

ASSET PROTECTION AND PLANNING  
Final Exam Fall 2001

**Directions:** Within the following fact pattern, you will see issues for which you are the class expert. Do not rewrite your paper. Just highlight what is pertinent to the discussion. Be sure to read the entire exam before planning your answer strategy. Be succinct. Watch your time.

**Fact Pattern**

You are in the midst of having dinner with two best friends, Doris and Sandy. You three have socialized, laughed and cried together for years. Tonight the conversation has turned to your seminar, "Asset Protection and Planning." Doris and Sandy want to know what you have learned that will help them with their financial and property planning."

Actually the reason you invited them to dinner was to commiserate with Doris. Doris was "downsized" last week. After twelve years, after glowing performance reviews, after multiple significant promotions – it was "out the door." A significant salary in six figures, a substantial benefits program (to which both the company and Doris contributed) are a thing of the past. The problem is Doris has very specialized job skills in an industry that is in a serious down cycle without much prospect of near term turn around. A week's worth of networking and job hunting have convinced Doris that chances of getting another job are bleak. A fairly responsible person, Doris has the recommended six months worth of liquid assets to cover costs. After that however, bills will be hard to pay.

Both Doris and Sandy are concerned about risks – What are they? Can anything be done? Any risks to the solutions? Etc.

Doris starts out. "What do I do when the money runs out?" Sandy jumps in to say "not to worry, I will cover you." You know that Doris and Sandy have never made an "official" commitment to each other, though they have been together for over ten years. Doris always says, when the subject comes up, that too many couples they know seem to split up shortly after the ceremony. But Sandy says it is safer not to be "official" as his ex-wife will take him back to court and try to reopen the divorce again to see whether she can get more money, more property, more child support etc. As a result, Doris and Sandy live pretty much separate financial lives. Each contributes 50% to all living, health care, entertainment and other expenses. Sandy is a tenured professor with a local college. His job is secure and he probably can pick up more of the expenses. Also Sandy has substantial money in his retirement accounts, CDs and stocks.

1. But back to Doris. The house the couple lives in is in Doris' name alone. There is a substantial mortgage but equity of close to \$200,000.00. Plenty for creditors to go after. And Doris has creditors. There is the mortgage company, substantial loan balance on a 2001 SUV, a balance on a Timeshare in the Bahamas, an old student loan, etc. None of this debt was unreasonable while Doris was salaried. What about the house?

2. Doris has a \$100,000.00 CD which is about to mature. Doris wants to know how to protect the money. Doris is thinking about giving the money to Sandy. Or the couple has been thinking about starting an actual business out of a hobby they have been developed in creating wild and whimsical pottery and the like. The pottery sells like wildfire at craft shows. Should the CD be used to start the business? In fact they

have been looking at an empty building by a small winding river in Ipswich that has a beautiful view and would be perfect for the business. They have spoken with a realtor off and on. However, they heard a rumor that the building had been used as part of a tannery operation and they are concerned about toxic residue and have put off making a decision about purchase. What do they need to know? If they did start a business could the money be used for that and then could the business buy the property and then would they be protected from land and pottery process environmental problems? What about his pension? Move it to the new business? Cash it in to underwrite the business? Is it safe where it is? Should he roll it over to an I.R.A.?

3. And now Sandy wants to know what to do about his mother? She wants to give him the family house. And she wants him to take over her bank accounts, income etc. She is in her mid eighties and is adamant about being independent and will go to a nursing home before she would move in with Doris and himself. She is getting "meals on wheels" services and has someone come in and clean once a week. Her mobility is becoming increasingly difficult due to various infirmities. Sandy believes she will be lucky if she can stay out of a nursing home for another three years or so. She does not have nursing home insurance though she does have medicare and some benefits from her working days. She has other property (real estate, stocks, jewelry, life insurance policy and more). Right now she is worth probably \$2,500,000.00. The house is probably worth half that. She wants to leave half of her worth to Sandy and his sister Sarah and the rest to the church. Everyone has heard that President Bush will do away with estate taxes over time. But Sandy wants to be able to tell his Mom what is going on in the meantime. So Sandy wants to know (a) if it is possible to preserve Mom's assets from being wiped out on nursing home care and (b) is it possible to preserve them from federal and Massachusetts state taxes. What is the "sponge tax" anyhow?

4. Sandy and Doris are also concerned about Sandy's son, Arthur. Arthur is seventeen and does not appear to be too responsible around money. He does not plan to go to college. Both Sandy and Doris have been contributing to a bank savings account which both consider to be for Arthur's benefit someday. They know that there is no evidence other than their intent as to what the money is for but since Doris's name is on the account, they wonder if they should be doing something to protect the money for Arthur.

5. Finally, and while they are at it. Sandy and Doris want to know what they should do for themselves regarding the division of their individual and joint property if they should split up. (Heaven forbid!) They want something enforceable between themselves and the outside world (meaning in court).

Now it is clear that Sandy is a "he." But Doris's gender is unclear. Will gender make a difference in any of your discussion? In your discussion of each issue be sure to indicate that you considered the gender issue. If gender is not an issue – just say so. If gender is an issue – explain what effect it has on recommendations.

### **Extra Credit**

If the couple is heterosexual, should they get married? If not why not. If so, what benefit would they have as regards any of the issues discussed?