

Introduction, Pt. 2

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

As we have done in January for the last nine 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 40th Annual Philip E. Heckerling Institute on Estate Planning that is being held January 9-13, 2006 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, Bruce Stone of Goldman, Felcoski & Stone, PA in Coral Gables, Florida (a member of the Institute's Advisory Committee), Herb Braverman of Walter & Haverfield, LLP in Cleveland, Ohio, Jeff Weiler of Benesch, Friedlander, Coplan & Aronoff, LLP in Cleveland, Ohio, Merry Balson of Wade, Ash, Woods, Hill & Farley in Denver, Colorado, Barbara Dalvano of Isaacson & Rosenbaum, PC in Denver, Colorado, Paul Hood of L. Paul Hood Jr. (APLC) in Manderville, Louisiana, and Joanne Hindel of Fifth Third Bank in 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.

In Introduction Part I we summarized the Scope of the Institute, introduced the Faculty for 2006, 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 with the assistance of Reporter Gene Zuspann.

2006 HECKERLING SUBSTANTIVE PROGRAM SCHEDULE AND HIGHLIGHTS:

Monday, January 9

9:00 – 12:15 P.M. OPTIONAL PRE-CONFERENCE FUNDAMENTALS PROGRAM – Anatomy of Plan Beneficiary Designations - Natalie B. Choate Now learn exactly what to do with retirement benefits in the estate plan:

Who should (and should not) be named as beneficiary, and why (or why not).

Learn how to name your chosen beneficiary: how to fill out the beneficiary designation and get it accepted by the plan, how to draft a trust that's guaranteed to pass the IRS see-through trust rules, and when to ignore those rules. Includes designation forms and interview checklist. Plus a review of 2005 developments, and a preview of 2006 (including what estate planners need to know about the NEW "Roth 401(k)s").

2:00 – 2:10 p.m. Introductory Remarks
Tina Portuondo, Institute Director

2:10 – 5:15 p.m. Recent Developments – 2005 Dennis I. Belcher, Jeffrey N. Pennell and Carol A. Harrington Materials by Richard B. Covey and Dan T. Hastings

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

Tuesday, January 10

9:00 – 9:45 a.m. - Grantors Are From Mars, Grantor Trusts Are From Venus Samuel A. Donaldson
Once the ugly duckling, the grantor trust has become the beautiful swan – a centerpiece in many contemporary estate plans. Attractive because of its simplicity and flexibility, the grantor trust often makes traditional estate planning strategies that much better, solving some of the practical barriers that limited the benefits of traditional plans. This session will address emerging issues and innovative techniques involving grantor trusts, analyzed from the perspectives of the income, gift, and estate taxes.

9:45 – 10:30 - Growls or Gratitude? Practical Guidelines for Trustee Selection and Succession
Kimbrough Street This presentation will highlight practical, non-tax issues our clients need to consider in choosing individual trustees and will emphasize the advisor's role in helping the client structure creative and flexible plans for trustee succession.

10:45 – 11:30 A.M. - Relieving Your Situs Headache: Choosing and Rechoosing the Jurisdiction for a Trust Richard W. Nenno Notwithstanding the emergence of the Uniform Trust Code, the tax and trust laws of U.S. jurisdictions are quite different, and clients can benefit from careful situs selection. This program will explore factors to consider in choosing a jurisdiction for a new trust, the advisability and practicability of moving an existing trust to a more favorable jurisdiction, and related ethical and legal issues.

11:30 a.m. – 12:25 P.M. - The Trustee's Duty to Provide Information to Beneficiaries: When Can The Settlor Say "Don't Ask, Won't Tell"?
Anne J. O'Brien

This program will focus on the settlor's ability to keep information out of the hands of beneficiaries. It will include a discussion of different state approaches to Section 105 of the Uniform Trust Code, the Duty to Inform and Report.

2:00 – 3:30 - A Wild Decade at Midlife

Ronald D. Aucutt, Carlyn S. McCaffrey, Ann B. Burns & Lloyd Leva Plaine At the halfway point between the enactment of EGTRRA in 2001 and its scheduled "sunset" in 2011, this panel will explore the resulting challenges of planning and drafting, the patchwork of state laws in various stages of "coupled-ness", and the portent of carryover basis just over the horizon, as well as any current developments in Washington that could affect any of this.

3:45 – 4:30 p.m. - Marital Planning While the Rules Are Changing Eric A. Manterfield Selecting credit shelter and marital deduction provisions is difficult when the only certainty is that the tax laws will change. This discussion will focus on marital planning under a variety of circumstances, including funding provisions, alternative marital trusts and disclaimers.

4:30 – 5:15 p.m. - We're Sorry, Our Charitable Gift Has Gone South. Please Revoke the Gift and Protect Our Tax Savings and Other Benefits Winton C. Smith, Jr.
Recent developments provide practical ways to revoke or modify gift plans and obtain a more favorable result for both the donor and the charitable organization.

Wednesday, January 11

9:00 – 9:45 a.m. - Foreign Affairs 101: Planning for U.S. Clients with Foreign Property M. Read Moore This program will address basic succession law and tax planning issues for U.S. clients with foreign property such as foreign real estate, shares in foreign corporations, foreign inheritances, and interests in foreign trusts, with a discussion of related federal income tax issues that will affect these clients while they are living and that will affect their families after their deaths.

9:45 – 10:30 a.m. - The Beauty and the Beast: Partnership Interests in Your Estate or Trust Administration Carol A. Cantrell Marrying partnership interests into an estate or trust administration can bring out the best and the worst in both. Don't get caught off guard when blending partnership and fiduciary tax law concepts by critical differences between them in timing of income, elections, special allocations, separate shares, inside/outside basis, accounting issues, equitable tax adjustments, flow-through basis adjustments, compensation, distributions and more.

10:45 a.m. – 12:15 p.m. Question & Answer Session Dennis I. Belcher, Jeffrey N. Pennell & Carol A. Harrington

2:00 – 5:15 - FUNDAMENTALS PROGRAM – Creditor Wars: Asset Protection Strikes Back – Protection from Predators and Creditors in the 21st Century Gideon Rothschild This session will examine the techniques and legal strategies used to obtain maximum wealth protection, including exemption planning, limited liability entities, discretionary trusts, domestic and offshore self-settled trusts. The program will cover the effect of the recently enacted Bankruptcy Act on self-settled trusts and exemption planning, fraudulent transfer principles and case law developments.

2:00 – 3:30 - Special Sessions I

I-A – Uncle Sam: The Silent But Ever-Present Party at the Estate and Trust Dispute Settlement Table Donald R. Tescher & Laird A. Lile Most estate and trust disputes are resolved through negotiation and mediation. Tax considerations attendant to a proposed settlement can have a significant effect on the ultimate financial outcome and can enhance the positions of the parties. Failure to consider the potential tax consequences can have disastrous consequences to the client and to the attorney. The more consequential tax issues will be examined as well as practice aides to achieve the intended tax consequences.

I-B – Transfer Tax Audit Issues: What's Hot Norman J. Benford, John W. Porter, Martin E. Basson & James L. Gulley This panel, representing the views of the practitioner and Internal Revenue Service (represented by the Estate and Gift Tax Supervisory Attorneys of South Texas and South Florida – two of the busiest jurisdictions in the country), will take a practical approach to the discussion of significant current issues in estate, gift and generation-skipping tax audits, including valuation matters (available discounts and adjustments, impact of post-death events, defined value issues and Section 7520); use of appraisers; adequate disclosure considerations; Graegin notes, unresolved claims and other deduction issues; increased use of summonses; and settlement considerations.

I-C – The 7 Habits of Highly Effective Grantor Trusts Samuel A. Donaldson & M. Read Moore This session will use case studies to present several strategic uses for grantor trusts in contemporary estate planning, with an emphasis on drafting issues and participant questions.

I-D – Ethics – What's a Lawyer to Do?

Frank A. Thomas, III

A discussion of the ethical and professionalism issues which may arise in family and intergenerational representation.

I-E – The Trustee's Duty to Provide Information to Beneficiaries: When Can the Settlor Say "Don't Ask, Won't Tell"?

Anne J. O'Brien, Gail Cohen & Dennis I. Belcher An expanded discussion of the settlor's ability to keep information out of the hands of beneficiaries. The program will include a discussion of different state approaches to Section 105 of the Uniform Trust Code, the Duty to Inform and Report.

I-F – Alternative Investments: Promise or Peril?

Susan M. Mangiero

Endowments, foundations and other tax-exempt organizations are increasingly investing in hedge funds, private equity and other alternative investments.

This program will address the risk-return trade-off of various types of alternatives, suitability for tax-exempt organizations, early warning signs and unique characteristics such as valuation, risk management and transparency.

3:45 – 5:15 p.m. - Special Sessions II

II-A – The Prophylactic Approach for Total Return Trusts: Avoiding Unwanted Litigation Margaret E. W. Sager & Paul S. Lee This program will address potential litigation hot points under the new total return options, and how to avoid them in advance, considering “real world” situations and recent developments.

II-B – Transfer Tax Audit Issues: What's Hot (Repeat of Session I-B)

II-C – More Marital Planning

Eric A. Manterfield

This workshop will explore a number of fact situations and will present alternative solutions to commonly encountered problems.

II-D – Charitable Giving Exit Strategies Jerry J. McCoy & Winton C. Smith, Jr.

Case studies illustrate a variety of charitable gift plans and the exit strategy that is appropriate for each type of gift.

II-E – How to Keep From Throwing Uncle Joe (and His Successors) to the Dogs Kimbrough Street

This session will explore how to educate the client as to the challenges trustees face, and will elaborate on planning for trustee succession in both short-term and long-term trusts.

II-F – Reinventing Yourself After Estate Tax Repeal or Higher Exemptions:

Using Estate Planning Techniques for Income Tax Planning Jerome M. Hesch & Neill G. McBryde

If there is no tax-free basis step-up at death, the elimination of taxable gains upon death can no longer be relied upon as an income tax solution.

Preservation of capital gains, exclusions from gross income and deferral of income will become more important. This session will examine how to use common estate planning techniques to accomplish these income tax planning objectives. Even under an estate tax with higher exemptions, these techniques can still be useful.

Thursday, January 12

9:00 – 9:45 a.m. - Prefer to Defer? 409A May Make You Pay!

Donald O. Jansen

Transition is over! 409A is in full effect! This is the most significant change in taxation of non-qualified deferred compensation in over thirty-five years. This presentation will review the statute and IRS guidance concerning the new constructive receipt and funding rules, the definition of deferred compensation and grandfathered plans.

9:45 – 10:30 a.m. - They Lived Happily Ever After and Other Family Business Fairy Tales: Non-Tax Issues That Can Paralyze Succession and Estate Planning Mike Cohn This session will walk through the issues large family business clients face during succession and estate planning and explore why they often get stuck in the planning process. Non-tax issues that cause procrastination also create opportunities for the estate planner who wants to provide intergenerational solutions for clients.

10:45 a.m. - 11:30 a.m. - Business Succession Planning: The Charitable Options Daniel L. Daniels & David T. Leibell A discussion of the role of charitable planning in a comprehensive business succession plan, including split-interest charitable trusts, private foundations, supporting organizations and other alternatives. The program will compare charitable and non-charitable options for succession planning, discuss how to integrate charitable vehicles into the plan, explore income and transfer tax opportunities and problems, and cover planning for the private foundation excise taxes and the unrelated business income tax.

11:30 a.m. – 12:15 p.m. - Life Insurance Due Diligence or Everything You've Always Wanted to Know About Life Insurance but Were Afraid To Ask Jon J. Gallo A look "under the hood" at common life insurance products. The program will provide an overview of term, whole life, blended, universal and variable products, as well as an introduction to understanding life insurance illustrations and useful insurance industry sources of information.

2:00 – 5:15 p.m. - FUNDAMENTALS PROGRAM –Elder Law: “Be Comfort to My Age!”

Lawrence A. Frolik

Elder law answers Shakespeare’s request as it brings comfort to those of great age. An integral aspect of later life planning, elder law attempts to answer the essential needs of older clients. This session will delve into just what is “Elder Law”. We’ll examine its key aspects including planning for mental incapacity, planning for appropriate housing, advance health care directives, dealing with dying, paying for long-term care including planning for Medicaid eligibility, and a quick overview of Medicare.

2:00 – 3:30 p.m. - Special Sessions III

III-A – Trust Law and Order: A Mock Trial Demonstration Ripped From the Headlines Terrence M. Franklin, Bruce S. Ross, Dominic J. Campisi, Robert N. Sacks & Steven K. Mignogna Experienced trust and estate litigators will present a mock trial demonstration highlighting tips, strategies and suggestions for developing and offering evidence, and for making arguments in scenarios based on

actual contested trust and estate trials. The program will also assist estate planners in anticipating litigation issues and testifying when called as witnesses.

III-B – The Nuts and Bolts of Changing the Situs of a Trust Richard W. Nenno, Joshua S. Rubenstein, Carol A. Johnston & W. Donald Sparks, II Determining that a trust should be moved to another jurisdiction is only the beginning. This session will explore the procedural and practical considerations that must be addressed in connection with moving a trust.

III-C – Case Studies in Succession Planning: Addressing Generation-Specific Issues with Family Business Clients Mike Cohn As family business clients grow, the next generation can become smart owners without personal careers in the family business. An investor-model of ownership, emphasizing family governance, can help the estate planner integrate non-tax issues with multigenerational planning.

III-D – How Does 409A Work?

Donald O. Jansen

Examples will be discussed concerning equity deferred compensation (stock options, SARs, restricted stock and phantom stock), the new deferral rules and permissible distribution events.

III-E – The Gathering Storm – Circular 230: What Does It Mean and What Do We Do?

Charles A. Redd

What is the difference between a plan having as its "principal purpose", as compared to "a significant purpose", the avoidance or evasion of federal tax? What constitutes "advice"? Should every item of paper and electronic mail generated by a law or accounting firm contain a statement that it cannot be used to avoid tax penalties? These and similar questions will be explored.

III-F– Evaluating Insurance Products

Jon J. Gallo & Lawrence Brody

An examination of the use of life insurance in estate and business planning.

3:45 – 5:15 p.m. - Special Sessions IV

IV-A – Trust Law and Order: A Mock Trial Demonstration Ripped From the Headlines (continued)

IV-B – Avoiding “Oops” With Partnerships in Your Estate or Trust Administration Carol A. Cantrell Blending partnership tax law with fiduciary concepts can spell disaster for the uninitiated. This workshop presents examples of what not to do and also how to maximize the efficiency of both during your estate or trust administration.

IV-C – Ich Glueckspilz...! What To Do When Your Clients Inherit Foreign Property or Become Beneficiaries of Foreign Trusts M. Read Moore & Samuel A. Donaldson U.S. citizen and resident clients who inherit foreign property and who are beneficiaries of foreign trusts will all have one thing in common: U.S.

federal income tax issues. This workshop will address important substantive U.S. federal income tax rules and reporting requirements that affect these clients.

IV-D – More on the Charitable Options in Business Succession Planning Daniel L. Daniels & David T. Leibell This session will provide more detail on the use of charitable strategies in business succession planning.

IV-E – Coke without Sugar; Coffee without Caffeine; Estate Planning without Taxes: We Do Live in Interesting Times!

Mark B. Edwards

Estate planning in a tax-free environment will return to its roots: wills, trusts, powers of attorney and targeted gifts. We will look at planning in this context and at the issues of the older client with potentially diminished capacity.

IV-F – We Interrupt This Program to Bring You a Special Announcement: The CEO is Now Reporting to You Robert S. Stolar A quantitative look at the peculiar problems that affect a corporate executive’s estate and financial planning. Included in the discussion will be a review of low basis stock diversification strategies for the corporate insider and SEC issues affecting 16 (b) officers and directors. Also, planning around non-qualified and incentive stock options will be thoroughly reviewed. In addition, various charitable giving alternatives will be discussed.

Friday, January 13

9:00 – 9:45 a.m. - Interests in Trusts in Divorce: What the Settlor Giveth the Divorce Court May Taketh Away Marc A. Chorney Many divorce courts have expanded the pool of divisible assets in property divisions to include beneficiaries’ interests in trusts. Various state court decisions, valuation of interests and drafting issues will be considered.

9:45 – 10:30 a.m. - Circular 230: A Nine-Hundred Pound Gorilla Roy M. Adams Revised Circular 230, even after the last minute IRS “clarifications”, imposes onerous new standards for the giving of written tax advice. Some believe a “common sense” interpretation will prevail. Are you prepared to bet your right to practice before the IRS on that? Could a Circular 230 transgression constitute a violation of state ethics rules?

10:45 a.m. – 12:00 noon - Wrapping It Up 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:

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