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Memories of This Octogenarian, John Phelps, Ruth Phelps, Ruth M. Phelps, 0966716612, 9780966716610, . .

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The article covers the provisions of the American Taxpayer Relief Act of 2012 that impact estate planning. Portability of the unused exemption of the first spouse to die is explained. The article then discusses planning in light of the increased gift, estate, and generation-skipping transfer tax exemptions that are now permanent. Next, the article describes the Obama Administration proposals for fiscal year 2014 that affect estate planning. Finally, it points out the nontax services that estate planning attorneys perform for their clients that are not affected by the increased exemptions.

The United States Supreme Court's decision in *United States v. Windsor* has many implications for trusts and estates practitioners and their clients. This article summarizes the court's decision, and examines the primary effects that *Windsor* will have on estate planning and administration for same-sex couples.

Portability of estate tax exemption between married couples, which was recently made permanent, provides an additional planning option and greater flexibility when creating an estate plan, but gives rise to many pitfalls and new complexities. This article reviews the basics of portability and examines methods estate planners may use to provide for the appropriate use of portability in an estate plan.

Understanding the relevant federal court decisions is essential for practitioners using formula clauses for lifetime transfers. This article reviews relevant formula clause decisions including *Wandry*, and then addresses the use of formula clauses in practice providing guidance to practitioners in this developing area.

In administering the estate of a decedent, be mindful of any policy of insurance on the decedent's life if that policy is required to be maintained by the decedent in connection with the decedent's divorce. This article discusses whether the proceeds of that policy are includible in the decedent's gross estate for federal estate tax purposes and, if so, whether an offsetting deduction may be available.

The recognition for the first time in California of the tort of intentional interference with inheritance is likely just the beginning of judicial opinions defining the scope and breadth of this cause of action. In this second article of a two-part series, the author explains how other state courts have dealt with certain of the elements of this tort.

With the exploding popularity of social media websites, it has become challenging to apply old ethics

to the issues arising from these new media. For example, may an attorney send or direct someone else to send a "friend" request to a represented party to an action, or to an unrepresented party to that action? And, may an attorney approve a connection request from an existing client, or to a potential client?

The intersection of generation skipping trusts and California property tax rules often presents challenges for estate planning practitioners. This article surveys the landscape of property tax rules, regulations and annotations to explain the property tax consequences that attend the funding of California real property into, the administration of such property within, and the distribution of California real property out of GST trusts.

In *Estate of Giralдин*, the California Supreme Court held that remainder beneficiaries have standing, after a settlor dies, to claim a violation of a non-settlor trustee's fiduciary duty to the settlor to the extent that the violation harmed the remainder beneficiaries' interests. The Court reasoned that a trustee's breach of fiduciary duty owed to the settlor can substantially harm the remainder beneficiaries by reducing the trust's value against the settlor's wishes. In this article, the authors analyze the impact of *Estate of Giralдин* and examine its potential shortcomings.

In the first of a two-part series, the author discusses California's newly recognized tort of intentional interference with inheritance. In this first part, the author discusses the development of the tort in California, its recognition in California by *Beckwith v. Dahl* and application of the tort in a famous case involving an octogenarian oil tycoon and his much younger, Hollywood starlet wife.

The Capacity Declaration -- Conservatorship (Judicial Council Form GC-335) calls for a statement about capacity when the conservatee has dementia. This article analyzes why physicians may be unwilling to make the categorical statements regarding such a declaration and offers possible solutions to this practical dilemma.

Asset protection planning runs through estate planning, estate tax planning and income tax planning. For some attorneys, it is their entire practice. For others, it should not be overlooked both in counseling clients and in protecting themselves. This article analyzes important asset protection techniques that should be considered in estate planning.

In 1995, a year after the National Conference of Commissioners on Uniform State Laws promulgated the Uniform Prudent Investor Act (1994), the California legislature enacted the Uniform Prudent Investor Act with several modifications. This article examines those modifications, places them in historical context, and opines as to whether these modifications should be replaced with the provisions of the Uniform Act. This article also examines other modifications made by other states to determine whether they should be adopted in California.

The *Dacey* case is only the latest attempt to address the reach of the one-year statute of limitations for actions against a decedent. It demonstrates that there is still much uncertainty about what claims are subject to that limit and how the statute of limitations interacts with the creditors' claim process and its separate time limits.

One of the 2011 laws that most directly affects estate planning attorneys concerns statutory form powers of attorney. Prior law did not expressly require these form documents to set forth expressly in the power of attorney the agent's power to make gifts, change beneficiaries, or take other actions to dispose of the principal's assets during life or at death. This article explains these and other changes to the power of attorney law that provide greater protection to the users of the statutory form.

The author discusses the fact that the Professional Fiduciaries Act does not provide for licensure of any professional fiduciary business entity such as a professional corporation or limited liability partnership. As a result, professional fiduciaries may not be able to validly operate through a business entity of this type or achieve the limited liability that is available to other professionals.

The economic substance doctrine has long been applied to estate and gift tax planning. However, the recent codification of that doctrine, and the increased penalties that now apply when it is violated, bring new urgency to understanding the doctrine and the ways in which it might be asserted against common estate planning techniques. The author discusses the general development of the economic substance doctrine and examines its possible application in the estate planning context.

The Andersen case addressed the important issue of the testamentary capacity that is required for a trust, rather than a will. Unfortunately, it may have raised more questions than it answered. This article examines the Andersen case in detail and discusses its implications for trusts, trust amendments and other testamentary instruments.

Estate planners often must informally assess a client's competency to understand and adopt a particular plan, but most are not trained to do so. Dr. Stein's article provides concrete suggestions for spotting behaviors or attitudes that may raise questions about a client's capacity, and advice about how to react to warning signs of incapacity.

The (perhaps temporary) increase of the gift tax exemption to \$5,000,000 and the current low interest rates used by the IRS to value certain transfers create some unique opportunities for clients to transfer wealth to beneficiaries. This article discusses three techniques — a spousal lifetime access trust, a sale to an intentionally defective grantor trust, and a charitable lead trust — that are particularly useful in today's environment.

Due to changes to the federal estate tax rules, estate planners today face a set of additional considerations regarding whether a bypass trust is necessary for a couple uncertain to face estate taxes at the surviving spouse's death. The use of a formula general power of appointment may permit a couple to maximize their tax benefits by ensuring the lowest estate tax possible and maximizing the use of the step-up in income tax basis at death.

The authors demonstrate the proposition that basing the valuation of pass-through entities on investors' real world focus on after-tax returns will yield more accurate valuations of S corporations and other pass-through businesses that do not pay tax at the entity level than the current methods that are used by the Tax Court and appraisers.

Probate Code section 19000 et seq. contains an optional creditors claim procedure that can be used by the trustee of a decedent's revocable living trust during the post-death trust administration. However this process has many dangers and limited benefit, so the choice whether to use the formal claims procedure must be considered carefully. This article provides a guide to the trust claims procedure and its benefits and downsides.

IRC section 2519 imposes gift tax when any part of the income interest in a QTIP trust is transferred. The statute can have unintended and punitive consequences. The authors propose amendments to allow severance of a QTIP trust and to provide a good faith appraisal defense, to relieve the harsh operation of this rule.

Internal Revenue Code section 645 provides an election for a revocable trust to be treated as part of the decedent's probate estate for income tax purposes. This article analyzes the technical and procedural aspects of the election and provides an overview of its implications from a practical standpoint.

A recent decision by the California Court of Appeal confines standing in elder-abuse actions to plaintiffs who have a financial stake in the outcome of the litigation. This article discusses how the holding in that case frustrates the legislative goal of preventing elder abusers from profiting through their misconduct.

The court of appeal in *Das v. Bank of America, N.A.* ruled on whether the mandated elder abuse

reporting duty for financial institutions opened the door to private civil actions. The answer is a clear “no,” leaving injured seniors with no damages remedy for this failure to carry out a statutory duty.

Exclusions to the property tax change in ownership rules allow property to pass down generations and between individuals and legal entities without reassessment – if the rules are observed. This article reviews the change in ownership rules for legal entities and sets out some strategies for using those rules to avoid unnecessary and potentially costly easements of real property.

Who is a care custodian? Who is a dependent adult? Who can draft a certificate of independent review? When should an attorney decline to draft a certificate of independent review? This article explains the new law governing gifts to care custodians and the ethical issues that arise when preparing a certificate of independent review.

In the past decade, states including California have adopted unitrust and power to adjust legislation which has greatly enhanced the administration of trusts by permitting the separation of investment decisions from distribution decisions, thereby facilitating investments for total return. This article examines California's ordering provisions and analyzes the extent to which they are likely to be respected for Federal tax purposes.

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