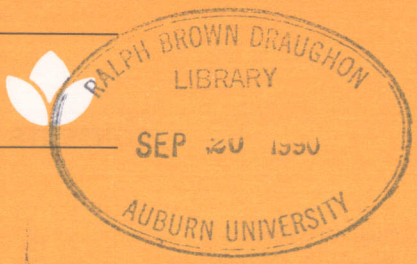


# Legal Knowledge of Estate Planning Possessed by Alabama Farmers

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# Legal Knowledge of Estate Planning By Alabama Farmers

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## INTRODUCTION

ESTATE planning is the continuous process of organizing the affairs of the estate owner to fulfill the owners objectives of conservation and disposition of the estate. The major item in the process is the eventual transfer of property from one generation to another. Inadequate estate planning can result in excessive estate taxes, uncertainty pertaining to future owner-operatorship of the farm business, unnecessary administrative and transfer costs, and liquidation losses.

Many farmers who die intestate, without a will, never know that the state had a will for them. Property disposition for those who die intestate is determined by the revised Probate Code, formerly known as the "Alabama Laws for Descent and Distribution." These laws also govern distribution of an estate when the will is determined to be invalid.

The Economic Recovery Tax Act of 1981 can have a major impact on the amount of taxes that a farmer must pay. The new tax law included many major changes concerning estate and gift taxes and other farm estate planning considerations. The new and revised provisions may allow farmers to save thousands of dollars in estate taxes. Farmers who are well informed about new tax laws stand to gain most from the many changes.

### Research Objectives

This study was part of a larger project entitled "Estate Planning for Farmers." The primary objective was to determine the knowledge Alabama farmers have of estate planning and how much estate plan-

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ning they have done. The specific objectives of the overall project were to:

1. Determine farmers knowledge about and objectives used in estate plans
2. Describe and evaluate major tools available for estate planning, including the utilization of present use valuation and its potential effects on estate taxes
3. Analyze, using a case study approach, how the available tools of estate planning can be used to accomplish the objectives of a farmer's estate plan.

## Procedure

All statutory laws for Alabama are contained in the "Code of Alabama," which was used extensively in the research for this study. The last reprint of the "Code of Alabama" was made in 1975, but each volume has supplementary sections which were revised through 1983. Following most of the statutes is a brief abstract of related court cases and other legal references. These cases were analyzed to determine which ones would be the most appropriate and relevant to illustrate the correct solution for each subject area of estate planning.

"Agricultural Law," by Neil E. Harl, was used as an additional source of reference. Two of the several volumes deal exclusively with estate planning and serve as a comprehensive source of information for all aspects of estate planning for farmers.

A questionnaire was developed for the purpose of collecting data on estate planning from farmers throughout Alabama. The questionnaire had two parts. The first dealt with farmers knowledge of estate planning and objectives used and the second was 32 hypothetical fact situations. Most of these questions were answered with a "yes" or "no" answer and a short subjective explanation. Pre-test interviews were conducted using the questionnaire to determine whether the contents were practical for field use. After some additions and corrections were made, a final draft of the questionnaire was used in interviewing about 200 farmers in 1984.

The sample of Alabama farmers was taken from the five predominantly agricultural areas in Alabama, including (1) Wiregrass, (2) Gulf Coast, (3) Black Belt, (4) Sand Mountain, and (5) Tennessee Valley. The number of farmers with gross farm incomes of $2,500 or more were determined from the 1979 Census of Agriculture. The number of farmers selected in each agricultural area was determined by the percentage of farms in that area based on the 1979 census data. Sample counties were randomly selected to get the required number per area. Each county was divided into approximately equal areas by

number of farms. Then, survey areas were randomly picked and five farmers were selected and interviewed in each area. If five farmers were not interviewed in the original selected sample areas, alternates from other areas were used.

## CHARACTERISTICS OF FARMERS

General characteristics were obtained from all of the farmers who were surveyed. The major characteristics requested were personal, farm, and estate planning information. The results indicated the amount of estate planning done by the average full-time farmer in the study areas.

### Personal Characteristics

Data were collected from farmers on personal characteristics of age, marital status, and children. Farmers ranged in age from 21 to 79 years, most were married, and approximately 90 percent had children. Only six of the farmers had never been married, but a small number had been married previously.

### Farm Information

General information was gathered for each farm. Farm size averaged 432 acres, with a range of 7 to 8,000 acres. One farmer owned 3,800 acres while one farmer rented 4,800 acres. Over 90 percent of the farmers rented part of their land. The younger farmers rented a larger percentage of their land than the older farmers.

Sixty-one percent of the farmers acquired their land by purchase, while only a few acquired their land by both purchase and inheritance.

The deed, for land purchased, was made in both the husband and wife's name for over 50 percent of the farmers. Joint tenancy with right of survivorship has become a popular form of land ownership. This form of ownership was stated in the deed for 30 percent of the farmers.

Farmers were found to have various combinations of enterprises. Sixty-six percent had crops and livestock while 15 percent had crops only. Enterprise combinations, with the number and percent of farmers for each category, were as follows:

| *Enterprise* | *Number of farmers* | *Percent of farmers* |
|---|---|---|
| Crops and livestock | 132 | 66 |
| Crops only | 31 | 15 |
| Crops, livestock, and poultry | 13 | 6 |
| Livestock and poultry | 4 | 2 |
| Livestock only | 12 | 6 |
| Crops and poultry | 4 | 2 |
| Poultry only | 3 | 2 |
| Other combinations | 1 | 1 |

Farm information is not complete without financial information. Only full-time farmers with sales of $2,500 or more were included in this study. Gross farm income (defined as total farm sales) ranged from less than $10,000 to more than $300,000, with about one-third of the farmers in the range of $50,000 to $100,000. The next largest group (19 percent) had incomes of over $300,000. The ranges of gross farm income with the number and percent of farmers in each level were as follows:

| *Gross farm income* | *Number of farmers* | *Percent of farmers* |
|---|---|---|
| Less than $10,000 | 3 | 1 |
| $10,000 - $24,999 | 6 | 3 |
| $25,000 - $49,999 | 33 | 16 |
| $50,000 - $99,999 | 53 | 27 |
| $100,000 - $149,999 | 26 | 13 |
| $150,000 - $199,000 | 21 | 11 |
| $200,000 - $300,000 | 20 | 10 |
| Over $300,000 | 38 | 19 |

The total value of the net farm estate indicates what a farmer owns minus his debts. The following items were included: land, machinery, equipment, livestock, stored crops, checking and savings accounts, stocks and bonds, and life insurance. About one-third of the farmers had net farm estates in the $200,000 or less level. The ranges of the net farm estates, including the number and percent of farmers in each level, were as follows:

| *Net farm estate* | *Number of farmers* | *Percent of farmers* |
|---|---|---|
| Less than $200,000 | 52 | 26 |
| $200,000 - $399,999 | 60 | 30 |
| $400,000 - $599,999 | 31 | 16 |
| $600,000 - $799,999 | 12 | 6 |
| $800,000 - $999,999 | 14 | 7 |
| $1,000,000 or more | 31 | 15 |

## Educational Level

The largest group of farmers, 36 percent, represented those who had only finished high school, while about 20 percent had completed college. The "Graduate School" category consisted of all farmers who had done partial or complete work on a graduate degree. The "Other" category included farmers who had attended a shortcourse on agriculture or a vocational school. The number and percent of farmers who had completed various educational levels were as follows:

| *Educational level* | *Number of farmers* | *Percent of farmers* |
|---|---|---|
| Below high school | 38 | 19 |
| High school | 72 | 36 |
| Junior college | 16 | 8 |
| Some university | 18 | 9 |
| University | 37 | 19 |
| Graduate school | 5 | 2 |
| Other | 14 | 7 |

Data on estate planning workshops and seminars attended indicated the majority of the farmers had not participated in such activities. Almost 50 percent had attended farm management workshops, but only 17 percent had attended estate planning workshops. The Alabama Cooperative Extension Service and the Alabama Farm Bureau Federation were the most popular sponsors of these workshops, representing 29 and 24 percent, respectively. Banks, insurance companies, and universities were some of the other frequently mentioned sponsors.

## Estate Planning Information

Most farmers had simple types of business organizations, with the single proprietorship accounting for 74 percent. Partnerships and corporations were used by 23 and 3 percent of the participating farmers, respectively. Farmers were asked why they chose a particular type of business organization. The most frequent responses were "to bring family members into business" and "so I could maintain control over my farm business".

The two most common investments made outside the farm business were stocks and certificates of deposit. These accounted for 78 percent of total investments made by all of the farmers. The average value of non-farm investments was $65,528 for the 130 farmers who

reported this type of investment. Remaining farmers had no investments outside the farm business.

The major estate planning tools are wills, gifts, trusts, and life insurance. Making a will is usually the first step in creating an estate plan. Fifty-four percent of the responding farmers had a will. Most of the wills made were simple, while a few were detailed in their objectives. All but four of the farmers who had wills engaged an attorney to prepare their wills. Over 40 percent of farmers who had wills had never made any revisions. The two most common provisions in the wills were to leave everything to the wife and to include a common disaster clause in case something happened simultaneously to both husband and wife.

Most farmers who did not have a will thought the wife would get 100 percent of everything. The most common reasons were the following: wife has a life estate, she is my wife , and everything is jointly owned. Another frequent response was that the wife and children would share everything equally. The most common reasons were: that is what the law states, these are my wishes, and it is just the right thing to do.

Only 11 of the 200 farmers had made gifts to wives, children, or others and only five farmers had made use of trusts. The primary purpose of a trust was to provide for property management.

Over 90 percent of the farmers had life insurance on themselves, many with amounts they considered adequate to pay all debts at their death. Not as many farmers owned life insurance on wives and children. Some farmers' wives owned life insurance on themselves and their children.

Data on questions about plans for their farm after death indicated that farmers would prefer that some family member continue operating the farm. Most farmers wanted their son(s) to have overall management of the farm business, while a few wanted their spouse to manage the farm business.

Farmers were asked to rank various estate planning objectives from most important to least important. The most important was to save taxes, followed by provision for transfer of property to desired persons. Other objectives in order of importance were to provide for property management, to complete a gift to a minor beneficiary, and to remove property from the gross estate.

Some farmers had not done any estate planning. The most common reasons were: never gotten around to it, lack of knowledge on estate planning, and not given it much thought. Many farmers believed that a will was all the estate planning that was necessary.

## FACT SITUATIONS AND KNOWLEDGE OF FARMERS

The extent of knowledge that Alabama farmers have on estate planning was evaluated and tabulated from information taken from the questionnaires. Farmers' answers were individually scored and were then combined into groups to be evaluated as a whole.

### Evaluation of Individual Fact Situations

Thirty-two fact situations were used to determine the knowledge that Alabama farmers have of estate planning. Most of these questions were answered with either a "yes" or "no" followed by a short subjective explanation. All answers were checked in conjunction with Alabama statuatory law and case laws to determine if the response was correct. Answers were grouped as follows: (1) right answer with the right reason, (2) right answer with the wrong reason, (3) wrong answer with the right reason, (4) wrong answer with the wrong reason, and (5) don't know.

Responses from all of the 200 farmers were tabulated collectively for each fact situation and percentages were calculated for each response group, table 1. A wide variation of percentages was found in all but two response groups. The response group "wrong answer right reason" and response group "don't know" had low percentages. The response group "wrong answer with right reason" had 19 of the fact situations with a zero percentage and response group "don't know" had 20 fact situations with less than eight percentages. Farmers usually attempted to answer the question even though they had little or no knowledge of the correct answer. Response group "wrong answer with the wrong reason" had a wide variation of percentages with six fact situations of over 50 percent.

### Evaluation by Fact Situation and Subject Area

The 32 fact situations were divided into 13 fact situations groups and assigned a subject name best describing them. The percentage of farmers giving correct responses for each subject area group is indicated in table 2. The numbers on the left side of table 2 represent each fact situation. The correct response, "right answer with the right reason," was used to determine the legal knowledge that farmers had of estate planning. Farmers were most knowledgeable in the subject area of current use valuation with a high of 88 percent correct responses. Farmers were also knowledgeable in the subject of deeds

TABLE 1. PERCENTAGE OF FARMERS GIVING RIGHT OR WRONG ANSWERS AND REASONS TO INDIVIDUAL FACT SITUATION, 200 FULL-TIME FARMERS, ALABAMA, 1983

| Fact situation | Type of answers and reasons | | | | |
|---|---|---|---|---|---|
| | Right answer, right reason | Right answer, wrong reason | Wrong answer, right reason | Wrong answer, wrong reason | Don't know |
| | *Pct.* | *Pct.* | *Pct.* | *Pct.* | *Pct.* |
| 1 | 19 | 8 | 1 | 66 | 6 |
| 2 | 65 | 22 | 1 | 10 | 2 |
| 3 | 63 | 29 | 0 | 7 | 1 |
| 4 | 60 | 6 | 0 | 29 | 5 |
| 5 | 63 | 8 | 0 | 24 | 5 |
| 6 | 19 | 23 | 1 | 51 | 6 |
| 7 | 88 | 6 | 0 | 3 | 3 |
| 8 | 72 | 4 | 2 | 19 | 3 |
| 9 | 64 | 5 | 0 | 22 | 9 |
| 10 | 41 | 2 | 1 | 39 | 17 |
| 11 | 71 | 16 | 1 | 9 | 3 |
| 12 | 69 | 7 | 1 | 20 | 3 |
| 13 | 36 | 5 | 0 | 52 | 7 |
| 14 | 57 | 9 | 0 | 26 | 8 |
| 15 | 5 | 6 | 0 | 86 | 3 |
| 16 | 95 | 3 | 0 | 1 | 1 |
| 17 | 72 | 0 | 0 | 24 | 4 |
| 18 | 13 | 7 | 1 | 64 | 15 |
| 19 | 22 | 71 | 0 | 5 | 2 |
| 20 | 67 | 19 | 0 | 6 | 8 |
| 21 | 14 | 22 | 1 | 47 | 16 |
| 22 | 58 | 19 | 0 | 19 | 4 |
| 23 | 73 | 8 | 0 | 13 | 6 |
| 24 | 45 | 13 | 1 | 30 | 11 |
| 25 | 19 | 1 | 1 | 70 | 9 |
| 26 | 88 | 6 | 0 | 0 | 6 |
| 27 | 88 | 4 | 0 | 2 | 6 |
| 28 | 60 | 3 | 1 | 25 | 11 |
| 29 | 42 | 12 | 1 | 18 | 27 |
| 30 | 60 | 18 | 0 | 10 | 12 |
| 31 | 75 | 3 | 0 | 18 | 4 |
| 32 | 60 | 2 | 0 | 27 | 11 |

TABLE 2. PERCENTAGE OF FARMERS GIVING RIGHT ANSWER WITH RIGHT REASON BY FACT SITUATION AND SUBJECT AREA, 200 FULL-TIME FARMERS, ALABAMA, 1983

| Fact situation | Subject area | Percent correct |
|---|---|---|
| 1-5 | Land ownership | 54 |
| 6-8 | Life estate | 60 |
| 9-10 | Business organizations | 53 |
| 11-13 | Intestate succession | 59 |
| 14-15 | Distributive share | 31 |
| 16-17 | Deeds | 84 |
| 18-22 | Gifts | 35 |
| 23-24 | Life insurance | 59 |
| 25 | Marital deduction | 19 |
| 26-27 | Current use valuation | 88 |
| 28 | Generation skipping | 60 |
| 29-30 | Trusts | 51 |
| 31-32 | Simultaneous death | 68 |

with 84 percent correct responses. The subject area of marital deduction had the lowest correct responses of only 19 percent. The subject areas of distributive share and gifts also had low correct responses with less than 40 percent. Results indicate that farmers had limited legal knowledge on the subjects of distributive share, gifts, and especially marital deduction.

## Evaluation of Characteristics

Four characteristics, age level, farm size, average gross farm income, and educational level, were used to determine if a relationship existed among these characteristics and the 13 subject area groups. Only correct responses were used for the correlation.

### *Age Levels*

Farmers were divided into three age levels with approximately the same number of farmers in each group. A wide variation of correct responses was found for the different age levels and the subject area groups as shown in table 3. The average of correct responses for all subject areas at each age level was 55 percent. The subject area gifts, current use valuation, and trusts had a slight progressive increase in

TABLE 3. PERCENTAGE OF FARMERS GIVING RIGHT ANSWER WITH RIGHT REASON BY SUBJECT AREAS AND AGE LEVELS, AND NUMBER OF FARMERS BY AGE LEVELS, 200 FULL-TIME FARMERS, ALABAMA, 1983

| Subject areas | Correct answers, by age levels[1] | | |
|---|---|---|---|
| | 21-42 years | 43-55 years | 56-79 years |
| | *Pct.* | *Pct.* | *Pct.* |
| Land ownership | 56 | 48 | 56 |
| Life estate | 59 | 60 | 59 |
| Business organizations | 59 | 51 | 48 |
| Intestate succession | 57 | 60 | 59 |
| Distributive share | 29 | 28 | 37 |
| Deeds | 85 | 82 | 84 |
| Gifts | 34 | 35 | 36 |
| Life insurance | 55 | 67 | 56 |
| Marital deduction | 21 | 14 | 20 |
| Current use valuation | 85 | 88 | 91 |
| Generation skipping | 64 | 61 | 54 |
| Trusts | 47 | 52 | 53 |
| Simultaneous death | 65 | 72 | 68 |
| Average of correct responses[2] | 55 | 55 | 55 |
| Number of farmers | 67 | 64 | 69 |

[1]Age levels were determined to give three approximately equal farmer groups.
[2]Weighted average of fact situations.

correct responses for each age level. Results indicate that younger farmers know about as much about estate planning as older farmers.

### *Farm Size*

Farm size was defined as the number of acres owned or operated in the total farm operation. The farms were divided into three groups, with approximately the same number of farms in each farm size group. The average of correct responses for subject area groups declined as farm size increased. Results in table 4 indicate that as size of farm increased knowledge of estate planning declined.

### *Gross Farm Income*

Gross farm incomes were divided into eight levels and ranked from lowest income to highest income. Correct responses were related to gross farm incomes and the 13 subject area groups as shown in table 5. Several broad ranges of correct responses in the subject area groups were analyzed. In the subject area "marital deduction," farmers had zero percent correct response for an income of less than $10,000 and 88 percent correct response for an income level of $25,000-$49,999. There was also a broad range in current use val-

TABLE 4. PERCENTAGE OF FARMERS GIVING RIGHT ANSWER WITH RIGHT REASON BY SUBJECT AREAS AND FARM SIZE, AND NUMBER OF FARMERS BY FARM SIZE, 200 FULL-TIME FARMERS, ALABAMA, 1983

| Subject areas | Correct answers, by size of farm in acres | | |
|---|---|---|---|
| | Small (7-449) | Medium (450-1,000) | Large (1,001-8,000) |
| | *Pct.* | *Pct.* | *Pct.* |
| Land ownership | 55 | 54 | 54 |
| Life estate | 54 | 61 | 65 |
| Business organizations | 52 | 57 | 47 |
| Intestate succession | 59 | 63 | 53 |
| Distributive share | 30 | 35 | 30 |
| Deeds | 80 | 85 | 87 |
| Gifts | 31 | 32 | 41 |
| Life insurance | 49 | 63 | 64 |
| Marital deduction | 21 | 13 | 22 |
| Current use valuation | 82 | 90 | 91 |
| Generation skipping | 55 | 54 | 70 |
| Trusts | 50 | 50 | 52 |
| Simultaneous death | 61 | 73 | 69 |
| Average of correct responses[1] | 61 | 56 | 57 |
| Number of farmers | 67 | 70 | 63 |

[1]Weighted average of fact situations.

TABLE 5. PERCENTAGE OF FARMERS GIVING RIGHT ANSWER WITH RIGHT REASON BY SUBJECT AREAS AND GROSS FARM INCOME LEVELS, AND NUMBERS OF FARMERS BY GROSS FARM INCOME LEVELS, 200 FULL-TIME FARMERS, ALABAMA, 1983

| Subject areas | Correct answers, by gross farm income levels | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | Less than $10,000 | $10,000 to $24,999 | $25,000 to $49,999 | $50,000 to $99,999 | $100,000 to $149,999 | $150,000 to $199,999 | $200,000 to $299,999 | $300,000 and over |
| | *Pct.* | *Pct.* | *Pct.* | *Pct.* | *Pct.* | *Pct.* | *Pct.* | *Pct.* |
| Land ownership | 53 | 47 | 52 | 55 | 55 | 59 | 59 | 50 |
| Life estate | 44 | 50 | 61 | 57 | 59 | 63 | 57 | 65 |
| Business organizations | 34 | 34 | 49 | 54 | 62 | 55 | 50 | 51 |
| Intestate succession | 78 | 50 | 63 | 60 | 58 | 57 | 53 | 58 |
| Distributive share | 33 | 34 | 32 | 28 | 41 | 34 | 20 | 34 |
| Deeds | 67 | 84 | 85 | 77 | 83 | 95 | 90 | 83 |
| Gifts | 20 | 23 | 35 | 31 | 32 | 35 | 36 | 44 |
| Life insurance | 50 | 42 | 56 | 58 | 64 | 64 | 48 | 66 |
| Marital deduction | 0 | 33 | 88 | 9 | 19 | 29 | 15 | 21 |
| Current use valuation | 84 | 59 | 24 | 84 | 94 | 95 | 90 | 88 |
| Generation skipping | 33 | 33 | 64 | 55 | 42 | 62 | 75 | 71 |
| Trusts | 17 | 34 | 55 | 58 | 43 | 53 | 53 | 46 |
| Simultaneous death | 50 | 67 | 63 | 69 | 71 | 65 | 70 | 70 |
| Average of correct responses[1] | 43 | 45 | 56 | 53 | 56 | 59 | 55 | 57 |
| Number of farmers | 3 | 6 | 33 | 53 | 26 | 21 | 20 | 38 |

[1]Weighted average of fact situations.

uation with a 24 percent correct response for the income level of $150,000-$199,999. Other broad ranges of correct responses were found in the subject areas of "generation skipping" and "trusts." The average of correct responses increased initially from 43 percent at the lowest income level to 59 percent at an income level of $150,000-$199,999 and then declined slightly in the next income level.

*Educational Levels*

Farms were divided into seven groups based on the farmer's education and ranked from lowest to highest. Correct responses were related to each educational level and the 13 subject area groups as shown in table 6. The range of correct responses was widely dispersed throughout all educational levels. This was most pronounced on the subject of "generation skipping," with a correct response of 100 percent by farmers who had completed graduate school, but only 50 percent for those below the high school and junior college level. The next wide range was in the subject area "distributive share," with zero percent correct responses by farmers in the graduate school level and 42 percent correct responses in the some university level. Results showed little relationship between educational levels and increased knowledge in estate planning.

## LEGAL SOLUTIONS TO FACT SITUATIONS

Legal solutions were developed for the 13 fact situations groups. Some of the more typical farmer responses are reported when appropriate. All references are to the 1975 "Code of Alabama" unless otherwise cited. Legal solutions apply directly to each fact situation in this study. Since these situations are hypothetical, real life situations may have different circumstances requiring other legal solutions. All assumptions made are for the purpose of clarification. Names used in each fact situation are hypothetical.

### Land Ownership

Several different kinds of land ownership are common to Alabama farms. Two of the more widely used are tenancy in common and joint tenancy with right of survivorship. Tenancy in common is the holding of an estate in land by different persons under different titles, but there must be unity of possession and each must have right to occupy the whole in common with cotenants (3, p. 1685).

TABLE 6. PERCENTAGE OF FARMERS GIVING RIGHT ANSWER WITH RIGHT REASON BY SUBJECT AREAS AND EDUCATIONAL LEVELS, AND NUMBER OF FARMERS BY EDUCATIONAL LEVELS, 200 FULL-TIME FARMERS, ALABAMA, 1983

| Subject area | Correct answer, by educational level | | | | | | |
|---|---|---|---|---|---|---|---|
| | Below high school | High school | Junior college | Some university | University | Graduate school | Other[1] |
| | *Pct.* | *Pct.* | *Pct.* | *Pct.* | *Pct.* | *Pct.* | *Pct.* |
| Land ownership | 51 | 54 | 44 | 60 | 51 | 70 | 67 |
| Life estate | 52 | 61 | 52 | 59 | 64 | 67 | 62 |
| Business organization | 52 | 59 | 54 | 42 | 50 | 38 | 43 |
| Intestate succession | 58 | 62 | 50 | 48 | 57 | 67 | 62 |
| Distributive share | 36 | 29 | 29 | 42 | 34 | 0 | 43 |
| Deeds | 87 | 82 | 82 | 86 | 83 | 75 | 86 |
| Gifts | 28 | 35 | 34 | 40 | 37 | 25 | 41 |
| Life insurance | 63 | 60 | 57 | 64 | 53 | 75 | 50 |
| Marital deduction | 24 | 11 | 7 | 22 | 24 | 25 | 21 |
| Current use valuation | 82 | 91 | 90 | 89 | 84 | 100 | 97 |
| Generation skipping | 50 | 58 | 50 | 67 | 73 | 100 | 50 |
| Trusts | 60 | 52 | 47 | 45 | 50 | 38 | 43 |
| Simultaneous death | 67 | 68 | 75 | 70 | 62 | 88 | 65 |
| Average of correct responses[2] | 55 | 56 | 52 | 56 | 56 | 59 | 56 |
| Number of farmers | 38 | 72 | 16 | 18 | 37 | 5 | 14 |

[1]Farmers who attended an agricultural shortcourse or vocational school.
[2]Weighted average of fact situations.

Joint tenancy with right of survivorship is widely used by Alabama farmers. Joint tenants have the same interest in the land and the same right of possession. The right of survivorship passes the interest in the land to the survivors on the demise of any joint tenant. In Alabama, the term "right of survivorship" must be explicitly included in the deed, otherwise the survivor will not automatically get the land.

### Situation No. 1

Mr. and Mrs. Gentry own and operate a cow-calf operation, including production of 500 acres of grain crops. They hold equal ownership in the property as tenants-in-common. Each spouse, by will, is leaving his or her property to the other for life, with the remainder interest in both cases going to their two children. Mr. Gentry died in 1980, leaving his wife a life estate in his land. At the death of Mrs. Gentry, will her husband's land be included in her gross estate?

No. Each spouse, by will, had left his or her property to the other for life. The remainder interest in both cases was left to the two children. Mrs. Gentry is entitled (1) to the income from the property left by her husband, (2) to the income from her property, and (3) to sell, mortgage, or consume the principal of her own property. At Mrs. Gentry's death, only the property that she owned would be included in her gross estate. The life estate that she received in her husband's property would not be included in her gross estate. That property would go to the remaindermen (children) at her death without further federal estate tax (23).

### Situation No. 2

Farmer Jones had a 1,200-acre farm. He had four sons, all over 21, who inherited the farm as tenants in common when Mr. Jones died in 1983. One of the sons stayed on the farm and had planned to continue the farming operation. The other three lived off the farm and had no interest in farming. Can these three sons have the farm sold and the money divided?

Yes. According to the "Code of Alabama," however, several steps are involved before the land can be sold. The sons must first file for partition. Partition is any division of real or personal property among co-owners (3, p. 1276). The partition of land among tenants in common is a matter of right, but the alternative right to have the land sold for division is statuatory, and it requires proof that the property cannot be equitably divided or partitioned among the co-tenants. Once

it is proven that the land cannot be equitably divided, the right to sell for division of the land can be ordered by the circuit court (37)

The circuit court had the authority to order a public or private sale, with the prime objective being, in all cases, to sell the property so as to produce the highest possible sum for division (*21*). Once the sale has been completed, the proceeds are distributed by the probate judge to the co-tenants according to their respective interests (*8*).

### Situation No. 3

John Smith works on the family farm with his father. They have worked as informal partners for 5 years with an oral agreement that John will inherit the farm at his father's death.

His parents deed to the land states to Charles and Mary Smith with "right of survivorship." John and his father have never signed a contract creating a formal partnership. They just assumed that John would continue to farm when his father retired. Suddenly, John's father dies without a will. Who will obtain ownership of the land. John or his mother?

Mother. The deed gave Mrs. Smith the right of survivorship in the land owned by her and her husband. She is the survivor, thus she receives title to the land. Section 35-4-7 of the "Code of Alabama" states " . . . that in the event it is stated in the instrument creating such tenancy that such tenancy is with right of survivorship or other words used therein showing such intention, then, upon the death of one joint tenant, his interest shall pass to the surviving joint tenant or tenants according to the intent of such instrument" (*5*). The statute in Alabama on joint tenancy requires (1) that the right of survivorship must be clearly expressed in the deed, and (2) the unity of time element is eliminated. The Alabama case of Nunn v. Keith states "The 1949 deed conveying the subject real property to Ed Nunn, Katie L. Nunn, and Calvin C. Keith, created a joint tenancy, with right of survivorship, as clearly expressed on the face of instruments" (*36*).

### Situation No. 4

Mr. Black owns a 500-acre farming operation. He and his wife bought the land 40 years ago and own it as joint tenants with right of survivorship; that is, the deed was made to John and Jane Black, with right of survivorship. They have one son who farms with his father. Mr. Black has willed the farm to this son. Upon the father's death, who gets ownership of the farm?

Mrs. Black. The farmers who were interviewed had a correct response of 60 percent for this situation. The most typical farmer response was that Mrs. Black had right of survivorship stated in the deed. A legal deed when delivered passes a present interest in real property. Deeds are irrevocable (can't be taken back) and take effect at delivery. A will is a revocable instrument by which a person makes disposition of his property to take effect after death (3, p. 1772). Wills may be revised at any time and the most recently executed will is used for property disposition upon the testator's death. Just because the son was granted the farm in the will does not guarantee that he will receive the farm at his father's death. The joint tenancy with right of survivorship deed takes precedence over the will because ". . . upon the death of one joint tenant, his interest shall pass to the surviving joint tenant or tenants according to the intent of such instrument" (5). The deed was made to John and Jane Black with right of survivorship, therefore Jane Black is the survivor and she gets the farm. With knowledge of her husband's intentions for continuing the farm business, Mrs. Black may make provisions that will allow the son to manage and operate the farm.

### Situation No. 5

Mr. White and his son had farmed together for 15 years with all of the farmland in joint tenancy with right of survivorship with the son, under the assumption that upon his death, the son would become sole owner. But, unexpectedly the son was killed in an automobile accident leaving a wife and four children. His son had written a will and left the remainder of his estate, house, and personal belongings to his wife. Who will inherit the son's part of the farm?

Father. Mr. White and his son had farmed together as informal partners, and they owned all the farmland as joint tenants with right of survivorship. Section 35-4-7, "Code of Alabama" states that when one joint tenant dies his interest will pass to the surviving joint tenant or tenants (5). When the son was killed unexpectedly in an automobile accident, his interest in the farmland passed to his father. The son's wife and children have no legal right to any of the farmland, but they will receive the remainder of the property that was left to them in the son's will.

## Life Estates

Life estate is one in which duration is limited to the life of the party holding it, or to the life of some other person (3, p. 1656). There

are two kinds of life estates, a granted life estate and a retained life estate. A granted life estate is created by an act of law, usually by deed or will. A retained life estate is a life estate where the grantor retains some right to or control over the property for his or her life.

At the death of the life tenant (the one who has a life estate), all of the real property will usually pass to the remaindermen. Remaindermen are those persons designated to receive possession and ownership of the real property upon the death of the life tenant. This interest is a future interest, therefore remaindermen do not have the right to take, hold, or possess the real property in opposition to the life tenant for his or her life.

A life tenant has certain rights and responsibilities. The life tenant has the right to (1) possession of the property, and (2) income from the property. Responsibilities of the life tenant involve paying property taxes, paying interest on any mortgage, and keeping the property in a reasonable state of maintenance (*31*).

Estate taxes vary greatly between the retained life and granted life estate. Retained life estates usually make the entire value of the property taxable in the estate of the person retaining the life estate, while granted life estates are usually not subject to any federal estate taxes. The subject area of life estates is covered in three fact situations.

### Situation No. 6

A wife is left a life estate in a farm with children holding remainder interests. The farm has a long standing 2-year selective cutting program for timber. There is a sizable amount of marketable timber on the farm. The wife decides to clear-cut all of the woodland acres on the farm. Does she have the legal right to contract this clear-cutting operation?

No. The wife has the responsibility as a life tenant to keep the real property in a reasonable state of maintenance. The wife may cut timber as is necessary for firewood, repairs, or to change from woodland into arable (land that is tilled) where change is productive and of no lasting injury to inheritance (*30*). If her intentions were to clear-cut all of the woodland, and she had no future plans for bringing the real property back into production, then total clearance of the real property would materially lessen the value of the inheritance. She may continue the 2-year selective cutting program because this had been started before her husband's death (*30*).

It has been established that the wife cannot legally clear-cut the timber. Therefore, if she does clear-cut the timber she could be sued

by the remaindermen for her actions. An Alabama court case ruled that "timber cut from land in possession of life tenant unauthorized to cut such timber becomes the property of the remaindermen whether cut by the life tenant or a third person" (*34*).

### Situation No. 7

Mr. Alexander is a prominent peanut farmer and has two sons, John and Michael. John is an executive vice president for a large corporation Michael has farmed in an informal partnership with his father for almost 20 years. In the last few years, he has gained ownership in most of the machinery and equipment.

Mr. Alexander prepared a will when both sons were in college. He gave his wife a life estate in all of his property with a remainder interest to John and Michael. Over the past 25 years, the will has never been changed. Michael plans to continue farming after his father retires. Mr. Alexander has decided to deed all of his real property, except his home, to Michael. He believes that this will be a fair distribution of his estate since John is a successful businessman. Mr. Alexander died before he made the deed. At his death who will have control of the real property?

Wife. He executed a will 25 years ago which gave his wife life estate in his property with a remainder to the sons. At his death, possession and control of the real property passed to the wife. Mr. Alexander intended for Michael, the son who was farming, to get control and possession of the real property but the deed was never rewritten to convey the land to Michael. Section 35-4-20 of the "Code of Alabama" requires that conveyances of land must be in writing (*11*). If this requirement is not met, then the conveyance of land is void. Wills and deeds should be reviewed every couple of years so that any necessary changes can be made.

### Situation No. 8

Jim Black died leaving a life estate in his 200-acre farm to his wife, and at her death the land would go to their two children. May Mrs. Black, as a life tenant, sell the farm?

No. The farmers who were interviewed had a correct response of 72 percent for this situation. The most common response was that Mrs. Black only had a life estate in the farm and at her death the children would own it and be able to take possession of it. A life estate is limited to the life of the party holding the property. The life tenant

has the right of possession of the property and to receive income from the property for her life. Mrs. Black, as the life tenant, has possession of the farm for her life. Her two children as remaindermen own the farm, but cannot take possession of it until the death of Mrs. Black. Mrs. Black may sell her life estate in the property, but upon her death the farm goes to the remaindermen.

## Business Organizations

Farmers have various forms of business organizations from which to choose. The sole proprietorship is the most popular form in America because so many farming operations have one owner and one operator. Also, the sole proprietorship is the simplest to use since there are no formalities for organization.

Partnerships and corporations are other forms of business organizations and have become more popular in the last several years. Larger farms with more than one person involved in a single farming operation have increased in number, consequently more attention is being given to the continuity of the farm business. Partnerships and corporations have characteristics that can enhance this objective. Partnerships and corporations also have tax advantages that may make them more desirable than the sole proprietorship.

Limited partnerships and family farm corporations are special variations of the partnership and the corporation. A limited partnership is one where the firm consists of one or more general partners and one or more limited partners, with the latter not being personally liable for the partnership debts. Primary characteristics of a limited partnership are: (1) one or more general partners who control the business, (2) one or more limited partners who contribute to its capital and who share in its profits, but who have no powers in the control of the business, and (3) limitation of the rights of its creditors to the partnership fund and to the general partners (*4*).

A corporation is an artificial person or legal entity, having its own personality and existence distinct from that of its own members, created by or under the authority of state law, and vested with the capacity of continuous succession. A corporation acts as s single individual in matters relating to the common purpose of the association (3). A corporation has a distinct separate existence from its human agents and is operated and managed by its owners, agents, managers, and employees. A corporation has most of the rights and responsibilities as that of a natural person. It can own real and personal property, can enter into contractual agreements, can sue and be sued, and is a separate taxpayer from its owners (*1*).

There are two types of corporations, the regular corporation and the subchapter S corporation. The latter is not recognized in the state of Alabama, and it is treated as a regular corporation for Alabama income tax purposes.

The following situations (9-10) are the legal solutions and discussions of business organizations.

### Situation No. 9

Mr. and Mrs. Persons have owned a cow-calf operation for 25 years. They produce grain for feed and sell the surplus. Mr. and Mrs. Persons have two grown sons, Jim and Bob, who have finished college and are a vital part of the farm business.

Up until now, Mr. Persons has been owner and operator. Over the last 3 years, Jim has bought one bull and eight cows. Bob has invested his money in a tractor and other farm equipment.

After consulting with his lawyer, Mr. Persons decided to form a family farm corporation. All of the land, buildings, machinery, equipment, livestock, and all other assets were valued at fair market value and transferred to the corporation. Therefore, shares of stock represent all farm assets. The stock distribution was one-third for the parents, one-third for Jim, and one-third for Bob. The sons can combine their stock and create a majority interest in the farm corporation. May the sons sell the farm without their parents approval?

Yes. The parents failed to maintain right of control over the corporation by retaining 51 percent of the stock. Retention of 51 percent of the stock in the corporation would have given the parents controlling interest over all of the assets of the corporation (2). It is assumed that no provisions exist in the articles of incorporation or the bylaws that will prevent the farm from being sold. It is also assumed that the corporation was formed to facilitate the management and equitable ownership of all farm assets. Originally, Mr. Persons was sole owner and operator of the farm, but now that the sons are a part of the farm business he felt that a family corporation would best fit their needs. Mr. Persons created uncertainty for the future financial security of himself and his wife when he established a farm corporation in which he did not retain controlling interest.

### Situation No. 10

Dr. Hilyer is a successful neurosurgeon who has been practicing medicine for about 20 years. He has some money that he would like

to invest in a farming operation. Dr. Hilyer has found a farmer who is willing to go into partnership with him. They have agreed to form a limited partnership, with Dr. Hilyer contributing capital for operating expenses and some limited equipment purchases. Dr. Hilyer has requested that he be a limited or silent partner. This means that he cannot actively participate in daily management decisions. However, he will share in the profits of the farm business.

Dr. Hilyer's partner is an average farmer who has always just barely broken even. But economic conditions have improved and the farm is beginning to show profits. It looks as through Dr. Hilyer has made a good investment. In 1980, his partner was named "Farmer of the Year" in Alabama. Dr. Hilyer attributes most of the recent success of this farm to his involvement in the business. He has begun to tell his friends that he is a partner in this farm. Also, he has become more active in daily decision-making. Will increased participation in the farm business jeopardize Dr. Hilyer's status as a limited partner?

Yes. The partnership was originally organized as a limited partnership with the farmer as the general partner and Dr. Hilyer as the limited partner. One of the characteristics of a limited partnership is that the limited partner has no powers in the control of the business (*4*). Dr. Hilyer has violated this characteristic. He has become an active participant in the daily management of the farm, and he has held himself out to the community as a partner in the farm. He has given up all rights that he once held as a limited partner, and he is now in effect a general partner assuming all the rights and responsibilities of a general partner.

## Intestate Succession

Intestate succession is a succession when the deceased has left no will. The Alabama statutes on intestate succession are called the Laws of Descent and Distribution, sections 43-8-40 through 43-8-58 of the Probate Code. The statutes on intestate succession provide a property distribution plan for those persons who fail to make a will. The new Alabama Probate Code became effective January 1, 1983. Section 43-8-41 of the "Code of Alabama" concerns the share of the estate the surviving spouse receives. The new Probate Code gives the surviving spouse a larger share than most pre-existing statutes on descent and distribution. The new case states, "In doing so, it reflects the desires of most married persons, who almost always leave all of a moderate estate or at least one-half of a larger estate to the surviving spouse when a will is executed" (*15*).

Section 43-8-42 of the "Code of Alabama" concerns the share of the estate that heirs other than the surviving spouse receive. This section eliminates inheritance by more remote relatives tracing through great-grandparents (*16*). Additionally, the new statute adopts the principle of representation throughout. The old statute permitted representation to lineal descendants of the intestate and lineal descendants of parents of the intestate. Representation has now been extended to lineal descendants of grandparents.

The legal solutions for the subject area of intestate succession are discussed in situations 11-13.

### Situation No. 11

Mr. Clark owned and operated a dairy farm in central Alabama. He has a wife and two grown sons. The sons work on the farm. All of the farmland and related equipment is owned solely by Mr. Clark.

Mr. Clark told his sons that they will inherit the farm at his death. He has told his wife that she will inherit the family home and all of their personal property.

Mr. Clark was between 45 and 55 years of age. He has never made a will because he assumed that there would be plenty of time to do so in the years to come. Mr. Clark died in 1983 without a will. Will his property pass to his heirs according to his personal wishes?

No. The surviving spouse and the two sons will inherit all of his property. The property will be divided based on Laws of Descent and Distribution of the State of Alabama. According to section 43-8-41 of the "Code of Alabama," the surviving spouse will receive the first $50,000 in value, plus one-half of the balance of the intestate estate. The two sons will share equally in the remaining one-half of their father's estate since Mr. Clark failed to execute a will before his death (*15*).

Mr. Clark had orally divided his property among his wife and two sons. But his intentions for division of the property were not in compliance with Alabama statutes. Alabama statutes require that a will must be in writing, therefore, his intentions for distribution of the property were inapplicable.

### Situation No. 12

Mr. Johnson was owner and operator of a 300-acre farm, He has a wife and one son. He died in 1983, intestate (without a will). Will his

wife inherit all of the farm?

No. About two-thirds of the respondents answered this situation correctly. The most common answer of the farmers interviewed was that both the wife and son would share in division of the estate and the wife would get the majority of the estate. Mr. Johnson had failed to execute a will prior to his death. The wife will inherit a part of the farm, but she will not get the entire estate. Distribution of the estate is governed by section 43-8-41 of the "Code of Alabama" which states "If there are surviving issue all of whom are issue of the surviving spouse also, the surviving spouse gets the first $50,000 in value, plus one-half of the balance of the intestate estate" (*15*). Surviving issue is defined as surviving children of the decedent and the surviving spouse. The son will get the remaining one-half of the balance of the intestate estate.

### Situation No. 13

Mr. Hood has farmed for 10 years. He and his wife do not have any children. Her parents are deceased, but his parents are still living. Mr. Hood has not made a will because he assumed that his wife would inherit his entire estate at his death. If Mr. Hood dies next year, will Mrs. Hood inherit his entire estate?

No. Only one-third of the farmers interviewed got this situation correct. About one-half of the farmers interviewed thought that Mrs. Hood would get his entire estate, because there were no children and she was his surviving spouse. The distribution of Mr. Hood's estate is provided for by the Laws of Descent and Distribution. His surviving spouse will receive the first $100,000 in value, plus one-half of the balance of the intestate estate. His parents will receive the remaining one-half of the intestate estate based on section 43-8-41 of the "Code of Alabama."

Mr. Hood assumed that since there were no children his wife would inherit his entire estate. He could have conveyed his entire estate to his wife in a will.

## Distributive Share

The statutes on intestate succession and distributive share have had some major changes over the last several years. Intestate succession concerns the rules for distribution of an estate in which the deceased had no will. Distributive share is the share or portion which

a given heir receives on the legal distribution of an intestate estate. These statutes are contained in the probate code of the "Code of Alabama," Section 43-8-70.

The new Alabama Probate Code became effective on January 1, 1983. The new statutes do not make any distinctions between real and personal property of the intestates' estate as did the old statutes. Also dower and curtesy were abolished with effective enactment of the new probate code. The following two fact situations illustrate the distributive share as it applies to the new probate code.

## Situation No. 14

Mr. Smith died in 1982 without children, but he left a widow. He had willed his farm to his parents. Mrs. Smith did not have an estate of her own, thus she claims she is entitled to her distributive share (formerly called dower) of her husband's estate. Is she legally entitled to part of her husband's estate?

Yes. The husband, Mr. Smith, may not completely disinherit his wife by will. She was legally entitled to her dower share of his estate. Mr. Smith died in 1982 before the new probate law became effective in 1983. The statutes in effect at that time were different from those of the revised probate code. Under the old statutes, Mrs. Smith was entitled to dissent from the will since her husband did not leave her any share of his estate. Section 43-1-15 of the "Code of Alabama" of 1975 provided for the widow to dissent from the will and to take her dower in her husband's lands and also to take that portion of the personal estate that she would be entitled to in case of intestacy (*10*). One exception states that if there are no children or their descendants, then the widow may take the first $50,000 of the personal estate of the deceased husband, regardless of the amount of her separate estate. The remainder of the personal estate shall be distributed as provided for in the will, formerly Sec. 43-1-15. The widow's dower was a life estate in a fraction of the lands of her deceased husband to which she had not relinquished her right during the marriage. In this situation, the quantity of the widow's dower is a life estate in one-half of her husband's land, formerly Sec. 43-5-2 (*11*).

The revised Alabama Probate Code abolished dower and curtesy in section 43-8-57 of the "Code of Alabama" (*17*). Under the new statutes, the surviving spouse is legally entitled to the elective share of the deceased's estate, section 43-8-70 of the "Code of Alabama." If Mr. Smith had died in 1983, Mrs. Smith would have gotten the first

$100,000 in value, plus one-half of the balance of the intestate estate which will be shared with his parents since no children were involved (*18*).

### Situation No. 15

Mr. and Mrs. Smith own a farm in the Tennessee Valley Area of Alabama. Mr. Smith farms 100 acres of cotton. He and his wife have separate estates of real property. The land that he farms is in his name only, yet he and Mrs. Smith have certain personal property which they own jointly. Mrs. Smith inherited 600 acres in Jackson County which is her own real property. The value of her property is greater than the value of his property. At Mr. Smith's death, will Mrs. Smith be entitled to her distributive share of his farmland?

No. Farmers that were interviewed had correct responses of only five percent, which was the lowest correct percentage response for all of the 32 fact situations. The majority of the farmers said that Mrs. Smith was entitled to her distributive share of her husband's estate. They believed that the value of her separate property was irrelevant in this situation. Since Mrs. Smith's land had a greater monetary value than her husband's land, her estate was larger than his estate: therefore, she was not entitled to a distributive share of his estate.

The surviving spouse is not entitled to any of the estate of the deceased when his or her separate property has a value greater than that of the deceased spouses' property, Section 43-8-70 of the "Code of Alabama" (*18*). Separate property is defined as lifetime interspousal transfers and other inter vivos financial arrangements the deceased spouse may have made for the survivor. It also includes property the surviving spouse may have received from other sources (*18*). All property is distributed according to the will or the laws of intestacy depending on which one is appropriate for each situation.

## Deeds

A deed is a written instrument, signed, sealed, and delivered, by which one person conveys property to another. A distinct difference exists between a "deed" and a "will." A deed passes a present interest, and a will passes no interest until after the death of the testator. Deeds are irrevocable and take effect by delivery while wills are revocable until the testator's death (*39*).

The following six statuatory requirements are mandatory for a

deed to be effective in Alabama: (1) The deed must be written or partially written on paper. (2) The deed must be signed at the foot by the grantor or an agent with written authority. (3) If the deed is not signed by a normal signature, then it must be signed for him, with the words "his mark" written beside his name, and there must be two witnesses. (5) If the deed is notarized, then there is no need for a witness. (6) The deed must be delivered to the grantee, and it must be accepted by the grantee.

The two most used kinds of deeds are a warranty deed and a quitclaim deed. A warranty deed contains a covenant of warranty. The covenant typically implies that the seller owns the real estate in fee simple and that the property is free from any encumbrances. The grantor of a warranty deed passes the legal title for real estate to the grantee.

A quitclaim deed is a deed from a grantor that conveys any title of interest or claim that the grantor has in real property to the grantee. A quitclaim deed lacks warranty or covenants for title. It conveys only the interest that the grantor holds in the real property. The grantee may acquire legal title to the real property only if the grantor had legal title to the property upon conveyance of the deed.

The following two situations (16-17) concern the subject area of deeds.

### Situation No. 16

Mr. Thompson has decided to buy 100 acres of farmland in the adjacent county. He makes a down payment to the seller, Mr. Johnston, which amounts to 10 percent of the selling price. He had made arrangements to finance the farmland with his local bank. Mr. Thompson received a quitclaim deed to the property from Mr. Johnston. Mr. Thompson's banker discovers that the Federal Land Bank holds a mortgage on this 100 acres. Does Mr. Thompson hold clear title to this farmland?

No. The farmers who participated in the interviews answered this situation correctly 95 percent of the time, the highest correct percentage response for all of the 32 fact situations. The most common response was that the Federal Land Bank (FLB) holds a mortgage on this property. A quitclaim deed only conveys the interest which one holds in real property. If the grantor, Mr. Johnston, has clear title to the property, he may convey this land to the grantee, Mr. Thompson. Since the grantor did not have clear title to the farmland, he could only convey the interest that he held in this farmland. He sold his in-

terest in this farmland to Mr. Thompson, and he gave Mr. Thompson a quitclaim deed to the property. Mr. Thompson's banker discovered that the FLB had a mortgage on this land. In the Alabama case of Denton v. Lindler, the court ruled "Title to mortgaged property is in mortgagee only as security and revests in mortgagor upon payment of debt" (*20*). The mortgagee (lender) holds the title to the land as security for the debt while at the same time the mortgagor (purchaser) is considered the owner of the property.

### Situation No. 17

On April 1, 1983, Mr. Rasco sold 50 acres of land to Mr. Brown. Mr. Brown was given a warranty deed to the land but did not record the deed at the county courthouse. Being dishonest, 1 week later Mr. Rasco sold the same 50 acres to Mr. Woodward and also gave him a deed to the property. Mr. Woodward did not know that someone else had bought this same land just 1 week earlier. Mr. Woodward went to the county courthouse on the day of purchase and recorded the property in his name. Who is the legal owner of the property?

Mr. Woodward. The farmers had a correct response of 72 percent. They commonly said that Mr. Woodward was the legal owner of the land, because he was the first one to record his deed. The Alabama statutes on deeds implies that the first-recorded deed gives constructive notice that someone owns the land. Mr. Brown, being the first purchaser, was given a warranty deed to the property. At this time, he owned the land even though his deed was unrecorded. Since Mr. Woodward had no prior knowledge that this property had been sold just 1 week earlier, he was a bonafide purchaser without notice. This is supported by section 35-4-90 of the "Code of Alabama"which states, "All conveyances of real property, deeds, mortgages, deeds of trust or instruments in the nature of mortgages to secure any debts are inoperative and void as to purchasers and judgement creditors without notice, unless the same have been recorded before the accural of the right of such purchasers, mortgagees or judgement creditors" (*7*).

This statute has been substantiated in the Alabama case Lott v. Keith, which involved land that had been sold to different parties at different times. W. O. Lott received a deed to the property, but he did not record it. Keith received a deed to the property, and he was the first one to record it. Therefore, the court ruled "that Keith had fee simple title to the lands" based on the evidence that Keith "was an innocent purchaser for value" (*41*).

## Gifts

A gift is a voluntary conveyance of land, or transfer of goods from one person to another, made gratuitously, and not upon any consideration of blood or money (3, p. 817). The two most common types of gifts are testamentary gifts and *inter vivos gifts*. A testamentary gift is made by will and becomes effective upon the death of the donor or person making the gift. The *inter vivos* gift is given by one who is still living and becomes effective at the time it is conveyed. Three distinct requirements must be met for one to convey a valid *inter vivos* gift: (1) an intention to give and surrender title to, and dominion over, the property; (2) delivery of the property to the donee; and (3) acceptance by the donee.

All transactions in which property is transferred to another without adequate consideration are gifts and subject to gift tax (32). A gift tax return, form 709, United States Gift Tax Return, must be filed during the year in which the transfer of property takes place.

The following constitute transactions that do not require a gift tax return to be filed: (1) a transfer that is not more than the annual exclusion, (2) a qualified transfer for educational or medical expenses, or (3) a transfer to your spouse that qualifies for the unlimited marital deduction.

The donor generally pays the gift tax, but if he fails to do so, the donee or the receiver of the gift may have to pay it. The gift tax, if any is due, is imposed once the gift is completed. The gift is completed when the donor gives up dominion and control or relinquishes his rights over the transferred property and the donee accepts it.

The subject area of gifts is illustrated by fact situations 18-22. The average correct response for these five situations was only 35 percent. Overall, farmers lacked a working knowledge of the current gift tax laws.

### Situation No. 18

Mr. Copeland, a 78-year-old widower, owns a 400-acre farm. In discussions about his retirement, Copeland's lawyer suggested that he give his farm to his two nephews who are his only living heirs. Mr. Copeland transferred his farm, including the house he lived in, to his nephews and filed a gift tax reflecting the gifts, but he continued to live in the house until he died. He continued to receive a small yearly payment for an oil and gas lease on the transferred property. He also reported income for his share of the crops grown on the land. At his

death in 1983, will this transferred property be included in his estate?

Yes. The farmers had a correct response of only 13 percent, which was the next to lowest correct response percentage for all of the 32 fact situations. The farmers responded with a 64 percent wrong answer with the wrong reason. The two most common reasons given with the wrong answer were: (1) he had given it away and paid the gift tax or, (2) he had already transferred the property. Mr. Copeland had attempted to transfer most of the value of his estate to his two nephews with the intention of saving estate taxes upon his death. He failed to give up all rights that he had in this property because he was still living in the house. Also he did not keep sufficient income or money to support himself for the remainder of his life; therefore, he needed the small annual payment from the oil and gas lease on the transferred property.

Distinct requirements must be met for the *inter vivos* gift to be complete and Mr. Copeland did not meet these requirements. The most significant requirement is that the donor must have a clear and unmistakeable intention to give up dominion and control over the transferred property. In the Alabama case of Davis v. Wachter, the court stated "The mere placing of the manual possession of the instrument in the hands of the other is not an effectual delivery unless it is done with the intention on the part of the owner to divest himself then and there of its ownership" (19). Mr. Copeland failed to complete the *inter vivos* gift because he continued to live on the land and received benefit from it. Therefore, the entire value of the transferred property is included in his taxable estate upon his death.

### Situation No. 19

Mr. Ellis died in 1981, leaving a wife and three grown children. For the past 5 years, he had made gifts of $3,000 a year to each child. Will these gifts be included in his taxable gross estate?

No. The farmers who were interviewed had a correct percentage of 22 percent. The most common response of those answering correctly was that the $3,000 a year gift was tax free. Before 1982, federal tax laws permitted an annual gift tax exclusion of $3,000 a year to any person. Each child was given $3,000 a year; therefore, these gifts are tax free. Another important section of the tax law before 1982 dealt with transfers of property within 3 years of death. The law said that any gifts made within 3 years of death must be included in that decedent's gross estate. This rule does not apply for this situation be-

cause Mr. Ellis had started this gift giving program 5 years prior to his death (*38*).

### Situation No. 20

Mr. Brown owns a peanut farm in south Alabama. He and his wife have two children, a son and a daughter, who are both in college. Mr. and Mrs. Brown give money to the children for their tuition. Would this tuition money be considered a gift requiring the payment of a gift tax?

No. The farmers who were interviewed had a correct response of 67 percent. Farmers were most knowledgeable about this situation when comparing it with the other four situations on gifts. The most common response was that the payment is a normal educational expense that the parents are expected to pay. It is not a gift, therefore no gift tax return must be filed. The tuition that is paid by the parents is legally called a qualified transfer. "A qualified transfer is any amount paid for an individual: (1) To an educational organization as tuition for the individual's education or training, or (2) To any person for medical care provided to the individual" (*42*). The educational organization must have a full time faculty and regularly enrolled students at the place where classes are conducted. The payment must be made directly to the educational organization.

The qualified transfer was a part of the Economic Recovery Tax Act of 1981. Tuition payments before 1982 were considered a gift under some circumstances that required the filing of a gift tax return.

### Situation No. 21

Mr. and Mrs. Blalock have a cattle farm. Mr. Blalock also has a trucking firm to haul cattle for himself and other farmers. He and his wife are nearing retirement age, and he has decided to give each of his five children $10,000 a year for at least the next 10 years starting in 1983. Their estate is valued at $2 million; thus, they could reduce the taxable estate by as much as $500,000. Will Mr. and Mrs. Blalock have to pay gift taxes on these gifts?

No. Only 14 percent of the farmers interviewed answered this situation correctly. The Economic Recovery Tax Act of 1981 increased the annual gift tax exclusion per recipient from $3,000 to $10,000 per donor. Any money given, up to $10,000, as a gift is tax free after 1981. The gift must be of a present interest to qualify for the exclusion. With the consent of each, the spouses may split the gift by each giv-

ing $10,000 to each recipient for a total of $20,000 in a calendar year. This $20,000 would pass to the recipient tax free. Mr. Blalock will be able to substantially reduce the value of his estate by following the guidelines of this increased annual gift tax exclusion.

### Situation No. 22

Mr. Johnson died in 1983 only 2 years after giving his peanut farm to his two sons. At the time of the farm transfer in 1982, he paid gift taxes with the intention of saving taxes at his death. But, Mr. Johnson had continued to live on the farm but did not share in the income generated from the farm. Will the farm be included in Mr. Johnson's estate and taxed as a part of his estate?

No. Farmers interviewed had a correct response of 58 percent. Beginning in 1982, transfers of property within 3 years of death are generally not included in the gross estate of the decedent. When Mr. Johnson transferred the farm, he gave up all of his rights in the farm business. He continued to live in the house on the farm, but he did not share in any of the income generated from the farm. It is a generally accepted rule that parents may continue to live in the farm house for their life even though all of the other land has been transferred to the children or some other person. The farm would only be included in Mr. Johnson's estate if he had retained "the possession or enjoyment of, or the right to the income from, the property" (*30*). This was not the case since the two sons had complete control of the farm and the house when Mr. Johnson died.

## Life Insurance

Life insurance is insurance in which the risk contemplated is upon the death of the insured; when the event occurs, the insurer promises to pay a stipulated sum to the legal representative of the insured or to a third person having an insurable interest in the life of the insured (*3*, p. 994).

Farmers buy life insurance for several reasons, most importantly to provide security for the surviving spouse and minor children. It is likely that the decedent was the only one contributing income to the family; therefore, the proceeds of life insurance will probably be needed by the survivors during the transitional period. The proceeds from life insurance can be used to pay debts, estate settlement costs, and taxes against the estate of the decedents. Proceeds of life insurance also can be used to provide an equitable inheritance for heirs who are not involved in the farm business.

The subject area of life insurance consists of fact situations 23 and 24.

### Situation No. 23

Mr. and Mrs. Blackstone own 300 acres of land as joint tenants with right of survivorship. Mr. Blackstone is a successful farmer who has planned for the farming operation to continue after his death. The Blackstone's only son, who is a senior in college, plans to return to the farm when he finishes school.

In 1982, Mr. Blackstone transferred a life insurance policy to his son, giving up all of his rights to the policy. Mr. Blackstone died unexpectedly in 1983. Will the life insurance proceeds be included in his estate?

No. Seventy-three percent of the farmers interviewed answered this situation correctly. The most common response was that since the son pays the premium, he owns the policy. When Mr. Blackstone transferred a life insurance policy to his son, he gave up all of the incidents of ownership in the policy. His son now owned the policy, and he was responsible for paying all of the premiums that become due and payable on the policy. Section 2042 of the "Internal Revenue Code" concerns the proceeds of life insurance. Paragraph two is most appropriate for this situation. It says the life insurance policy will be included in the decedent's gross estate if he "possessed at his death any of the incidents of ownership" (*41*). Incidents of ownership include any reversionary interest "only if the value of such reversionary interest exceeded 5 percent of the value of the policy immediately before the death of the decedent." As used in this paragraph, "reversionary interest" includes a possibility that the policy, or the proceeds of the policy, may return to the decedent or his estate" (*31*). Since Mr. Blackstone gave up all of his rights to the life insurance policy at the time of its transfer to his son the proceeds of the policy are not included in this estate.

### Situation No. 24

Mr. Harris is a prominent Alabama cattleman. He has been farming for approximately 40 years. He has a wife and one son who is married. Five years ago, he wrote a will to help facilitate the transfer of his property at death, hoping to transfer the majority of his estate tax free. Mr. Harris has planned for his son to continue farming after his death. He has made his wife the beneficiary of his life insurance. At death, will his life insurance be included in this taxable estate?

Yes. Only 45 percent of the farmers interviewed answered this situation correctly. Their most common response was that the wife is the beneficiary of the life insurance policy. When Mr. Harris made his wife the beneficiary of his life insurance policy, he retained certain incidents of ownership in the policy (the right to pay the premiums); therefore, legally he is considered the owner of the life insurance policy. Reference has already been made to section 2042 of the "Internal Revenue Code" which provides that a retained right to any of the incidents of ownership will cause the proceeds of life insurance to be included in the gross estate of the decedent.

### Marital Deduction

An estate tax is a tax that is required to be paid upon the transfer of the net estate. It is different from a property tax, because it is a tax imposed on property which is transferred at death. The federal estate tax has been a part of our tax structure for about 50 years.

With the increased value of farm estates over the last several years, a number of farm estates are being devastated by federal estate taxes. The Economic Recovery Tax Act of 1981 has many provisions which can help reduce federal estate taxes. The marital deduction is just one of the provisions that has had a major impact in the last few years.

Under the Tax Reform Act of 1976, a marital deduction was allowed which equaled the greater of $250,000 or one-half of the adjusted gross estate for spousal transfers at death. Also, the first $100,000 of gifts made between spouses was entitled to a full marital deduction. With the Economic Recovery Tax Act of 1981, the law on marital deduction was revised so that an unlimited marital deduction for both estate and gift taxes is allowed for spousal transfers. Taxing joint interests in property, such as joint tenancy with the right of survivorship, was also revised.

Prior to 1982, the full value of jointly owned property was taxed in the estate of the first to die unless the spouse could prove that he or she had paid for part of the property. After 1981, only one-half of the jointly owned property will be considered in the estate of the first to die when calculating the estate taxes of the spouse that has died. This is true even though the surviving spouse is no longer required to prove that he or she paid for part of the property.

### Situation 25

Mr. and Mrs. Jones own a farm as joint tenants with right of survivorship. Mr. Jones has farmed for 40 years and has accumulated an

estate valued at $1 million. His accountant has encouraged him to write a will, but he has not done so. In 1982, Mr. Jones died without a will. Mrs. Jones, the surviving spouse, chose to take the marital deduction. Will Mrs. Jones have to pay any estate tax at the death of Mr. Jones?

No. Only 19 percent of the farmers answered this situation correctly. The lack of knowledge about the revised laws on estate taxes is attributable to the incorrect responses received for this situation. At Mr. Jones' death, the farm will automatically pass to Mrs. Jones because of the right of survivorship as joint tenants. One-half of the $1 million estate will be included in Mr. Jones' taxable estate, in compliance with the revised tax law concerning joint interests in property. Mrs. Jones may take the unlimited marital deduction which would reduce the federal estate tax to zero. This is just one situation in which the unlimited marital deduction can be used effectively to reduce federal estate taxes.

## Current Use Valuation

Current use valuation is a fairly new tool for determining the value of farmland for estate tax purposes when a farmer dies. Under some circumstances when a farmer dies, his farm estate may be valued according to its agricultural productive use instead of at fair market value. The property that qualifies for current use valuation is farmland or, to be more specific, it is "qualified real property." "Qualified real property means real property located in the United States which was acquired from or passed from the decedent to a qualified heir of the decedent and which, on the date of the decedent's death, was being used for a qualified use by the decedent or a member of the decedent's family" (*24*).

The current Alabama statute on current use valuation is section 40-7-25.1 of the "Code of Alabama" (*9*). This statute defines "current use value" for all agricultural property in Alabama. It also provides a simplified standard value approach to the current use assessment of certain Class III real property.

The subject area of current use valuation had an average correct response of 88 percent. Both state and federal statutes on current use have received considerable public attention for the past several years; therefore, farmers are more knowledgeable about current use valuation that other subject areas of estate planning.

Several requirements must be met before a farm can qualify for

current use valuation. The following two fact situations concern current use valuation and some of its more common qualification requirements.

## Situation No. 26

Mr. Sims owns a 500-acre farm valued at $450,000 and has personal property valued at $100,000. At his death in 1981, he left a wife and two sons who farmed with their father. His will provided for the sons to continue the farming operation and for his wife to live in a house on the farm for the remainder of her life. Does the farmland qualify for current use valuation?

Yes. The following are some of the requirements that are necessary to qualify for current use valuation: (1) at least 50 percent of the adjusted gross estate must be used for farming (*35*); (2) the real property was owned by decedent or a member of the family and used as a farm for a total of 5 of the 8 years prior to death (material participation) (*36*); (3) the real property was owner operated or had material participation by decedent or a member of decedent's family (*27*). After the Economic Recovery Tax Act of 1981, "the active management of a farm shall be treated as material participation by such eligible qualified heir in the operation of such farm" (*28*) and the term "qualified heir" means, with respect to any property, a member of the decedent's family who acquired such property (or to whom such property passed) from the decedent" (*29*); and (4) the real property was being used as a farm at the date of death (*34*). To remain qualified for current use, the real property must continue to be used for farming after death of decedent. The material participation requirement is continued after death, so 3 years out of an 8-year period without farming by a qualified heir would result in disqualification for current use valuation.

This farm qualifies for current use valuation because it meets the qualification requirements for current use. First, it is assumed that Mr. Sims actively farmed right up until his death in 1981 in accordance with the qualification requirement of material participation. Second, over 50 percent of the adjusted gross estate is a part of the farm; therefore, fulfilling another qualification requirement for current use valuation. Third, the sons received the farm by will, and they plan to continue farming. This satisfies the post death qualification requirement of continuous farm operation by qualified heirs.

### Situation No. 27

Mr. Dunn died in 1980 after a long battle against heart disease. He had been forced to retire in 1974, leaving the management to his son Sam, to whom he willed the farm. Sam is planning to continue farming. Will the property qualify for current use valuation?

Yes. The property will qualify for current use valuation, because it meets the two qualification requirements of material participation and continuous farm operation. Material participation requires that the decedent or a member of the family must farm for a total of 5 of the 8 years prior to death. Mr. Dunn was disabled for 6 years prior to his death. His son Sam was manager of the farm for these 6 years. Sam owns the farm and plans to continue farming thereby satisfying the qualification requirement of continuous farm operation.

## Generation Skipping

Generation skipping is characterized by a transferor who leaves property to a younger generation and gives the skipped generation a life interest in the property. Because a life interest is not generally subject to the estate tax, a series of life interests has been an effective way to 'skip' the estate tax on some succeeding generations (*40*). It is generally used by persons who have large farm estates and by those who wish to minimize federal estate taxes. This estate planning tool, like the trust, has traditionally been used most by wealthy persons.

### Situation No. 28

Dr. and Mrs. Lowe have a son, Tim, who is their only child. Dr. Lowe, a dentist, was raised on a farm in central Alabama. His father has farmed for 20 years and expects to work for another 10 years. Both Dr. Lowe and his father are in high income tax brackets. Dr. Lowe's father has decided to try to minimize federal estate taxes by transferring the farm to his grandson. His will provides for Dr. Lowe to receive a life estate in the farm with the remainder interest to his grandson. Dr. Lowe will be entitled to the income for a long as he lives. Will the farm property be included in Dr. Lowe's taxable estate at his death?

No. The farmers who were interviewed had a correct response of 60 percent. Dr. Lowe only has possession of the farm and the right to

the income from the farm for his life. His father granted him a life estate in the farm with a remainder to his grandson, Tim. A granted life estate is not subject to federal estate taxes, because the life tenant does not own the property. In this situation, Tim becomes the owner of the farm at the time his grandfather transfers the farm to him. Dr. Lowe is the younger generation who was skipped, and his estate is not liable for estate taxes on this farm at his death.

## Trusts

A trust is an arrangement whereby property, real or personal, is transferred with the intention that it be administered by one party for the benefit of another party. A trustee, required by law, administers the trust for the benefit of the beneficiaries. The trustee holds the legal title to the property while the beneficiaries hold an equitable title. An equitable title is a right in the party to whom it belongs to have the legal title transferred to him (3, p. 1656).

Property in trusts may include real or personal property. "Usually only income producing property or property that can be sold and the proceeds invested by the trustee is placed in trust" (*41*). The benefits of a trust are included in the written trust agreement. Trusts may be created for indefinite time periods depending upon the primary purpose for creation of the trust.

An *inter vivos* trust takes effect in the lifetime of the one creating the trust. A testamentary trust is a trust that is written in a will, and it goes into effect at death of the trustor (one who creates a trust). *Inter vivos* (lifetime) trusts can be made to be revocable or irrevocable.

A revocable trust cannot be used to reduce estate taxes because it can be taken back by the trustor at any time. A major reason for creating a revocable trust is to provide for good property management, leaving the trustor free to do other things. Other reasons for creating a revocable trust are to avoid probate costs and to provide flexibility in using insurance proceeds paid to the trust (*42*).

An irrevocable trust can be used to reduce estate taxes, because once it is created it cannot be terminated. When the trust property is turned over to the beneficiaries, the trustor no longer has any legal rights to the property in trust. An irrevocable trust should be carefully worded since it cannot be changed once it is executed.

Most farmers create a trust to: (1) relieve the farmer of the burden of property management, (2) complete a gift of property to a minor beneficiary, (3) remove property from the gross estate (hopefully re-

ducing estate taxes), and (4) provide for transfer of property to desired persons.

The following two situations are concerned with the subject area of trusts with specific emphasis on *inter vivos* trusts.

### Situation No. 29

Mr. Wilson is a successful Alabama dairyman. He and his wife have two sons who are over 21 years of age and one teenage daughter. The sons are active in the dairy operation. Mr. Wilson has put his farm in a revocable living trust for his two sons. At Mr. Wilson's death, will the property in the trust be taxed as a part of his estate?

Yes. The farmers who were interviewed had a correct response of 42 percent for this situation. Mr Wilson had created a revocable trust, which means that he had not given up complete ownership and all rights to the dairy farm. An Alabama case supports the right of revocation by the trustor. It states "if he desires to do so, and expresses his intentions in the trust instrument or in other appropriate way, may retain in himself a power to change the terms of the trust in general or in one or more particular ways specified, as with regard to the names and shares of the cestius, the personnel of the trusteeship, or the property to be subject to the trust" (35). So long as Mr. Wilson retains certain rights to the farm, it will be included in his taxable estate because he had a revocable trust which included the dairy farm.

### Situation No. 30

Mr. Douglas is a prominent cotton farmer who owns a cotton gin and 5,000 acres of farmland. He has four children who are certain to inherit much of his estate. Mr. Douglas has created an irrevocable living trust for all of the children. This trust consists of 2,000 acres of farmland. Mr. Douglas has given up all rights that he holds on this 2,000 acres, which is now in trust for his children. At death, will this land be included in Mr. Douglas' gross estate?

No. The farmers who were interviewed had a 60 percent correct for this situation. The most common reason given was that Mr. Douglas had given up all of the rights that he had in this land; therefore, he no longer owned it. Mr. Douglas created an irrevocable trust which consisted of 2,000 acres of land. It is assumed that he did not reserve the right to revoke the trust in the written instrument of the trust. At the time of execution of the trust, the children (beneficiaries) become

the legal owners of the land with Mr. Douglas giving up all rights that he once held in the land. Since the children are now the owners of the 2,000 acres of land, they are liable for all of the taxes on this land. At Mr. Douglas death this land will not be included in his gross estate because he has given up all rights that he once held in this land.

## Simultaneous Death

Simultaneous death is defined as death from a common accident when it cannot be determined which person died first. Many people ignore the possibility of both spouses or the spouses and their children all being killed in a common accident. Today our population is more mobile than ever before; thus, accidents are more likely to occur. An absence of prior planning for provisions for distribution of property in the event simultaneous death could cause unnecessary bickering and fighting among the beneficiaries and for property being distributed contrary to wishes of the decedent.

The following two fact situations (31 and 32) are used to explain simultaneous death provisions although these cases do not fit the definition for simultaneous death in the State of Alabama. Initially, each situation will be answered just as written. Secondly, each situation will be answered assuming that the events which occurred resulted in simultaneous death.

### Situation No. 31

Farmer Brown owns a 500-acre farm in joint tenancy with his wife. He and his wife have no children. Both his and her parents are living and are the heirs to the estate of each. In 1979 while riding in the family car, Mr. Brown and his wife were involved in an accident. Farmer Brown was killed instantly and his wife died an hour later from injuries received in the accident. At the death of Mr. Brown, his wife inherited his entire estate. Who inherits the estate at her death?

Her parents. Seventy-five percent of the farmers interviewed answered this situation correctly. Mr. and Mrs. Brown owned the land as joint tenants, with right of survivorship implied. Joint tenancies are with "right of survivorship," although to be allowed in Alabama the deed has to include the words "right of survivorship." At the death of Mr. Brown, his estate passes to the survivor Mrs. Brown. His parents do not inherit any of his property because of the joint tenancy with right of survivorship.

Mrs. Brown died as a result of the automobile accident 1 hour later than her husband. At the time of her death she owned the entire estate, because she was the last survivor and she had right of survivorship. Her parents are her only heirs, so they inherit the entire estate.

If this situation had been simultaneous death from a common accident then the order of inheritance in the estate would have been different. Assume that Mr. and Mrs. Brown were killed instantly, hence simultaneous death. It is also assumed that they owned the farm as joint tenants with right of survivorship. In this situation, property will be distributed according to the Uniform Simultaneous Death Act Section 43-7-4 of the "Code of Alabama" which states, "Where there is no sufficient evidence that two joint tenants or tenants by the entirety have died otherwise than simultaneously, the property so held shall be distributed one-half as if one had survived and one-half as if the other had survived" (*13*). This means that one-half of the estate will go to his heirs and one-half to her heirs. For this situation, both sets of parents will inherit one-half of the estate.

### Situation No. 32

Mr. Brooks is a young professor in the School of Agriculture at a southern university. He is married and has one child. His parents are nearing retirement and they wish to give him part of their estate now, so they give him the family farm.

Being conscious of financial security of his family, Mr. Brooks writes a will. He leaves the farm to his only child and the remainder of the estate to his wife.

One year later in 1980, Mr. Brooks and his family are involved in the crash of a small airplane. He is killed instantly, his child dies enroute to the hospital, and his wife dies 2 days later. Who gets the farm and the remainder of his estate?

Her parents. Sixty percent of the farmers interviewed answered this situation correctly. The most common response was that Mrs. Brooks was the last survivor and her heirs inherit the estate. Mr. Brooks had written a will, and he left the farm to his only child and the remainder of his estate to his wife. The remainder consists of all of his personal property. There was no simultaneous death provision in the will; therefore, the property passed in order of succession to the last survivor, Mrs. Brooks. At her death, she had title to the farm and the remainder of the estate. Title to the entire estate passed to her heirs upon her death. Mr. Brooks' parents will not get any of the

estate because the "Code of Alabama" states that the title to all real and personal property is to be distributed to the heirs of the last survivor.

This situation would have been an example of simultaneous death if the following events had occurred: all three occupants were killed instantly, and there was not sufficient evidence to prove that Mr. and Mrs. Brooks and their child died other than simultaneously. Section 43-7-2 of the "Code of Alabama" states that when there is no evidence of survivorship the property of each person shall be disposed of as if he had survived (*17*). Under these circumstances, the estate would have been distributed in part to both his and her parents.

The Uniform Simultaneous Death Act has a section that pertains to life insurance policies. The Alabama case of Liberty National Life Insurance Co. v. Brown is applicable for this section. This case involves the accidental drowning of a husband and wife. No sufficient evidence was presented to indicate that they died other than simultaneously.

The wife (beneficiary) had bought a life insurance policy on her husband (insured) and she had paid all of the premiums. The policy indicated that if the beneficiary predeceased the insured, the estate of the insured would automatically become that of the beneficiary. Since the deaths occurred simultaneously, the court ruled that the proceeds of the life insurance would be distributed in accordance with the "Code of Alabama." The "Code of Alabama" (Section 43-7-5) states "where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died other than simultaneously, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary" (*14*).

## SUMMARY

The primary objective of this study was to determine the knowledge that Alabama farmers have of estate planning and how much planning they have done. Data were collected from a random sample of 200 full-time farmers throughout Alabama. Interviews were conducted in the five major agricultural regions of Alabama. General characteristics of the farmers surveyed were obtained to provide an overview of the personal background, general farm information, and current status of the farmers.

Personal characteristics of the farmers included age, marital status,

and children. The range of farmers' ages was from 21 to 79 years. Ninety-seven percent of the farmers were married and approximately 90 percent had children.

Farm information included the following items: farm size, type of ownership, enterprise combinations, gross farm income, net farm estate, and type of business organization. Average farm size was 432 acres. Joint tenancy with right of survivorship was the most popular form of land ownership, with 30 percent of the participating farmers owning land as joint tenants. Farmers had various combinations of enterprises; however, 66 percent had a combination of crops and livestock and 15 percent of the farmers had crops only. Gross farm income was divided into eight levels with about one-third of the farmers in the level of $50,000 to $100,000 and 80 percent had gross farm incomes of $50,000 or more. The net farm estate was divided into six levels with about one-third of the farms in the $200,000 - $399,999 level. The most common type of business organization, sole proprietorship, was reported by 74 percent of the farmers in this study. Partnerships were used by 23 percent of the farmers surveyed and corporations by 3 percent.

The educational level of farmers was determined along with various other educational experiences. The largest group of farmers (72) had only finished high school, but 37 had completed college. Data were collected on the workshops or seminars on estate planning that farmers had attended. Only 17 percent had attended estate planning workshops. The two primary sponsors of these workshops were the Alabama Cooperative Extension Service and the Alabama Farm Bureau Federation.

The four major estate planning tools are wills, gifts, trusts, and life insurance. Fifty-four percent of the farmers had wills. This is an indication that Alabama farmers are becoming more aware of the importance of executing wills. The estate planning tools of gifts and trusts are used sparingly. Only 11 of the participating farmers had made gifts to wives, children, or other unrelated persons, while trusts were used by only five farmers. Over 90 percent of farmers reported having life insurance on themselves.

The extent of knowledge that farmers had on estate planning was evaluated and analyzed based on answers taken from the questionnaires. Farmers answers were individually scored and were then combined into groups to be evaluated as a whole.

Thirty-two fact situations were used to determine the legal knowledge that farmers had on estate planning. All answers were checked in conjunction with Alabama statuatory law and case laws to deter-

mine if the response was right. Farmers' answers were divided into five response groups: (1) right answer with the right reason, (2) right answer with the wrong reason, (3) wrong answer with the right reason, (4) wrong answer with the wrong reason, and (5) don't know. A wide variation of responses was tabulated in all but two of the response groups. These two groups were the wrong answer with the right reason and don't know. Response group "wrong answer with the right reason" had 19 of the fact situations with a zero percentage and response group "don't know" had 20 fact situations with 1-7 percent correct. These low percentages were a result of farmers attempting to answer each question even though they had little or no knowledge of the correct answer.

All of the fact situations were divided into 13 subject area groups. The correct response, "right answer with the right reason," was used to determine the legal knowledge that farmers had of estate planning. Farmers were most knowledgeable in the subject area of current use valuation (88 percent correct responses), followed by the subject area of deeds with 84 percent correct. The subject areas of distributive share and gifts had correct responses of less than 38 percent. Farmers were least knowledgeable in the subject area of marital deduction (only 19 percent correct).

The characteristics of age, farm size, gross farm income, and education were studied to determine if a relationship existed between each of these characteristics and the 13 subject area groups. Results indicate that no relationship existed between age, farm size, or educational level and the 13 subject area groups on estate planning. A wide variation of correct responses existed for gross farm income levels and the different subject area groups. As gross farm income increased, there was a slight increase in average correct responses up to the $150,000-$199,999 level; therefore, there was a relationship between gross farm income levels and increased knowledge in estate planning.

Legal solutions to the fact situations were presented in layman terms, according to Alabama statuatory case laws and federal estate tax laws.

## CONCLUSIONS

Farmers need to be aware of their legal rights and responsibilities relative to estate planning. With tax laws changing frequently, it is important for farmers to seek legal assistance in preparing an estate plan for their farm business. Professional consultants on estate planning could help farmers save money on estate taxes.

The 32 fact situations were divided into 13 subject areas. The subject area of land ownership included five fact situations. This area had average correct responses of 54 percent, with the highest being 65 percent and the lowest 19 percent. Farmers were least knowledgeable about the subject of tenants-in-common. The other three fact situations in this area covered joint tenancies and averaged 62 percent correct responses.

Life estates had three fact situations. Farmers had an average of 60 percent correct responses for this subject area. One of these situations concerned the clear-cutting of timber by a life tenant. Only 19 percent of the farmers got this situation correct.

Business organizations had two fact situations with average correct responses of 53 percent. Farmers had a fair score of 64 percent correct for the situation on corporations, but only 41 percent correct on the situation about limited partnerships.

Farmers scored fair for the three fact situations on intestate succession, with average correct answers of 59 percent. Some farmers were not aware of the revised laws on intestate succession.

The two fact situations on distributive share had average correct responses of only 31 percent. In one of the situations, the husband tried to disinherit his wife by willing his farm to his parents. Fifty-seven percent of the farmers answered this situation correctly. The other situation only had correct answers of 5 percent, the lowest of all of the 32 fact situations.

Deeds covered two fact situations with average correct responses of 84 percent. One of these situations elicited correct responses of 95 percent, indicating that farmers were more knowledgeable about this situation than all of the other fact situations.

Gifts were covered by five fact situations, for which correct responses averaged only 35 percent (a high of 58 percent correct for one situation and a low of 13 percent correct for another).

Life insurance only covered two fact situations, with average correct answers of 59 percent. The farmers scored 73 percent correct on one situation and 45 percent correct on the other.

The subject area of marital deduction had only one fact situation, for which there was a correct response of 19 percent. This was the lowest correct response percentage for any of the subject areas. Farmers had little knowledge about the revised law on marital deduction which became effective after 1981.

Current use valuation had two fact situations and farmers scored

an average of 88 percent correct. This was the best percentage of correct answers for all of the 13 subject areas.

The subject area of generation skipping had only one fact situation because it was not one of the major estate planning tools considered in this study. Farmers had a score of 60 percent correct answers, indicating a fair level of knowledge for this subject area.

Trusts were covered by two fact situations, one on revocable trusts and the other on irrevocable trusts. Farmers scored average correct responses of 51 percent for these two situations, even though only 2.5 percent of the farmers interviewed had made use of trusts in their estate planning.

The last subject area was simultaneous death. Farmers had an average of 68 percent correct responses for the two fact situations used in this subject area.

This study indicates that farmers have only a fair level of legal knowledge about the broad field of estate planning and need to become more knowledgeable about the most recently revised laws.

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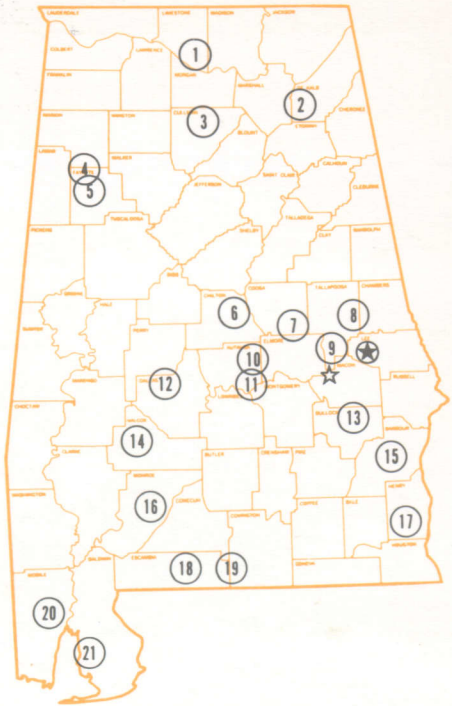
(38) Rome, Wendy, James Hurboncak, and Ron Durst. 1982. The Economic Recovery Tax Act of 1981: Provisions of Significance to Agriculture. Economic Research Service. United States Department of Agriculture.
(39) Self v. Self, 103 So. 2d 591 (1925).
(40) Uchtmann, Donald L. 1981. Agricultural Law. McGraw-Hill, Inc., New York, N. Y. p. 586.
(41) Uchtmann. p. 603.
(42) _____. p. 604.

# Alabama's Agricultural Experiment Station System
## AUBURN UNIVERSITY

With an agricultural research unit in every major soil area, Auburn University serves the needs of field crop, livestock, forestry, and horticultural producers in each region in Alabama. Every citizen of the State has a stake in this research program, since any advantage from new and more economical ways of producing and handling farm products directly benefits the consuming public.




## Research Unit Identification

★ Main Agricultural Experiment Station, Auburn.
☆ E. V. Smith Research Center, Shorter.

1. Tennessee Valley Substation, Belle Mina.
2. Sand Mountain Substation, Crossville.
3. North Alabama Horticulture Substation, Cullman.
4. Upper Coastal Plain Substation, Winfield.
5. Forestry Unit, Fayette County.
6. Chilton Area Horticulture Substation, Clanton.
7. Forestry Unit, Coosa County.
8. Piedmont Substation, Camp Hill.
9. Plant Breeding Unit, Tallassee.
10. Forestry Unit, Autauga County.
11. Prattville Experiment Field, Prattville.
12. Black Belt Substation, Marion Junction.
13. The Turnipseed-Ikenberry Place, Union Springs.
14. Lower Coastal Plain Substation, Camden.
15. Forestry Unit, Barbour County.
16. Monroeville Experiment Field, Monroeville.
17. Wiregrass Substation, Headland.
18. Brewton Experiment Field, Brewton.
19. Solon Dixon Forestry Education Center, Covington and Escambia counties.
20. Ornamental Horticulture Substation, Spring Hill.
21. Gulf Coast Substation, Fairhope.