

ESTATE PLANNING NEWS



A Special Bequest:

Professor's Porsche Finds New Home With Former Student

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A “specific bequest” is a specific gift of property that is left to a beneficiary under a will or revocable living trust. Gifted objects often consist of jewelry, antiques, automobiles, collections, family heirlooms, pets, real estate, or money.

I recently read about a very special bequest from a law professor to his former student and longtime friend.

After a lengthy illness, Frank A. Engfelt, a Professor at the University of San Diego School of Law from 1963 to 2004, passed away on October 4, 2007. The law school received a flood of emails from alumni sharing their fond memories of him.

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Announcements

The U.S. Supreme Court recently decided that investment advisory fees incurred by a trust are deductible only to the extent that they exceed 2% of the trust's adjusted gross income. See *Knight v. Commissioner* (2008). This is consistent with an individual's right to deduct investment advice fees. In a footnote, the Court indicated that the analysis would also apply to decedent's estates.



Tip of the Month

Constructive Trust Doctrine May Thwart Attempt to Avoid Child Support Obligation

Between 1998 and 2005, James amassed a debt of approximately \$134,000 in unpaid child support. Shortly before the death of James' mother, Edwina, James convinced Edwina to amend her will to leave James' one third share of Edwina's estate to James' sister, Mary. James' ex-wife, Tammy, sued to enforce payment, alleging that the last minute change to Edwina's will was a fraudulent transfer.

In *Cabral v. Soares* (2007), an Appellate Court held that Tammy could amend her complaint to allege a constructive trust. Tammy must prove that Edwina changed her will in reliance on an agreement between James and Mary that Mary would hold the property for James and later get the money to him.

Entertainment

Enchanted (2007)

Princess Giselle's (Amy Adams) perfect life in the wonderful cartoon kingdom of Andalasia comes to an abrupt end when the evil Queen Narissa (Susan Sarandon) exiles her to the cruel, real world of New York City, where the naive girl will have to quickly learn some street smarts. Fortunately, a Prince Charming in the unlikely form of a divorce lawyer (Patrick Dempsey) offers to lend her a hand.



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La façon de donner vaut mieux que ce qu'on donne.
(The manner of giving is worth more than the gift.)

-- PIERRE CORNEILLE
Le menteur (The Liar) (1643)

A Special Bequest

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Wrote one alumni, "Every year at the Women's Law Caucus fundraising auction, one of the most popular items was a ride in Professor Engfelt's red 1970 Porsche 911S."

Donald Mayes (Class of 1996) added, "My first year contracts course was with Frank Engfelt. I liked him so much that I took every class that he taught while I was at USD law school."

Professor Engfelt occasionally used his Porsche in fact patterns to illustrate finer points of law. He called his Porsche 'Hester' because it was a red 'S', and it reminded him of the character Hester Prynne from Nathaniel Hawthorne's *The Scarlet Letter*.

Donald said, "It was never a matter of 'if' I was going on that trip with Professor Engfelt and Hester, it was just a matter of 'how much' it was going to cost me."

The rides in Hester became a tradition. On a prearranged day each year that Donald was a law student, he rode his motorcycle to Professor Engfelt's house, and the professor, student and Porsche headed out to San Diego's back country.

Donald recalled, "One year, I watched Professor Engfelt spryly jump out of Hester's bucket racing-seat and talk his way out of a speeding ticket like only a law professor could."

On their last ride together, after lunch in Palm Springs, Professor Engfelt handed Donald the keys to Hester and let him drive home. "That's the day that I first felt like a member of the legal profession," Donald remembered proudly.

In the fall of 1996, Donald and his future wife, Candi (Class of 1996), were guests for Sunday dinner at the Engfelts' home. They were joined by Professor Engfelt's wife, Marci; daughter, Ann Marie; son-in-law, Bill; and two grandchildren.

After dinner, Professor Engfelt brought Candi out to the garage, and introduced her to Hester. As they were saying their goodbyes, Professor Engfelt suggested that he, Donald and Hester go for a ride again and that, because he didn't drive anymore, Donald could do the driving.

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Over the past ten years, Donald and Candi kept in touch with Professor and Mrs. Engfelt. The Engfelts were on the guest list at the Mayes' wedding in May of 1998, and the families exchanged Christmas cards every year.

After Professor Engfelt died, Bill informed Donald that he was to receive Hester. Donald reportedly blushed at the idea and offered to sell the car for the family.

Bill countered that Donald had put himself through college working as an auto mechanic and was the most qualified person to take care of the old car.

When Donald went to pick up Hester, he told Ann Marie, "You know, I didn't buy that trip with your father every year just because I liked the car." Ann Marie replied, "I know."

Planning Considerations

When considering special bequests for your will or trust, keep in mind that such gifts should be limited. It is inadvisable to attempt to dispose of all (or even a large part) of an estate through special bequests.

(1) It is next to impossible to predict all of the items of property that will be in the estate when a person dies.

(2) Bequests that were intended to be equal or proportional when the will or trust was executed may be grossly disparate when the estate is ultimately distributed.

(3) A large number of special bequests may hamper the prompt and efficient administration of the estate.

(4) If the estate has insufficient assets to pay all debts, expenses, and taxes, and to satisfy all bequests, then bequests are distributed in the order listed in the will or trust. Some beneficiaries may be deprived of intended gifts. This is called **abatement**. It is especially common when large medical expenses are incurred during a last illness.

(5) **Ademption** occurs when an item is sold or otherwise disposed of during the owner's lifetime. If the item is not part of the estate at the time of death, then the beneficiary takes nothing.

(6) If the estate is subject to estate tax, special bequests may complicate the proper calculation and payment of the tax. Unless the will or trust provides otherwise, estate taxes must be equitably prorated among all persons interested in the estate. Items that are specifically bequested - and subject to estate tax - must be valued separately. For this reason, special bequests often include instructions that they are left free of estate tax (*i.e.*, the tax is paid from other assets). This allows all household and personal effects of small or modest value to be listed and valued in groups.

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