beneficiaries? When will a two-generation charitable remainder trust beat a stretch IRA payable to a standard bypass or QTIP trust?

I-D – Disunification of GST and Gift Tax Exemptions Ellen K. Harrison This program will propose techniques to take optimum advantage of the GST tax exemption without incurring gift tax.

I-E – Ethical Issues and Drafting Solutions in Medical Releases and Competency Determinations Michael L. Graham George S. French This session will focus on drafting and potential regulatory solutions for appropriately accessing medical information in the estate planning and trustee qualification areas. Particular emphasis will be placed on the ethical issues presented by these problems.

I-F – The 2005 Economic Outlook: Impact of the Changing Interest Rate Environment (Wyndham) Harvey Rosenblum This session covers the economic challenges confronting the United States

economy in 2005 as the Federal Reserve shifts to a less accommodative monetary policy. The implications for portfolio management and estate planning will be examined.

3:45 – Special Sessions II
5:15 p.m.

II-A – Tax Controversy Work: Winning Cases Through Mastering Procedure Kathleen R. Sherby M. Read Moore Ann B. Burns This presentation will dissect and analyze the tax controversy from beginning to end, suggesting appropriate strategies to use in controlling the controversy to maximize the results for our clients. The program will cover handling and controlling the audit process, dealing with statute of limitation and transferee liability issues, effective strategies for dealing with the 30 day letter, keeping control of the appeals process, and selecting the most appropriate jurisdiction for the case.

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II-B – FLP Update (Repeat of Session I-B) John W. Porter Alex W. Howard

II-C – Planning to Meet the Liquidity Needs of the Private Business Owner's Estate Dennis I. Belcher Business strategists say a primary job of a private business owner is planning for succession and meeting liquidity needs following the owner's death. This session will use case studies to illustrate solutions for liquidity needs. The program will cover the mechanics of Internal Revenue Code Sections 6166 and 303, and their application to tiered entities.

II-D – Practical, Professional and (Perhaps) Even Profitable Solutions to Every Day Ethical Dilemmas Alan F. Rothschild, Jr.

Christopher H. Gadsden

Stacey L. Cole

Whom does an attorney represent during the administration of an estate?

Can an attorney draft wills for out-of-state clients? Is it ethical to represent a spouse in a divorce when the firm previously drafted the couple's wills? May an attorney draft estate planning documents which benefit a charitable organization on whose board the attorney serves?

This session takes a look at common ethical and professional dilemmas and suggests ways to anticipate and address these situations.

II-E – The Recovery of Cultural Property Looted by the Nazis:

History, Legacies, and Unsolved Mysteries Jonathan Petropoulos This program will discuss the history of the Nazis' art looting program from the active participation of the top leaders to the central role played by art experts. It will also cover recent developments concerning Holocaust era looted cultural property, including issues of current initiatives, both governmental and non-governmental; some of the difficult legal questions that have arisen in the recent past; and cases where the speaker has helped claimants pursue missing works.

II-F – Life Settlements (Wyndham)

Michael I. Frankel

Gary R. Lee

The panelists will use actual and hypothetical client experiences to illustrate potential benefits of, and issues which may arise in connection with, the sale of life insurance policies.

Thursday, January 13

9:00 – Disclaimers: When, Why & How to Say “No” to an Inheritance

9:45 a.m.

E. Diane Thompson

This program will provide a general background on disclaimers and a summary of the requirements for a tax-qualified disclaimer under Internal Revenue Code Section 2518, cover a myriad of tax and non-tax uses and nonuses, and examine the problem areas.

FIN

9:45 – The FLIP Side of FLPs: Income Tax Issues 10:30 a.m.

Samuel A. Donaldson

This presentation will address federal income tax aspects of forming, operating, and liquidating a family limited partnership. While FLPs are typically created with the intent to minimize exposure to federal and state wealth transfer taxes, practitioners sometimes ignore important income tax consequences that can arise with the use of this technique. This session will serve as a reminder of the income tax issues and will suggest possible strategies to address them.

10:45 – Risk Management for Trustees: Happy Beneficiaries Equal Empty 11:30 a.m. Courtrooms
William C. Weinsheimer Effective risk management requires a trustee to develop a "best practices" approach to trustee service which will enable the trustee to administer the trust and deal with the beneficiaries in a manner which minimizes the threat of litigation. This session will look at several facets of trustee service and suggest steps that can be taken to reduce the trustee's risks.

11:30 a.m. – You Can't Take It with You So Why Not Give It Away?

12:15 p.m. Charitable Remainder Trusts, Charitable Lead Trusts and Other Charitable Planning
Sanford S. Schlesinger A fresh analysis of charitable planning with split interest charitable trusts twenty-five years after enactment. What we have learned and what we need to revisit.

2:00 – FUNDAMENTALS PROGRAM – Estate Planning While You Wait:

3:30 p.m. / The EGTRRA and What to Do While Congress Ponders the Fate of

3:45 – the Estate and GST Taxes (Runs concurrently with the Special Sessions)

5:15 p.m.

Howard M. Zaritsky

Discusses the effect of the EGTRRA on estate planning, including proposals for permanent estate tax repeal, changes in marital deduction and GST tax planning, elimination of the state death tax credit, changes in gift and charitable planning, and the areas of estate planning that should be stressed as the percentage of clients with taxable estates declines. Includes sample forms.

2:00 – Special Sessions III

3:30 p.m.

III-A – Risk Management for Trustees: Happy Beneficiaries Equal Empty Courtrooms William C. Weinsheimer John T. Brooks This session will explore practical ways of limiting a trustee's risk, including defensive record keeping, delegation of certain duties (including investment functions), approval of accounts and discharge issues, creating and protecting the attorney-client privilege, and beneficiary communication problems.

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III-B – More Asset Protection Other than Self-Settled Trusts: More Information about Beneficiary Controlled Trusts, FLPs, LLCs, Retirement Plans and Other Creditor Protection Strategies Steven J. Oshins This presentation will provide more detail about Beneficiary Controlled Trusts and other

creditor protection strategies.

III-C – How Not to Inherit

E. Diane Thompson

This session will focus on case studies in which disclaimers are used in creative ways.

III-D – Technology – Demystifying the Numbers Joseph G. Hodges Roger L. Shumaker Find out what client-friendly computation and illustration software tools are available to planners to help clients understand various transfer tax planning techniques.

III-E – Planning with Reduced Dividend and Capital Gain Rates Richard B. Robinson This session will use case studies to illustrate the opportunities and pitfalls when trying to take advantage of the 15% tax rate.

III-F – The Care and Feeding of GRATs (Wyndham) Carlyn S. McCaffrey S. Stacy Eastland This session will illustrate, by the use of financial models, the techniques available to enhance the likelihood of a GRAT's success. It will also provide an opportunity for the participants to share the techniques that they have developed.

3:45 – Special Sessions IV

5:15 p.m.

IV-A – Using Mediation to Resolve Estate and Trust Disputes Mary F. Radford Jim C. Melamed Ray D. Madoff The panel will explore the use of mediation as a tool for resolving conflicts that arise during probate procedures and throughout the administration of estates and trusts.

IV-B – Come Into My Partnership, Said the Spider to the Fly Samuel A. Donaldson This session will use case studies and participant questions to elaborate on the tricks, traps, and techniques related to the federal income tax aspects of estate planning with family limited partnerships.

IV-C – Charitable Planning

Sanford J. Schlesinger

This session will focus on charitable planning, including planning with split interest charitable trusts. LIT

IV-D – Technology – Demystifying the Numbers (Repeat of Session III-D) Joseph G. Hodges Roger L. Shumaker

IV-E – Hot Topics on the Uniform Trust Code David English Suzanne Brown Walsh Alan Newman This program will address the more controversial sections of the UTC, including the provisions on trust modification and termination, the rights of creditors, the duty to keep the beneficiaries informed of trust administration, and the application of the UTC to special needs trusts.

IV-F – Implementing Total Return Trusts: Solving Three Variable Problems When You're Bad at Math (Wyndham) Paul S. Lee This session will focus on "total return" legislation and case law, providing a guide to fiduciaries on satisfying their obligations under the Uniform Prudent Investor Act, Uniform Principal and Income Act, and Treasury Regulations under Section 643. It will provide an analytical framework for making decisions on investment, distribution, and tax policy and guidance on drafting "total return investment policy" statements.

Friday, January 14

9:00 – Domestic Partners and Inheritance: Past, Present, Future

9:45 a.m.

Thomas P. Gallanis

A discussion of the changing treatment of domestic partners under the American inheritance law.

From the seminal palimony case of Marvin v.

Marvin to the recent flurry of activity on same-sex marriage, where has the law stood and where is it (should it be) going?

9:45 – Are You Going to Have to Tell the Government about Your Client?

10:30 a.m.

Henry Christensen III

This presentation will cover developments in the rapidly moving area of government initiatives against money laundering. What must you know about the application of the USA Patriot Act and the Forty Recommendations of the Financial Action Task Force on Money Laundering (“FATF”) to lawyers? What if your firm has offices in Europe?

10:45 a.m. – Wrapping It Up

12:00 p.m.

Louis A. Mezzullo

A practical discussion of the estate planning techniques covered during the Institute using a real life hypothetical fact situation designed to illustrate the application of the techniques

The End.....

GENERAL INFORMATION ABOUT INSTITUTE:

Inquiries/Registration:

Philip E. Heckerling Institute on Estate Planning University of Miami School of Law Center for Continuing Legal Education P.O. Box 248087 Coral Gables, FL 33124-8087

Telephone: 305-284-4762 / FAX: 305-284-6752 Web site: www.law.miami.edu/heckerling

E-mail: heckerling@law.miami.edu

Headquarters Hotel - Fontainebleau Hilton

4441 Collins Avenue

Miami Beach, FL 33140

Telephone (305) 538-2000, FAX (305) 674-4607
