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**Contemporary Estate Planning: Text and Problems. By John R. Price. Boston: Little, Brown and Company. 1983 Pp. vii, 622. \$25.00**

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## BOOK REVIEW

**CONTEMPORARY ESTATE PLANNING: TEXT AND PROBLEMS.** By John R. Price.<sup>1</sup> Boston: Little, Brown and Company. 1983. Pp.vii, 622. \$25.00.

Reviewed by Michael Braunstein<sup>2</sup>

One of the problems in teaching a course in estate planning is the apparent willingness of our lawmakers to change the gift and estate tax law at the drop of every political hat. The shifts in policy reflected by their changes can be dramatic. Thus, while candidate McGovern was unsuccessful in persuading Congress to significantly increase estate taxes in all estates above \$150,000,<sup>3</sup> President Reagan, just ten years later was able to persuade Congress to exempt from taxation all estates less than \$600,000.<sup>4</sup> Without speculating on the motivation, whether politics or conviction, the gift and estate tax law seems to be in for revision every few years,<sup>5</sup> with the result that it is uncommonly difficult to find a current text in this field. For this reason it was a real treat to discover Dean John Price's new work in this area, *Contemporary Estate Planning: Text and Problems*. And, indeed, *Contemporary Estate Planning* is as contemporary as can be hoped for under the circumstances: in particular, it thoroughly covers the Economic Recovery Tax Act and its contribution to estate planning.<sup>6</sup>

*Contemporary Estate Planning* is much more than just up to date. Its handling of the substance of the relevant tax laws is masterful. Chapter two of the text is a summary of gift and estate tax law. I do not assign the chapter because all of the students in my estate planning course have already had the prerequisite three hour course in gift and estate tax. Price's summary of the tax law in this chapter, however, is so excellent and complete as to make it practicable to teach estate planning to students who have not taken the course in gift and

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2. Associate Professor of Law, University of Wyoming.

3. CHRIST. SCI. MON. 22 (Apr. 15, 1981); Cobbs, *Egalitarianism: Mechanisms For Redistributing Income*, BUS. WK. 86, 90 (Dec. 8, 1975).

4. The Economic Recovery Tax Act of 1981, Pub L. No. 97-34, 95 Stat. 183 (codified as amended in scattered sections of 26 U.S.C.).

5. See, e.g., The Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. No. 97-248, 96 Stat. 574; The Economic Recovery Tax Act of 1981, Pub. L. No. 97-34, 95 Stat. 183; The Tax Reform Act of 1976, Pub. L. No. 94-455, 90 Stat. 1520 (each act codified as amended in scattered sections of 26 U.S.C.).

6. Pub. L. No. 97-248, 96 Stat. 574 (codified in scattered sections of 26 U.S.C.). Dean Price's text, however, does not (even though the copyright date of the text is 1983) cover the Tax Equity and Fiscal Responsibility Act of 1982 and its implications for this subject area.

estate tax.<sup>7</sup> Not only is this introductory chapter on the gift and estate tax well done, but the analysis throughout the text of the gift, estate, and income tax consequences of particular transactions, as well as variations caused by restructuring of those transactions, is excellent.

In addition, the textual materials are well sprinkled with thoughtful and thought-provoking problems. Many of these problems are useful not just for discussing substantive law but also in sensitizing students to the ethical, interpersonal, and other problems faced by the estate planner. For example, in the section devoted to interest-free demand loans, Dean Price postulates a typical scenario involving such a transaction and then asks the student to calculate the gift, estate, and income tax consequences based on best case and worst case assumptions. Finally, the problem asks, "Will W [the hypothetical lender/donor] have suffered any tax disadvantages if the worst case occurs?"<sup>8</sup>

The value of this problem lies not only in what it teaches the student about the substantive law of interest-free demand loans, but also in what it teaches the student about the meaning and proper uses of "aggressive" tax planning. I believe that some students, and lawyers as well, tend to confuse aggressive tax planning with reckless tax planning. Since the worst case for the interest-free demand loan involves, in all probability, no significant tax disadvantages, the problem invites a discussion of when leading a client to walk near the brink might be appropriate, and when, and in what circumstances, it is inappropriate and/or unethical.

Unfortunately, what is best about *Contemporary Estate Planning*, its handling of the tax laws, is also what is worst: simply too much time and space is devoted to the taxation of gift and estates and not enough to planning gifts and estates.<sup>9</sup> This problem manifests itself in at least two ways. First, the

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7. I would expect that these would be students who intend to enter general practice and, while not expecting to specialize in estate planning, nevertheless desire a passing familiarity with the subject.

8. J. R. PRICE, *CONTEMPORARY ESTATE PLANNING: TEXT AND PROBLEMS* 422 (1983).

9. This opinion may be the result of the particular curriculum at The University of Wyoming College of Law. At a law school where the students have not already had a gift and estate tax course, perhaps the balance struck by Dean Price would be appropriate.

non-tax aspects of the law of estate planning, specifically the law of trusts and estates, are given very short shrift. Second, the adjectival portion of estate planning is almost completely ignored; *Contemporary Estate Planning* instructs students very well on how to decide on a plan, but gives them almost nothing to enable them to implement that plan.

The treatment of the substantive law of trusts and estates, as well as the practical ways that law can be brought to bear to accomplish the goals of an estate plan, is shallow. Even the traps are sometimes not clearly marked. For example, *Frost v. Frost*<sup>10</sup> and the whole plethora of problems centering around testamentariness and the unfunded life insurance trust are dealt with in hardly more than a sentence.<sup>11</sup>

This is not to say, however, that *Contemporary Estate Planning* does not have a very valuable practice-oriented component. The chapter on insurance, for example,<sup>12</sup> does a wonderful job of cataloguing and describing the salient terms of not just the old stand-bys, like term and split-dollar insurance, but also some of the newer entries to the market, like universal life. Any lawyer, not just the estate planner, whose practice requires that he work with representatives of the life insurance industry will certainly appreciate the clarity and completeness of this chapter. This chapter also does an excellent job of discussing the estate and income tax consequences of various policy options and dispositions.

Despite its obvious virtues, the chapter on insurance also exemplifies the second flaw of *Contemporary Estate Planning*: namely, the relative paucity of material on implementing an estate plan once a suitable one has been selected. Thus, while the chapter on Insurance is over 100 pages long, only a little over fifteen of those pages are devoted to planning with life insurance. Not a sample clause or form is included, and about all that is said concerning how one would go about establishing a life insurance trust is contained in an unsophisticated block diagram.<sup>13</sup>

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10. 88 N.E. 446 (Mass. 1909).

11. PRICE, *supra* note 8, at 388.

12. *Id.*, ch. 6, at 297-401.

13. *Id.*, Chart 6-1, at 388.

Indeed, most of *Contemporary Estate Planning* is devoted to contemporary estate taxation and not really to planning at all. The text is remarkably devoid of sample clauses and forms. In the entire text of almost 800 pages there is not one form of a trust agreement, revocable, irrevocable or otherwise. While the life insurance chapter adequately emphasizes the importance of a properly drafted assignment of policy, no sample is provided.<sup>14</sup>

Most third year students have had little or no exposure to operative legal documents. While they have seen a lot of cases and statutes, they do not know how lawyers actually get things done for clients.<sup>15</sup> Students ought to have an opportunity during their law school careers to develop the specialized analytical skills needed to draw thoughtful and incisive documents and to critically review the documents of others. Such exposure would give the student not only a concrete sense of what estate planning is all about and the context in which it occurs but also a transferable skill, applicable in any area of legal practice involving document preparation.

It is worth noting that this defect in *Contemporary Estate Planning* is one that could be easily cured with a supplement such as the one Professor Casner has published in connection with his estate planning text.<sup>16</sup> Such a supplement would be a welcome addition to Dean Price's text.

In sum, notwithstanding some flaws—flaws, by the way, the perception of which may be idiosyncratic to this writer—*Contemporary Estate Planning* is an excellent work. It can profitably be employed both in a relatively sophisticated estate planning seminar designed for third-year students with a substantial background in gift and estate tax and in a more general survey course designed for students lacking such a background. Finally, it is worth noting that in its style and organization, *Contemporary Estate Planning* is not unlike a hornbook. Consequently, this work would make a valuable addition to the libraries of most attorneys engaged in this practice.

14. The text does contain a chapter devoted to sample will clauses (*id.*, ch. 4, at 161-223) and some samples of formula marital deduction clauses. (*Id.* at 272-96). However, samples of all the major documents required to execute a typical estate plan would be desirable.

15. Of course, students who have summer clerkships will be exposed to some legal documents, but their exposure is haphazard and unsystematic, at best.

16. A. CASNER, A PROPOSED ESTATE PLAN FOR MR. AND MRS. RICHARD HARRY BLACK III (rev. Supp. 1981).