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**ESTATE AND GIFT TAX**
**FALL 2023**
**BOGDANSKI**

**FINAL EXAMINATION**
**(Three hours)**

INSTRUCTIONS

This examination consists of three essay questions, each of which will be given equal weight in determining grades. Three hours will be permitted for this examination. At the end of the three hours, you must turn in this set of questions in the original envelope in which this set came. If you are using a computer, you must submit your answers using Examplify. If you are writing answers by hand, you must write them in the authorized exam booklet(s) you have been provided, and return the booklet(s), along with this set of questions, in the envelope.

No credit will be given for anything written on this set of questions. Only your electronic answer file or your exam booklet(s) will be graded.

Use of any electronic device during this exam, other than a device on which you are taking the exam using Examplify, is strictly prohibited. If you need it, the calculator function in Examplify is activated.

Pay close attention to the final portion, or "call," of each question. Failure to respond to the matters called for will result in a low score for the question. On the other hand, discussion of matters outside the scope of the call of the question will not receive credit.

Be sure to explain as thoroughly as possible your answers to the questions posed. Your reasoning, discussion, and analysis are often as important as any particular conclusion you reach.

The suggested time limit for each question is one hour. Experience has shown that failure to budget one's time according to this limit can result in a drastic lowering of one's overall grade on this examination.

Unless otherwise specified, assume that all transactions and events described in the questions take place after 2017 and before 2026; and that all persons named in the questions are individuals, U.S. citizens, and U.S. residents. Any references to "the Code" mean the Internal Revenue Code of 1986, as amended.

## QUESTION ONE
## (One hour)

Hu, a divorced individual, creates an irrevocable trust and transfers to it $5,000,000 cash. The trustee is Hu's sister Sissy. The trust instrument directs Sissy to invest the funds in income-producing real estate, and Sissy does so. The trust instrument further provides that all of the income of the trust is to be distributed annually to Hu's son, Chet, for the rest of Chet's life. If Hu survives Chet, then upon Chet's death the corpus is to be returned to Hu. If Chet survives Hu, then at Chet's death the corpus is to be distributed to Chet's daughter, Greta, or if Greta is not then living, to Greta's estate.

The trust instrument gives Sissy the power, in Sissy's sole discretion, to invade the corpus of the trust and distribute all or any part of it to Greta for Greta's "comfort and happiness." The trust instrument also gives Sissy the power, so long as Sissy is the trustee, to invade the corpus of the trust and distribute all or any part of it to Sissy herself for her own "comfort and happiness"; however, in order to make distributions to herself, Sissy must obtain the consent of Chet.

Two years after the trust is established, Sissy exercises one of her invasion powers and distributes $200,000 of corpus to Greta for Greta's use as a down payment in purchasing a home.

Shortly thereafter, Sissy asks Chet for permission to distribute $50,000 from the trust to Sissy so that Sissy can buy a new automobile. Chet refuses to give consent, at which point Sissy resigns as trustee and releases all powers she has under the trust instrument. Under the trust's terms, Hu can name anyone, but not himself, to be the successor trustee, filling the vacancy created by Sissy's resignation. Hu appoints his lawyer, Flo, to assume the trustee's duties.

Four years after the trust is established, Hu dies, survived by Chet and Greta. At the time of Hu's death, the corpus of the trust has a fair market value of $6,300,000. Hu leaves his probate estate to Chet and Greta.

One of the claims against Hu's estate is an obligation to Hu's ex-spouse, Willa. As required by an agreement entered into by Hu and Willa shortly before their divorce became final, Hu's executor transfers to Willa a vacation home that was Hu's separate property. The fair market value of the vacation home when Hu dies, and when it is transferred to Willa, is $800,000. At the time of the divorce, the home was worth only $450,000. Under the agreement, Willa was not required to transfer any property or pay any money to Hu.

Assuming that Hu and Sissy have previously used up their entire respective unified credits for federal gift tax purposes outside of the transactions and events discussed in this question, what are the federal gift, estate, and GST tax consequences to Hu, Hu's estate, Sissy, and Greta of each of the transactions and events just discussed, with and without all available tax elections? Be sure to discuss the amount and timing of each item.

Discuss.

**(End of Question 1)**

## QUESTION TWO
## (One hour)

Maya and Ned are married to each other. Maya is the chief executive of a large international corporation, Hugeco. Ned is a homemaker, performing valuable domestic services and mentoring the couple's only child, a medical school student named Owen. Maya and Ned have lived throughout their marriage in a separate property state. Most of the couple's wealth is in Maya's name.

In 2023, Maya establishes a joint investment account for Maya and Owen. The account is at a well-known financial institution. Under the terms of the account, either Maya or Owen can withdraw funds from it at any time. Maya deposits $50,000 cash into the account. Over the course of a few months in 2023 and 2024, Owen withdraws $20,000 cash from the account. Maya makes no withdrawals.

That same year, Maya establishes an irrevocable trust, the Charity Trust, for two beneficiaries: a nonprofit university named Uni, and Owen. Maya transfers Hugeco stock worth $10,000,000 to the Charity Trust. Under the terms of the Charity Trust, Uni receives any and all the income from the trust each quarter for a 20-year period; at the end of the 20-year period, the trust is to terminate and the corpus is to be distributed to Owen, or if Owen is not then living, to Owen's estate. The Hugeco stock pays ample dividends, which are distributed to Uni each quarter. The trustee of the Charity Trust is required by the trust instrument to keep the corpus invested in income-producing property.

Hugeco sponsors an employee death benefit program. As part of this program, Maya's employment contract states that in consideration of Maya's performing services, Hugeco will pay, in addition to Maya's salary, a lump-sum death benefit of a stated amount to Maya's survivors if Maya is employed by Hugeco when Maya dies. Under the terms of the program, the employee can designate the beneficiaries of the death benefit during the course of employment with Hugeco. Absent such a designation, in the case of a married employee with children, the program provides that the death benefit is payable one-half to the employee's surviving spouse and the other half to (or in trust for) the employee's surviving children. Maya makes no designation otherwise.

In 2025, Maya dies unexpectedly, survived by Ned and Owen. Hugeco pays the death benefit in cash, one half to Ned and one half to Owen. The investment account, with a value of $38,000 at the time of Maya's death, automatically becomes Owen's sole property by operation of state law.

Maya's will establishes another trust, the Marital Trust, for the benefit of Ned and Owen. The trust is funded with a $2,000,000 cash bequest. The trust instrument of the Marital Trust provides that all of the income from the trust is to be paid annually to Ned for the rest of Ned's life; on Ned's death, the trust is to terminate and the corpus is to be distributed to Owen, or if Owen is not then living, to Owen's estate. The trustee of the Marital Trust has unlimited discretion to invade corpus for distribution to Ned "if the need arises." Ned dies 15 years later, having received all the income from the Marital Trust but no distributions of corpus. When Ned dies, the Marital Trust terminates and the corpus, worth $2,800,000, is distributed to Owen, who survives Ned.

What are the federal gift, estate, and GST tax consequences to Maya, Maya's estate, Ned, and Ned's estate of each of the transactions and events just discussed, with and without all available tax elections? Be sure to discuss the amount and timing of each item.

Explain.

**(End of Question 2)**

**QUESTION THREE**
**(One hour)**

Gary, a wealthy unmarried individual, has used up all his unified credit for federal gift tax purposes in past years. Gary establishes an irrevocable trust, transferring to it a portfolio of marketable securities with a fair market value of $2,000,000. The terms of the trust require the trustee to make annual payments of $50,000 to Gary for the rest of Gary's life or for 10 years, whichever period is shorter. Upon Gary's death or the end of the 10-year period, whichever occurs first, the trust is to terminate, and the corpus is to be distributed to Gary's daughter, Val, or if Val is not then living, to Val's estate.

Around the same time as the trust's being set up, Gary purchases Wineacre, a parcel of agricultural real estate, to hold for investment. Gary pays $5,000,000 cash for the property. At Gary's instruction, the seller conveys title to Gary and Val as one-half joint tenants with right of survivorship.

Five years after establishing the trust, Gary dies, survived by Val. The trustee distributes the corpus of the trust, with a fair market value when Gary dies of $2,400,000, to Val. At the time of Gary's death, Wineacre, which automatically becomes Val's wholly owned property, has a fair market value of $6,000,000.

At the time of Gary's death, Gary is embroiled in bitter litigation with a neighbor, Cheryl. Gary alleges that Cheryl's negligence caused damage to Gary's home and vintage car collection; Cheryl in turn accuses Gary of trespass and intentional infliction of emotional distress in a related incident. Both sides are seeking substantial amounts of damages from each other. When Gary dies, it is uncertain how the lawsuit will be resolved; both sides' allegations have some merit.

Two years later, the litigation is concluded with Gary's estate paying Cheryl $40,000 cash to settle the case; with that payment, all claims on both sides are dropped, and the administration of Gary's estate winds up. As one of its last acts, Gary's estate pays its litigation attorney her customary fee.

What are the federal gift, estate, and GST tax consequences to Gary and Gary's estate of each of the transactions and events just discussed, with and without all available tax elections? Be sure to discuss the amount and timing of each item.

Discuss.

**(End of examination)**