

# Essential Legal Concepts with Tax Analysis

## Course Description

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While accounting and the practice of law are separate professions, the accountant must be conversant with essential legal concepts. Modern accounting practice requires familiarity with corporate legal structure, business entities, partnership operations, contracts, property rights, employment law, divorce, consumer protection, will & trusts, and even bankruptcy law. This course explores these specific areas with emphasis on business and accounting issues. This informal and clear guide to the basic concepts of business law provides accountants with an excellent review of legal concepts that arise in any tax professional's practice. The attendees will gain the ability to recognize and discuss general legal concepts with both client and their counsel.

Knowledge is power and nowhere is that truer than in the field law. To gain such a working knowledge of law, readily understandable explanations are given to essential and related business law subjects. The accountant is guided through the complex maze of literally hundreds of legal principles from acceptance to zoning.

**Completion Deadline & Exam:** This course, including the examination, must be completed within one year of the date of purchase. In addition, unless otherwise indicated, no correct or incorrect feedback for any exam question will be provided.

**Course Level:** Overview. This program is appropriate for professionals at all organizational levels.

**CPE Credits:** 30 (CPA, EA)

**Category:** Taxation

**Prerequisite:** None.

**Advanced Preparation:** None

## Course Learning Objectives

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### Chapter 1: Asset Protection

1. Identify the goals and purposes of asset protection noting the objections some people have about shielding assets from creditors by:

- a. Citing reasons for asset protection and situations that can unexpectedly put assets and financial security at stake;
  - b. Specifying sources of lawsuits and the author's concept of exploding and imploding liability; and
  - c. Determining asset protection using the primary concepts of insurance, asset placement and statutory protections.
2. Recognize the importance of creditor types associated with asset protection and fraudulent transfers.
3. Specify fraudulent transfer laws noting badges of fraud, define statutes of limitation, criminal penalties, and permissible asset transfers.
4. Identify the degree and necessity of asset protection using net worth and asset values under a balance sheet and the various ways that insurance and buy-sell agreements can offer asset protection.
5. Recognize the asset protection advantages and disadvantages of ownership formats and entities by:
  - a. Determining the use of individual ownership and corporate ownership in an asset protection plan including the importance of S corporations and their estate tax planning advantages;
  - b. Identifying testamentary trusts, living trusts and subcategories of trusts noting asset protection elements;
  - c. Specifying the various types of co-tenancy, noting their asset protection dangers, and several types of partnerships citing their variation from limited liability companies; and
  - d. Recognizing the unique asset protection qualities of retirement plans, custodianship, and estates as asset protection tools.

## **Chapter 2: Alimony & Child Support**

1. Determine "alimony" and "separate maintenance payments" under §§71 and 215.
2. Specify the types of §71 "divorce or separation instruments" and determine how having an invalid decree, an amended instrument, or a premarital agreement impacts such an instrument.
3. Identify the alimony and child support tax provisions that currently apply from those that applied to instruments executed prior to 1985 by:
  - a. Specifying variables that impact whether a payment is alimony since 1984 and determining whether a cash payment is deemed made to or on behalf of a former spouse in order to characterize it as alimony;
  - b. Recalling the tax treatment of housing costs for the family residence showing the impact of ownership when the nonoccupying spouse owns the home and when the occupying spouse owns the home;

- c. Identifying what rent or resident cost payments can be alimony when a family residence is jointly owned and occupied by a spouse or a taxpayer is required to make rent payments for a spouse;
        - d. Recognizing the tax treatment of life insurance premium payments, voluntary payments and payments to a remarried spouse noting advantages and disadvantages to each spouse;
        - e. Determining how to recharacterize otherwise deductible alimony payments as nondeductible, and identifying whether spouses are members of different households, and identifying the alimony pitfall of being required to make payments after a former spouse's death;
        - f. Specifying the differences between child support and alimony and thereby avoid reporting errors;
        - g. Citing the pre-1985 alimony requirements and periodic payments; and
        - h. Determining marital relationship and the similarities and differences in the treatment of child support under current and previous law.
- 4. Identify the deduction of alimony paid and the reporting of alimony received on the proper forms noting required information.
- 5. Specify the alimony recapture rule for various marital agreements and its impact on the tax treatment of past payments.
- 6. Recognize the use of alimony trusts to realize tax advantage and security, determine the use of annuity contracts, and specify the proper tax treatment of alimony paid by an estate to a former spouse of a decedent.
- 7. Recall the tax treatment of child support, identify two circumstances where a payment will be fixed as child support, and specify six events that determine whether a contingency is clearly child-related noting how to rebut this presumption of child support.
- 8. Recall the COBRA and qualified medical child support order rules so as to maximize the use of health care coverage plans by:
  - a. Identifying whether COBRA rules apply to different plans including notice & deadline requirements and specifying four situations that may result in a termination of continuing coverage; and
  - b. Determining what constitutes "qualified medical child support orders" noting differences with other similar orders and identifying the procedures, requirements and jurisdiction of QMCSOs.

## **Chapter 3: Bankruptcy**

1. Determine how the 2005 Bankruptcy Act changed procedures, qualifications and tax law, and identify the most common bankruptcy types noting their influence on how an individual or business “goes bankrupt.”
2. Specify the rules for automatic stay and levy noting their impact on “freezing” creditor activity, tax assessment, and collection.
3. Identify the differences between preferential and nonpreferential payments noting the priority of creditor claims.
4. Recognize when debt is discharged under various bankruptcy types and identify how to establish an individual bankruptcy estate determining its taxable income and filing requirements.
5. Identify partnership and corporate bankruptcies, specify debts covered under homesteading, and determine permissible garnishment amounts noting special garnishment rules.

## **Chapter 4: Divorce Settlements & Divisions**

1. Identify the formats that courts typically follow if a couple does not have a premarital agreement and post-nuptial and premarital agreements including how they relate to divorce settlements and divisions.
2. Cite the position of U.S. v. Davis on interspousal transfers noting the changes made by §1041 and, specify the requirements of §1041 and the scope of its application.
3. Identify factors that determine when a property transfer is incident to divorce noting how to meet these factors or avoid §1041 altogether when desired and recognize the application of §1041 to transfers in trust under §1041(e) and to third party transfers on behalf of a spouse or former spouse.
4. Determine deferred tax liability and property basis for the transferor spouse and transferee spouse under §1041 after a property settlement.
5. Recognize the application of §1041 to property transfers where the transferee assumes liabilities encumbering the property, and identify with appropriate records the holding period for an asset transferred between spouses or former spouses incident to divorce.
6. Identify the dangers of purchasing a former spouse's interest in property particularly a marital residence including its tendency to create deferred tax liability, specify the effects of purchasing an interest in personal or real property used in a business or held for investment, recognize potential recapture and identify the use of an exchange to dispose of low-basis property received in a §1041 transfer.
7. Recognize sale, redemption, recapitalization, liquidation and third-party transfers as methods of dividing a business in a marital settlement citing unique provisions under §302, §368, §736 and §754.

8. Identify an overall tax and economic strategy for the division of pension benefits in a marital settlement by:
  - a. Specifying popular methods of dividing retirement benefits in a divorce or separation action;
  - b. Determining what constitutes a “qualified domestic relations order” noting specific information to be included in such an order and the tax consequences of QDRO distributions;
  - c. Recognizing the pros and cons of deferred, present, and alternate property division arguments;
  - d. Specifying the treatment of IRAs at divorce considering the IRA deduction limit and rollovers; and
  - e. Locating military pensions and civil service pensions that may be available to a former spouse.

## **Chapter 5: Employment**

1. Specify common-law rules used to determine employee status for FICA and federal income tax withholding, determine FICA and FUTA taxes including their reporting, and identify unreasonable compensation issues.
2. Recognize the mechanics of the Social Security system allowing better retirement planning by:
  - a. Determining how the system works, who qualifies, and when such participants are eligible for benefits; and
  - b. Locating clients’ retirement benefits following a multi-step process.
3. Identify Social Security taxes, their rates and covered earnings to determine actual amounts taken from gross pay.
4. Determine Medicare Part A and Medicare Part B differences noting what is needed to qualify, and identify the eligibility requirements of Social Security disability and survivors’ benefits.

## **Chapter 6: Entities & Title**

1. Identify tax and legal title formats noting the distinctions among these entity formats by:
  - a. Determining the advantages and disadvantages of holding property individually and through a sole proprietorship or a corporation noting associated title pitfalls;
  - b. Specifying the C corporations groups including the estate-planning problems associated with each; and
  - c. Recognizing advantages that partnerships may have over corporations.

2. Cite the S corporation requirements noting tax advantages and disadvantages particularly those associated with incorporating a farm.
3. Specify the title holding benefits of trusts, co-tenancy, partnerships, and limited liability companies and the tax characteristics of each, identify the types of retirement plans used to provide lifetime benefits to a business owner and to employees, determine how title can be held on behalf of minors and the tax treatment of custodianships, and specify the tax treatment of a probate estate.

## **Chapter 7: Insurance**

1. Identify characteristics of homeowner's, automobile, and disability insurance and what asset protection they may offer.
2. Specify persons in which rights are placed by life insurance and reasons to purchase life insurance and the benefits, uses and types of life insurance, identify variables that influence when life insurance is taxable for federal estate tax purposes, and cite reasons for establishing an irrevocable life insurance trust in order to achieve several estate tax planning advantages.
3. Determine what constitutes an annuity and the types and characteristics of annuities noting their tax advantages and disadvantages.
4. Identify entity purchase and a cross purchase agreements noting tax and legal advantages and pitfalls.

## **Chapter 8: Property Dispositions**

1. Identify capital gains rates with applicable assets using the "basket" approach.
2. Cite the elements of the §121 home sale exclusion noting their application and safe harbor regulations associated with the exclusion.
3. Recognize the installment method rules and regulations related to using this method by:
  - a. Identifying how §453, its requirements and basic terminology have changed since the Installment Sales Revision Act of 1980; and
  - b. Determining related party and contingent payment rules, §483 imputed interest and §§1271 through 1274 original issue discount.
4. Identify the mechanics of a §1031 like-kind exchange by:
  - a. Recognizing the advantage of §1031 as a tax deferral device naming at least three elements of an exchange;
  - b. Specifying related parties and conditions where they may sell or dispose of properties;
  - c. Determining the personal and multiple property regulations and the general rule for netting liabilities; and

- d. Recognizing a delayed exchange using the identification requirements, specify safe harbors to avoid actual or constructive receipt and identifying the “look thru” treatment of partnership interests according to the latest amendments to §1031.
- 5. Determine gain or loss on foreclosure or repossession noting reporting and filing requirements and the hidden income tax danger of directly or indirectly acquiring one's own debt at a discount.
- 6. Recognize the differences between personal property and real property repossessions, and identify when a bad debt deduction may be taken if the seller repossesses real property.
- 7. Identify the tax treatment of an involuntary conversion by:
  - a. Recognizing related terminology and the tax consequences of receiving a condemnation award or severance damages;
  - b. Locating gain or loss from condemnations and recognizing the proper reporting of payments associated with involuntary conversions;
  - c. Determining when clients can postpone gain on condemned, damaged, destroyed or stolen property; and
  - d. Citing the related party rule under §1033.

## **Chapter 9: Retirement & Employee Benefits**

1. Recognize the importance of effectively designing a retirement plan following a multi-step program.
2. Identify qualified corporate plans, SIMPLE plans, self-employed plans, IRAs, tax-deferred annuities, and SEP plans, how to build up investment funds, variables in a current investment plan, and participant loan regulations under §4975.
3. Determine the differences between nonstatutory and statutory fringe benefits, identify no-additional-cost services, qualified employee discounts, working condition fringes and de minimis fringes noting which property or services qualify under each benefit, and §79 group term life insurance.
4. Cite the §129 requirements and limits, identify a §125 “cafeteria plan,” recognize the §119 meals and lodging exclusion, determine the mechanics of §105 medical reimbursement plans, and cite the requirements and limits §127 programs.
5. Determine valuation methods for employer-provided automobiles, recognize interest-free and below-market loans, cite requirements and limitations on a number of other fringe benefits under §§217, 132, 67 212, 132(h)(5) and 280A, identify the limited S corporation fringe benefits, and specify ERISA compliance requirements.

## **Chapter 10: Torts & Personal Injuries**

1. Identify types of tort and the remedies tort law provides.
2. Recognize the personal injury exclusion to insure proper reporting of damages received because of injury, and determine how to report punitive damages, interest on injury awards and legal fees as determined according to case law.

## **Chapter 11: Wills & Probate**

1. Specify types of wills noting functions a will can perform, identify types of bequests, determine the duties of executors and guardians, and recall ways to hold title and their tax ramifications.
2. Identify advantages of a properly drafted will, determine the distribution flow of simple wills, and specify the pros and cons of probate proceedings.

## **Chapter 12: Trusts**

1. Identify the relationship of parties in a trust, reasons to establish a trust, and types of trusts noting their estate planning function.
2. Specify recommended living trust provisions, identify the application of gift and income tax including the use of a grantor trust and an unlimited marital deduction, and determine what constitutes an "A-B" and "A-B-C" trust format.