CULTURAL AND PSYCHOLOGICAL CLASHES IN THE ESTATE PLANNING PROCESS

I. Intro

A. Opening: Story of 3rd child. Female in an Asian family. Takes care of her parents yet all of the inheritance is left to the first born son.

B. Is this legal? Yes. Section II will look at the legal landscape in Hawaii/United States which allow for freedom of gratuitous transfer at death.

C. Is this common? Yes. Section III will look at the cultural and traditional influences on how people in Hawaii often divide their estate at death. Section IV will provide psychological justifications for donor’s intent.

D. Is this fair? Is this wise? Section V will explore the expectations, feelings, psychology of those on the receiving end of inheritance and those left out entirely. It will describe the potential fallouts; hurt feelings, sibling rivalries, family strife, ruined relationships.

E. What should lawyers do? Section VI will discuss the lawyer as counselor. Recommendations for heightened awareness of discussed issues and better communication among family members through such strategies as family meetings and ethical wills.

F. Thesis: Estate planning practitioners should be aware of various cultural and psychological aspects of gratuitous transfer. Such awareness will allow the lawyer to better counsel his or her clients during the various phases of estate planning. This will help the practitioner to facilitate communication between family members to avoid potential conflict.

II. Legal Background

This section will discuss the legal right to transfer property in any way that the donor wants to. Courts do not have the authority to question the wisdom, fairness, or reasonableness of the transfer. Except for a few exceptions, the donor has full freedom as to how she would like to allocate her property.

1. §10.1 Donor’s Intention Determines the Meaning of a Donative Document and is Given Effect to the Maximum Extent Allowed by Law

(a) The controlling consideration in determining the meaning of a donative document is the donor’s intention. The donor’s intention is given effect to the maximum extent allowed by law.

B. Hawaii Probate Code

1. §560:3-101 Devolution of estate at death
   (a) Upon the death of a person, the decedent’s real and personal property devolves to the persons to whom it is devised by the decedent’s last will.

C. Common law exceptions to testamentary freedom. Research Hawaii case law to show limits to testamentary freedom.

III. Cultural/Traditional Influences

A. Focus will be made on those cultures and traditions commonly found in Hawaii. Depending on the type of research found, focus may be limited to Asian traditions in Hawaii.

B. Research needed to find cultural practice of inheritance that still are prevalent with older generations, but reasons for traditions may be outdated in today’s world. Primogeniture is an example of a traditional practice which still has influence today. I have not yet found information in the legal journals. I need to expand search history and anthropology books and journals. Also, Hospice Hawaii has information on different ethnic/cultural beliefs associated with death and dying.

IV. Psychological Influences (Donor)

This section will address the various psychological aspects of giving from the standpoint of the donor. It will include ways in which the donor is influenced by his or her thoughts on death, property, and money. This section will also look at inheritance as a tool used by parents to influence the behavior of their children. Finally, a look at the how family dynamics play a role in the planning process.

A. Death

1. Thomas L. Shaffer, Will Interview, Young Family Clients and the Psychology of Testation, 44 Notre Dame L. 345 (1969)


B. Property/Money


C. Influence Behavior/Family Dynamics

1. Howard M. McCue, Planning and Drafting to Influence Behavior, Institute of Estate Planning (2000)


V. Psychological Influences (Donee/disinherited)

This section will explore the expectations, feelings, psychology of donees and potential heirs who are left out of inheritance. We will look into occurrences amongst potential heirs influencing their expectations, sense of entitlement, and general feelings on inheritance such as sibling rivalries, birth order, favoritism, and psychological views of money and property.

A. General Feelings in Inheritance


VI. Lawyer as Counselor/ Communication Tools

This section will discuss the lawyer as counselor, a role that is rarely taught within the law school setting. In this area, no amount of knowledge of tax strategies or will drafting will help. The practitioner must developed empathy and awareness of the client’s thoughts and feelings. Various tools which will help in developing communication between family members will be presented including such devices as family meetings and ethical wills.


C. Elizabeth Arnold, *Creating the Good Will*, (2005)


V. Conclusion

**PURPOSE:** To synthesize. Bringing together the psychological aspects of inheritance and the cultural influences existing in Hawaii in order to aid in the estate planning process.

**AUDIENCE:** Estate Planning Lawyers. Those involved in the process of gratuitous transfer.

**SCOPE:** Psychology and Hawaiian Cultural Traditions of Inheritance

**STANCE:** Informative Guidance

**Research strategy and timeline:**

*Step 1: Preliminary Research*
Completion date: January 28, 2007

*Step 2: Planning Document*
Completion date: January 28, 2007
Step 3: Advanced Research
Target Completion Date: February 10, 2007
Research Section III: Cultural/Traditional Influences. Hawaii case law.

Comment [JJR10]: Yes, these next ten days will be critical. Dig, dig, dig!!!

Step 4: Detailed Outline
Target Completion Date: February 17, 2007

Step 5: Writing Stage
Target Completion Date: February 24, 2007

Comment [JJR11]: Good!

Step 6: Writing Center
February 26-March 2: Have initial draft reviewed.

Step 7: Polishing/Editing
Target Completion Date: March 4, 2007

Submit First Draft
Due Date: March 5, 2007

Step 8: MEET WITH PEER REVIEWER AND PREPARE COMMENTS
3/7/07 – 3/14/07

Step 9: PEER PRESENTATIONS
Target Completion Date: April 18, 2007

Step 10: Finish Writing
Target Completion Date: April 18, 2007

Step 11: Final Bluebooking
Target Completion Date: April 20, 2007

Submit Final Draft
Due Date: April 23, 2007
Student,

Nicely done. This certainly offers a good plan for both the paper and the process. The THEME is here: avoid potential conflict. As noted in the comment, is this enough? Do purpose and stance need to be stronger? I sense that you think the old cultural ways are not so good. If that’s the case, create more scenarios and show in the paper why they are not good, or how practitioners can help clients to discover that these ways are not so good? The MATERIALS here suggest a good start. Keep going! Right now, the sources look good, but there are a number of gaps, as though not much was written in the 70s, 80s and 90s. I suspect not all of that has gotten onto Westlaw or Lexis, so you may need to go to the ILP and do some other creative digging to discover what is out there. This may be the greatest challenge of the semester. Start digging, digging now—get everything you can possibly need and perhaps more! The FORM is very nicely laid out in the Introduction. The questions are nice—should they be the headings of the other sections? Good work—keep going!

B

Best,