

TAKE-HOME FINAL EXAMINATION

This examination consists of three questions. Everyone must answer any two of them. Each answer counts for 50% of the grade on the examination. No question necessarily is meant to present either more or less difficulty than another.

For each question, please consider the readings and class discussion. Of course, feel welcome to look beyond them insofar as additional analysis might usefully apply. The instructor will not presume to disregard it.

There apply no limitations of space. Be thorough.

Apply the law in force as of the present date.

The examination is due in my office (or with Sharon Jacks) at 6:00 p.m. (within reason), Friday, December 13, 1991.

GOOD LUCK

I. A, B, C, and D were equivalent partners in the ABCD General Partnership, duly formed in 1988 under the laws of Ohio. The general partnership engaged in various business activities, most prominently real estate development.

On December 1, 1990, each partner, A, B, C, and D, transferred his partnership interest to a single trust, the ABCD Trust. The trust instrument named A, B, C, and D as its equivalent beneficiaries. Specifically, the trust instrument entitled A, B, C, and D to receive whatever distributions of such amounts of current or accumulated income or corpus that the trustees would in their sole and absolute discretion determine to make. Nonetheless, the trust instrument empowered the trustees to make such distributions solely for purposes of the respective beneficiaries' support, maintenance, health, reasonable support and comfort, or to maintain their accustomed standard of living provided, that any such distributions be made to each beneficiary individually, in the same composition and proportion of corpus or income, and in the same dollar amount, and for one or more of said purposes as enumerated immediately here in above.

The trust instrument further named each of A, B, C, and D as co-trustee, with any co-trustee's power of substitution upon approval of all of the other then co-trustees. Lastly, it provided that the trust would run until December 1, 2026, whereupon it would dissolve and terminate and its corpus would revert or otherwise devolve upon the settlers estates in equivalent shares.

A, B, C, and D did not contemplate setting up any spendthrift trust. (The reader may assume that the trust would not have worked to that end under Ohio law.)

A, B, C, and D, in their capacities as co-trustees, ended up making no distributions of any trust income or corpus, at all. Instead, in a meeting this morning, December 4, 1991, they lent the trust's

entire income, for its first full year of operations (Dec. 1, 1990-Dec. 1, 1991), to their own respective business interests. They lent half of the trust's income for this period to the ABCD General Partnership. They lent the other half of the trust's income for this period to the ABCD Corporation, a business corporation duly organized under the laws of Ohio in which A, B, C, and D each hold one-fourth of the shares.

What will all of this mean (for purposes of matters pertinent to the course)? And perhaps I have left something out. Would any further facts be well to know? The writer suggested to A, B, C, and D that their actions may have raised certain difficult theoretical tax consequences (so they have retained a good accountant). Ought they to do anything else in particular (and, maybe, when ought they to do it)?

Please discuss in full.

II. Professor Dobris concluded his article in 65 Iowa L. Rev. (1979), excerpted at such length in Pennell at 129-40, by stating, "Equity requires equality." (He also suggested an equivalency of Classicism and the Baroque--this, in what has become the bicentenary of Mozart's death. Anyway....)

Please discuss this, and the rest of what Dobris has to say, in a critical vein. If one agrees with Dobris throughout, say so (and add any reasons of one's own). If not, tell why not.

III. H and W owned the following properties:

Property	Adjusted Basis	Fair Market Value
1. Rental Real Estate	\$400,000	\$600,000
2. Municipal Bonds	90,000	100,000
3. IBM Corp. Common Stock, 1500 shs (all bought 1-2-89)	250,000	175,000

On December 1, 1990, H and W transferred these properties into trust, for benefit of their adult daughter D, and D's two minor children G-1 and G-2. The trust was duly formed under the laws of Ohio (wherein one may assume to apply the Revised Uniform Principal and Income Act (1962)). (H and W have satisfied their gift tax liability from the transfer into trust from their own resources.) They named the XYZ Bank & Trust Co. as trustee.

The trust instrument requires the trustee to distribute the trust's net income from the rental property (or any property substituted for it) annually to D. Further, the trust instrument empowers the trustee to make distributions of other income or of corpus, to D, or to G-1, or to G-2, in its the trustee's discretion. Upon D's death, the trust will terminate and G-1 and G-2 or their estates will take equally.

The trust instrument further requires the trustee to maintain reserves for depreciation, and to allocate the trustee's own fees to corpus. The trust instrument provides nothing for any other allocations.

The trust adopted a December 1 to November 30 fiscal taxable year. It uses the cash method of accounting.

For its year December 1, 1990 through November 30, 1991, the trust experienced the following receipts and expenses and charges:

RECEIPTS

1. Gross Rentals	\$ 60,000
2. Municipal Bond Interest	10,000
3. Dividends on IBM Corp. Common Stock	10,000
4. Proceeds of Sale, Net of Commission, IBM Corp. Common Stock, 600 shs	60,000
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	\$140,000

EXPENSES AND CHARGES

1. Trustee's Fees, XYZ Bank & Trust Co.	\$ 12,000
2. Depreciation on Rental Real Estate	24,000
3. Maintenance on Rental Real Estate	61,000
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	\$ 42,000

On November 28, 1991, the trustee distributed \$ 20,000 in cash to G-1, and \$ 20,000 in cash to G-2. On November 29, 1991, the trustee distributed the remaining 900 shares of IBM stock to D. On that date IBM closed at 100, such that the distributed stock had a fair market value of \$ 90,000.

Please discuss the respective income tax treatments for the trust and its several beneficiaries. Would any additional facts be well to know?

Incidentally, we would like not to incur any tax liability in the trust beyond the 15 % marginal rate, at least not without good reason (whatever hindsight may bring that to mean). Please share any insights you might have on this.