

Question 1

When Hu establishes the trust, the transfer is a completed gift of \$5,000,000. The property has been placed beyond the dominion and control of Hu. Sissy's power to invade the corpus is not attributed to Hu, because Hu does not have the power to substitute himself as trustee. No amount may be subtracted from the value of the gift for Hu's contingent reversion because it is not a qualified interest under section 2702 of the Code.

The gift of Greta's contingent remainder interest is not eligible for the annual exclusion because it is a future interest. IRC § 2503(b)(1). The gift of Chet's interest is also ineligible for the annual exclusion because Sissy has the unlimited power to invade the corpus for Greta and thus defeat Chet's right to receive present income. Reg. §§ 25.2503-3(b), 25.2503-3(c) Ex. 4.

When Sissy transfers the \$200,000 of corpus to Greta, the transfer is a taxable distribution for GST tax purposes. IRC § 2612(b). Greta is a skip person as to Hu. IRC § 2613(a)(1). Assuming that no GST exemption is allocated to the trust, the GST tax is the liability of Greta. IRC § 2603(a)(1).

Sissy's power to distribute corpus to Greta is not a general power of appointment. Nor is Sissy's power to distribute corpus to herself because it requires consent of an adverse party. IRC § 2514(c). Therefore, the exercise and release of Sissy's powers do not have wealth transfer tax consequences for Sissy.

When Hu dies, the transfers of assets to Greta constitute direct skips. If no GST exemption is available to be allocated to these transfers, GST tax is imposed on transfers at their date-of-death values, and the tax is the liability of Hu's estate. IRC § 2613(a)(3).

When Hu dies, section 2037 requires inclusion of Greta's remainder in the gross estate. The remainder is valued by multiplying the value of the trust corpus at the time of Hu's death, \$6,300,000, by an actuarial factor derived from tables promulgated by the IRS. The factor would be for a remainder after an individual of Chet's age at the time Hu dies. In computing the estate tax, the estate will, in effect, get credit for the gift tax paid on the remainder when the trust was established.

The claim against the estate by Willa is deductible under section 2053(c)(1)(A). The vacation home is included in the gross estate, and the deduction is calculated, at \$800,000, the value of the vacation home on the date of Hu's death. Although Willa paid nothing to Hu as consideration for her rights under the agreement, the agreement is covered by section 2516; as a result, the requirement of full and adequate consideration under section 2053(c)(1)(A) is considered satisfied. IRC § 2043(b)(2).

No gift occurred when the agreement with Willa was entered into, under section 2516.

Question 2

The setup of the joint investment account is an incomplete gift because Maya retains the right to withdraw funds at any time. When Owen withdraws funds from the account, the withdrawals constitute completed gifts by Maya to Owen. These gifts of cash are eligible for the annual exclusion.

When Maya dies, the balance in the account, \$38,000, is included in Maya's gross estate under section 2040 of the Code.

The setup of the Charitable Trust is a taxable gift of \$10,000,000. No portion of the gift is deductible under section 2522 because the trust is not an annuity trust or a unitrust. IRC § 2522(c)(2). The gift to Uni is eligible for the annual exclusion; the gift of Owen's remainder is not.

The employee death benefit is likely to be included in Maya's gross estate under section 2038. The IRS takes the position that Maya's performing services constitutes a transfer of "property" rendering section 2038 applicable, as Maya has the power to "alter, amend, or revoke" the benefits of the Hugeco program. The amount included in the gross estate is the lump sum payable to Ned and Owen. The marital deduction is available for the value of the half of the benefit that is paid to Ned.

The \$2,000,000 cash transferred to the Marital Trust is included in Maya's gross estate. Ned's interest is not eligible for a deduction under section 2056 unless a "QTIP" election is made, because the interest is a terminable interest. IRC § 2056(b)(1). The trust is eligible for the election because Ned is entitled to all of the income of the trust, payable no less frequently than annually. The fact that the trustee may make distributions of corpus to Ned does not disqualify the trust from the election. IRC § 2056(b)(7)(B)(ii); Reg. § 20.2056(b)-7(d)(6). If the election is made, the entire \$2,000,000 is deductible for estate tax purposes by Maya's estate.

If the election is made, then when Ned dies, the \$2,800,000 value of the corpus at the time of Ned's death is included in Ned's gross estate under section 2044. If the election is not made, nothing is included in Ned's gross estate when Ned dies. See IRC § 2033.

Question 3

When Gary establishes the trust, he makes a completed gift of the remainder to Val. The gift is valued by taking the \$2,000,000 value of the corpus and subtracting the value of Gary's retained interest. Because the retained interest is a qualified interest under section 2702(b)(1) of the Code, it is valued using the actuarial tables promulgated by the IRS under section 7520. The amount to be subtracted is the present value of a \$50,000 annual payment over the lesser of 10 years or the life of an individual who is Gary's age at the time the trust is established. No annual exclusion is available for the gift of Val's future interest.

The purchase of Wineacre as a joint tenancy is a gift to Val of Val's interest as co-tenant. The gift is \$2,500,000, with no discounts available for shared control. An annual exclusion is available for the gift of Val's co-tenancy interest.

When Gary dies, an amount is includible in his gross estate with respect to the trust. The amount included is the lesser of the \$2,400,000 fair market value of the trust corpus or the right to receive \$50,000 a year indefinitely, using the section 7520 interest rate in effect when Gary dies. In computing the estate tax, the estate will, in effect, get credit for the gift tax paid on the estate-tax-included amount when the trust was established.

When Gary dies, the entire value of Wineacre, \$6,000,000, is includible in Gary's gross estate. IRC § 2040(a). In computing the estate tax, the estate will, in effect, get credit for the gift tax paid on the \$2,500,000 gift of Val's interest when Wineacre was purchased.

Gary's claim against Cheryl is included in Gary's gross estate at its fair market value on the date of Gary's death. IRC § 2033. Under the default rules established by the regulations under section 2053, Gary's estate cannot deduct any amount with respect to Cheryl's claim until it actually pays the claim, at which time \$40,000 is deductible. Reg. § 20.2053-4(a)(1). In this case, the deduction would be taken on an amended estate tax return.

However, the estate may choose to deduct Cheryl's claim at the time of Gary's death because it is a counterclaim against a related claim included in the gross estate. Reg. § 20.2053-4(b)(1). If this option is chosen, the amount of the deduction is based on the value of Cheryl's claim at the time of Gary's death. To claim the immediate deduction, the estate must obtain a qualified appraisal of Cheryl's claim.

The attorney's fee is deductible by the estate as an administration expense under section 2053(a)(2). Reg. § 20.2053-3(c)(1).