INTERSPOUSAL TRANSFERS
AND
AUGMENTED ESTATE

THOMAS M. DAVIES*
WILLIAM E. OLSON, JR.**

ELECTIVE SHARE AND THE AUGMENTED ESTATE

This article begins with a discussion of the concept of the Augmented Estate and the new elective share provisions provided in the Nebraska Probate Code.

The traditional purpose of the statutory elective share provisions is to provide a surviving spouse protection against either intentional or unintentional disinheription. The intent of the Nebraska Probate Code is to protect the spouse of a decedent against donative transfers by will and will substitutes that would deprive the surviving spouse of a "fair share" of the decedent's estate. Present Nebraska law provides that the elective share of the surviving spouse is a fraction of the probate estate plus exemptions. The fraction is based on the intestate succession interest as provided in the Nebraska statutes. The elective share provisions provided in the Nebraska Probate Code are based on the concept of the augmented estate. Under current law, in addition to the intestate succession interest, the surviving spouse electing pursuant to the statute also receives the homestead interest as provided in section 30-101 and the exemptions provided in section 30-103.

This elective share plus the exemptions were in addition to any property which was not includible in the probate estate, such as joint tenancy property, insurance proceeds, inter vivos trust property, lifetime gifts and other nontestamentary transfers which passed to the spouse both as a result of the death and prior to death. The spouse, by electing the statutory share, could defeat a valid estate plan because the election was in addition to the property received outside of the probate estate. Thus, the spouse would often receive more than the intended share pursuant to the decedent's estate plan. Conversely, personal property transferred by the

* A.B., LL.B., University of Nebraska; Member, Mattson, Ricketts, Davies, Stewart & Calkins, Lincoln, Nebraska.
** B.A., J.D., University of Nebraska; Member, Mattson, Ricketts, Davies, Stewart & Calkins, Lincoln, Nebraska.
decendent to persons other than the spouse during the decedent's life could operate to disinherit the spouse.

The Nebraska Probate Code by utilizing the concept of the "augmented estate" has attempted to alleviate the problem of the disinherited spouse while at the same time protecting the valid estate plan of a decedent.

Under the Code, the elective share of a surviving spouse is one-third of the "augmented estate". In discussing the concept of the augmented estate it must be pointed out that this term is not synonymous with "intestate estate" or "probate estate". To begin with, the intestate succession share of a surviving spouse has been changed by section 30-2302. That interest is now computed as follows: (1) If there are no surviving issue or parent of the decedent, the surviving spouse receives all of the estate; (2) If there are no surviving issue but one or both parents of the decedent survive, the spouse receives the first $35,000 of the probate or intestate estate plus one-half of the balance of the estate; (3) If there are surviving issue, all of whom are issue of the surviving spouse, the surviving spouse receives the first $35,000 plus one-half of the balance of the probate or intestate estate; (4) If there are surviving issue, but one or more are not issue of the surviving spouse, the surviving spouse receives one-half of the intestate estate. This is the only situation where the surviving spouse does not receive the first $35,000 of the estate. The result has been to increase the basic intestate succession share of the surviving spouse. In no event would the surviving spouse be entitled to an intestate succession interest of less than one-half of the probate or intestate estate.

The surviving spouse can then elect one-third of the "augmented estate". The augmented estate is not computed on the basis of the intestate succession interest and has no direct relationship. The augmented estate includes much more than the intestate estate.

Some comments on procedure are as follows.

First, pursuant to section 30-2313(a), the right of election against the augmented estate is only available to a domiciliary spouse.

Furthermore, section 30-2315 provides that the right to elect is personal and can only be exercised during the lifetime of the surviving spouse. However, if the spouse is a "protected person", as defined by section 30-2601, then the election may only be exercised by order of the court after a finding that the exercise is "in the best interest of the protected person during his probable life expectancy" pursuant to section 30-2315. Obviously, what is in the
“best interest” of the protected person will be left to the court to decide. The term does survive from prior statutory law, section 30-108(2). In this regard, see a recent Nebraska Supreme Court case, Clarkson v. First Nat'l Bank of Omaha, 193 Neb. 201, 226 N.W.2d 334 (1975).

Section 30-2317 sets out the basic mechanics of the election and how it is made. The election must be asserted by a petition filed in the probate court within the earlier of six months after the publication of the first notice to creditors or one year after death. This time may be extended for cause by the court.

Notice of the hearing must be given to interested persons and to distributees and recipients of portions of the augmented net estate whose interest would be adversely affected. The court will determine the amount of the elective share after the notice and hearing. The order or judgment of the court may be enforced as necessary in a suit for contribution or payment in other courts of Nebraska or in other jurisdictions.

The computation of the augmented estate, while complicated is very similar to the computation and concepts involved in the Internal Revenue Code provisions defining the gross estate. A careful practitioner will at least make a rough computation of the augmented estate. In most estates the surviving spouse will have received more than her net elective share of the augmented estate and it will be unnecessary for her to assert her election. Since the augmented estate includes items passing to the spouse outside of the probate estate, such as joint tenancy property and life insurance, and since the spouse must set-off any property received by him or her, the impetus formerly provided for an election will usually not be present. Furthermore, the spouse can waive rights to election in whole or in part prior to the death of the decedent, and this waiver is legally binding on the surviving spouse.

Section 30-2314 defines the “augmented estate”. Basically, the augmented estate includes the probate estate, less funeral and administrative expenses, allowances and claims; plus the value of property transferred to others by the decedent during the marriage without full and adequate consideration in money or money’s worth if the decedent retained a life income, a power to revoke or dispose of, consume or invade the principal for his own benefit, held title with another with right of survivorship or transferred amounts over $3,000 in either of the last two years preceding death. Also added is the value of property owned by the spouse at the decedent’s death or transferred by the spouse without a full and adequate consideration in money or money’s worth and which would
have been includible in the surviving spouse's augmented estate if that spouse had predeceased the decedent, including proceeds of insurance payable to the surviving spouse, to the extent the owned or transferred property was derived by the surviving spouse from the decedent without a full consideration in money or money's worth.

There are certain tracing problems involved in the computation resulting from the time at which the includible property is valued. Includible property owned by the spouse at decedent's death is valued as of the date of death. Includible property transferred by the surviving spouse is valued at the earlier of the time the transfer became irrevocable or at decedent's death.

There is a rebuttable presumption that property owned by the surviving spouse at the date of death of the decedent, or property previously transferred by the surviving spouse to other persons was derived from the decedent. There is a similarity between the presumption of inclusion in the gross estate of jointly owned property under the federal estate tax law to this rebuttable presumption of inclusion in the augmented estate.

Items which are excluded from the augmented estate include transfers consented to by the surviving spouse, insurance and pensions payable to third parties and rights waived in whole or in part. The waiver provisions are provided in section 30-2316.

After the computation of the "augmented estate" is made, that total is divided by one-third to compute the elective share. Then there are certain set-offs against this one-third share which may reduce the share or completely abolish it. Section 30-2318 provides that the election does not affect the share of the spouse under the provisions of the decedent's will or the intestate succession share unless the surviving spouse also expressly renounces in the petition for an elective share the benefit of all or any of the provisions. This does not mean that the surviving spouse receives one-third of the augmented estate plus her intestate succession interest or her share under the provisions of the decedent's will. Section 30-2314, which defines the augmented estate, clearly states that this includes the "estate". The "estate" means the probate estate.

Section 30-2319 provides that property which is part of the augmented estate but which passes or has passed to the surviving spouse by testate or intestate succession or by other means is applied to the elective share to satisfy it. This is the set-off which can reduce or completely abolish the elective share total. The similarities to the provisions of a formula type marital deduction provision in a well-planned will should be noted.
Section 30-2319, in computing the amount due the spouse, first charges the spouse with property included in the augmented estate and received by her at decedent's death or during decedent's life, which has not been renounced. Any balance due under the elective share after the set-off is apportioned among other recipients of the augmented estate.

Persons liable to contribution for the spouse's elective share balance due are transferees or appointees of the decedent or their donees, if they still have the property. Those bound to the contribution can either give up the property or pay its fair value. There are provisions in the Code which protect bona fide purchasers from contribution.

In addition to the spouse's elective share rights, section 30-2318 states that the surviving spouse is entitled to a homestead allowance, exempt property and family allowance whether or not there is an election to take the elective share and whether or not there is a renunciation of benefits conferred upon the spouse by the will. However, if the will clearly provides that the provisions of the will are in lieu of these rights, then the provisions of the will would bar the allowances.

Basically, the homestead allowance provision as provided in section 30-2322 changes substantially the former law. The homestead allowance is now a specific amount, $5,000. Section 40-117 has been repealed and the homestead of a survivor is no longer a life estate in real property.

Exempt property rights are provided in section 30-2323. This section provides that the exempt property is in the amount of $3,500 in excess of any security interest in household furniture, automobiles, furnishings, appliances and personal effects. It should be noted that minor and dependent children share in the homestead allowance equally in the event there is no surviving spouse. Also, in the event there is no surviving spouse, any children including adult children share equally in the exempt property.

In addition to the rights of homestead allowance and exempt property, the surviving spouse is entitled to a family allowance as provided by section 30-2324. The family allowance may be determined by a personal representative in a lump sum not exceeding $6,000 or in periodic installments not exceeding $500 per month for one year. However, upon application and order of the court, the family allowance can be increased. The only limitation on the family allowance is that it must be “a reasonable allowance in money out of the estate for their maintenance during the period of administration.”
The homestead allowance, exempt property right and family allowance should all qualify for the estate tax marital deduction because they vest in the surviving spouse at the date of death of the decedent. In addition they are vested indefeasible rights in property that survive as an asset of the surviving spouse's estate if they are unpaid on the date of the death of the surviving spouse. Also, the rights do not terminate on remarriage according to section 30-2325. Once again, it should be emphasized, that these three allowances are in addition to any rights of the spouse under the elective share.

Section 30-2320 provides that if a testator fails to provide by will for his surviving spouse whom he married after making his will the surviving spouse is entitled to the same share that the spouse would have received had the testator died intestate, unless waived under the provisions of section 30-2316 Thus, there is no automatic revocation of the entire will in cases where the will was drafted prior to the marriage.

INTERSPOUSAL TRANSFERS

The computation of the augmented estate includes property transferred by the decedent during the marriage to persons other than the spouse according to section 30-2314(1) (a). Furthermore, according to section 30-2314(2), the augmented estate includes property owned by the surviving spouse at the decedent's death, as well as property transferred by the surviving spouse during the marriage to any person other than the decedent if that property would have been included in the surviving spouse's augmented estate had she predeceased the decedent, to the extent that the owned or transferred property was derived from the decedent for less than full and adequate consideration in money or money's worth. Thus interspousal transfers and gifts made at any time prior to or after the marriage are included in the augmented estate to the extent that they were derived from the decedent for less than a full and adequate consideration. As a result, if the surviving spouse has been provided for by the decedent during his lifetime through outright gifts, joint tenancy property, life insurance, living trust provisions, annuities, or pension plans other than Social Security benefits, the amount of such property received reduces the elective share and may wipe it out entirely. That is, first the amount is included in the augmented estate and then set off against the elective share as having been already received. It is very important to note that such transfers from the decedent to the surviving spouse are not limited to transfers taking place during the marriage, and include
transfers prior to the marriage. However, only transfers during the period of the marriage from the decedent to persons other than the spouse are includible in the augmented estate. A decedent can thus provide for children by a prior marriage by gifts or trusts established before the current marriage.

The Nebraska Probate Code does provide that the surviving spouse may waive in whole or in part her right to the elective share, homestead allowance, exempt property and family allowance. This includes waiver as to both real estate and personal property. The waiver may be accomplished before or after marriage pursuant to section 30-2316. The waiver must be by written contract, agreement or specific waiver which is signed by the party waiving. The waiver requires fair disclosure according to section 30-2316.

This changes the existing law in that it provides for both pre- and post-nuptial contracts as well as other forms of waiver. In addition, the waiver applies to both real estate and personal property.

Further, a complete property settlement agreement entered into after or in anticipation of a separation, divorce, annulment or dissolution of a marriage constitutes a waiver of all rights to the elective share, homestead allowance, exempt property and family allowance by each spouse in the property of the other. This constitutes an automatic waiver unless the agreement provides otherwise. The waiver provided for by the agreement also constitutes a renunciation of all rights of intestate succession and benefits passing by virtue of a previously executed will unless otherwise provided in the settlement agreement according to section 30-2316. It is our opinion, the settlement agreement constitutes a full waiver of those rights regardless of whether one of the spouses dies prior to the dissolution decree becoming final. The comment to section 30-2316 provides that the operation of a property settlement as a waiver and renunciation takes care of the situation which arises when a spouse dies or a divorce suit is pending. Also, section 30-2353 (b) (3) provides "For purposes of these subsections 1, 2, 3 and 4 of this article, . . . a surviving spouse does not include (3) an individual who is a party to a valid proceeding concluded by an order purporting to terminate all marital property rights against the decedent."

It would seem that in order to be effective any waiver, ante-nuptial agreement, post-nuptial agreement or property settlement agreement would require that the agreement be in writing and be signed by the waiving party, after fair disclosure. It should
be noted that section 40-104 relating to a conveyance of real estate comprising a homestead and which requires the signature and acknowledgment of both spouses has not been repealed by the Nebraska Probate Code. In any situation involving real estate, it would be wise to have both spouses sign and acknowledge the writing which constitutes the waiver.

Also, any will executed after such waiver which provides benefits for the other spouse would still be valid and the waiver would not affect those provisions according to section 30-2316.

Section 30-2314(1) provides that any transfer is excluded from the augmented estate if it was made with the written consent or joinder of the surviving spouse. Thus, in addition to the specific waiver provisions of section 30-2316 any transfer made during the marriage of either real or personal property which is signed by the non-owing spouse operates as a release of the elective share of the augmented estate for that specific property. There is a question whether the waiver section, section 30-2316, applies to transfers under section 30-2314(1). In the authors’ opinion any standard deed or bill of sale complies with the requirements of fair disclosure if the property transferred is described, the nature of the transfer is set forth and the value of the property being transferred is stated.

It is recommended that in any situation involving transfers of either real or personal property during the marriage that the non-owing spouse join in the transfer, and in the case of real estate, the acknowledgment of the non-owing spouse be included. This is so because there is no way to determine whether the transferor will live two years, and whether the property will be included in the augmented estate if the value was more than $3,000. Also, if the real estate could constitute homestead property pursuant to section 40-104, an acknowledgment would still be required to avoid any title problems.

Section 30-2351 refers to contractual arrangements relating to death. This section provides that a contract to make a will or devise or not to revoke a will or devise or to die intestate, (if the contract is executed after January 1, 1977) can be established only by setting forth provisions in the will stating the material provisions of the contract, express references in the will to a contract, and extrinsic evidence proving the term of the contract or by a writing signed by the decedent evidencing the contract.

Also, execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or the wills. This is an evidentiary statute and refers to executory agreements to make wills or not to revoke existing wills. The provision does
not affect the waiver by written agreement or rights under existing wills or of the right of election. The provision was inserted in the Nebraska Probate Code to tighten the methods by which contracts concerning succession might be proved. The existence of a joint, mutual or joint and mutual will has certainly given rise to considerable litigation, as noted in the Comment to section 30-2351.

A surviving spouse has the benefit of section 30-2352 which is the replacement for the Nebraska disclaimer act. Basically, this provides a method by which the surviving spouse can effect a "post-mortem waiver". It is mentioned here only in that regard and should be examined further.

The concept of the augmented estate can be a great aid to the estate planner in pre-death and post-death estate planning. The surviving spouse is protected but the estate plan is also protected if the surviving spouse has received his or her share. This is not true under the present law relating to the election statute in Nebraska.

CONCLUSION

The Nebraska Probate Code places great stress upon the importance of making a will and the provisions of a will, and upon a well planned estate. This is one of the strengths of the Nebraska Probate Code. A great deal more responsibility is placed upon a practicing lawyer by the Code both in the estate planning field and in handling the probate. This is particularly true in the sections relating to the concept of the augmented estate. Although this concept is complex, it is no more complex than the marital deduction provisions under the Internal Revenue Code. If a lawyer understands the marital deduction provisions of the Internal Revenue Code, can work out an allocation of assets under a marital deduction formula in a will, and compute Schedule M of form 706, then he can certainly work out an augmented estate problem.

PROBLEMS INVOLVING THE AUGMENTED ESTATE

It should be noted first that in each problem, the surviving spouse must have filed a petition for the election and has the burden of proof in computing the augmented estate and asserting her right of election. In representing the spouse, an attorney might want to compute her elective share if there was any doubt regarding her fair share.

Assuming the need for computation arises, the following two problems are illustrative:
PROBLEM NO. 1

Husband and wife, H and W, married March 1, 1920. H died as a result of accident October 1, 1977. H survived by W, S-son and D-daughter. W received by Will one-half of the net probate estate and S and D each received one-fourth. No attempt has been made to reduce estate by Federal and State death taxes or to apportion such taxes, but it is assumed that wife did not bear the burden of such taxes.

AUGMENTED ESTATE

I. Probate Estate.
   1. Gross Estate $250,000
   2. Less Deductions:
      Claims 10,000
      Funeral and Administrative Expenses 15,000
      Homestead Allowance 5,000
      Exempt Property 3,500
      Family Allowance per Court Order 12,000
      45,500
   3. Line 1 less Line 2—net probate estate
      204,500

II. Value of property transferred to others (other than surviving spouse) without adequate and full consideration in money or money's worth by the decedent during marriage. (Sections 2035, 2036, 2037 and 2038 of the Internal Revenue Code).

   NOTE: Language underlined is found in the Nebraska Probate Code and has been taken from the Internal Revenue Code as cited. Language in section 30-2314 (i) (i) and (ii) is taken from the Internal Revenue Code.

   4. Property worth $10,000.00 transferred into joint tenancy with right of survivorship with H’s mother on July 1, 1919—value as of October 1, 1977 $25,000.00—value includable—

   (because transferred to others before marriage)

   5. 80 acres transferred to S on June 1, 1946 reserving a life estate in H—value as of date of gift $20,000.00—value as of October 1, 1977 $64,000.00—value includable (See Section 2036 of the Internal Revenue Code).

   NOTE: If surviving spouse joined in the deed there is a waiver of the right to include this property in the augmented estate—see section 30-2314.

   6. Revocable Inter vivos Trust established for D and her children on February 1, 1950. Value when set up $20,000.00—value as of October 1, 1977 $30,000.00—
value includable (See Section 2036 of the Internal Revenue Code).

6a. Trust has earned $1,000.00 per year or $27,000.00 since it was set up—value includable

7. 80 acres transferred into joint tenancy with right of survivorship with D on September 1, 1965—value as of date of deed $40,000.00—value as to October 1, 1977 $64,000.00—value includable (See Section 2040 of the Internal Revenue Code)

NOTE: If surviving spouse joined in the deed there is a waiver of the right to include this property in the augmented estate—see section 30-2314.

8. Shares of stock irrevocably given to S on April 1, 1976—value as of date of gift $4,000.00—value on October 1, 1977 $5,000.00—includable because given within two years of death—$4,000.00 less an exclusion of $3,000.00 for 1976—amount includable

Compare with Section 2035 of the Internal Revenue Code—rebuttable presumption that transfers made within three years of death are made in contemplation of death. The concept of contemplation of death is not in the Nebraska Probate Code. All transfers made to others within two years of death are includable in the augmented estate.

9. H purchased a paid up life insurance policy on his life on December 1, 1970 payable to D—cost $10,000.00 value includable

NOTE: Suppose husband seriously depleted his estate by purchasing paid up life insurance payable to others than his spouse—this violates the spirit of code. Query: Does this come within the definition of “life insurance?”

10. H purchased a joint annuity with S as joint annuitant on May 1, 1971—cost $4,000.00—value includable

11. H had accident policy for $4,000.00 payable to D—value includable (Accidental death)

12. H had a pension plan and named S as beneficiary—amount paid to S after death $7,000.00—amount includable

13. See Line 15 for description of Trust—amount includable

III. Surviving spouse must account and include following property as part of the augmented estate:

A. All property owned by the surviving spouse at date of husband’s death to the extent that it is derived from the decedent other than by will or intestate succession (which latter is included as part of I) (Valued as of date of death.)
B. Property derived from the decedent which was transferred by the surviving spouse to a third person, if that transfer would have caused that property to be included in the surviving spouse's augmented estate had the surviving spouse pre-deceased the decedent. (Valued when transfer became irrevocable or at death of decedent, whichever occurred first.)

C. The property described above in III A. and III B. is presumed to have been derived from the decedent without a full consideration in money or money's worth, unless the surviving spouse proves otherwise.

14. Shares of stock—cost $10,000.00—transferred by H to W on February 15, 1920 (prior to marriage) value at date of death $15,000.00—value includable 15,000

NOTE: Different rule at Line 4—transfer to others than spouse.

15. H established a trust on August 1, 1971 under which W was given income for life, power in trustee to invade corpus, based upon an ascertainable standard, remainder to S and D — value on 8-1-71 $20,000.00—value of trust at date of death $25,000.00—value of wife's life estate—age 75—life estate factor .38833 X $25,000.00—value includable ($15,292.00 includable at Line 13) 9,708

NOTE: If W had been given a general power of appointment or unrestricted right to consume all of this trust, the entire value would be includable at Line 15.

16. Life insurance proceeds on life of H payable to W—premiums paid by H—$50,000.00—value includable 50,000

NOTE: The payment of premium test has been installed by the Nebraska Probate Code even though it has been abrogated under the Internal Revenue Code. In order to avoid this result W would need to prove that the premiums were paid by W out of W's own estate. (Same result on accidental death benefits.)

17. Joint annuity contract with W—H primary annuitant—premiums paid by H—commuted value of contract $7,500.00—value includable 7,500

(Result same if premiums were paid by H's employer).

18. Pension plan with H's employer—proceeds payable to W—commuted value $8,000.00—value includable 8,000

(Cost paid by H's employer)

NOTE: W became entitled to Social Security payments because of earnings of H—value includable None
19. H had a general power of appointment as to certain property under his father's will which he appointed to W (not included in Line 1) value at date of death $10,000.00—value includable 10,000

20. 40 acre farm irrevocably transferred by H to W on August 1, 1959—value at time of transfer $8,000.00—W transferred this farm to S on September 1, 1965 reserving a life estate in W,—value at time of transfer to S $16,000.00—value at date of death—$40,000.00—value includable 8,000

NOTE: If H joined in the deed to S there is a waiver of the right to include this property in W's augmented estate—therefore it would not be includable here.

21. Value of augmented estate—sum of Lines 3 through 20 487,000

22. Wife has a right of election to take ⅔ of the augmented estate—⅔ × line 21 162,333

IV. The surviving spouse is charged:
   A. With the value of property acquired from the decedent under decedent's will or by intestate succession; and
   B. With the value of property derived from the decedent outside of the probate estate under the rules laid down in the Nebraska Probate Code.

W is charged with the following:

23. One-half of the net probate estate under H's will ⅔ of Line 3 102,250

24. Line 14 15,000
25. Line 15 9,708
26. Line 16 50,000
27. Line 17 7,500
28. Line 18 8,000
29. Line 19 10,000
30. Line 20 8,000

31. Total of Lines 23 through 30 210,458

Since the amount chargeable to the surviving spouse, W at Line 31 is greater than the elective share of ⅔ of the augmented estate—Line 22, W gets nothing further from the estate. She has already received more than her "fair share" of the estate and the property she received has completely exhausted the "elective share."

This will be the result in most estates.
PROBLEM NO. 2

Second marriage for both H and W married October 1, 1965, H has grown children A and B and a grandson, J; H died October 1, 1977. W received by will one-third of the net probate estate and A and B each received one-third. There was no pre-marital or post-nuptial contract between H and W.

AUGMENTED ESTATE

I. Probate Estate.
   1. Gross Estate
   2. Less deductions:
      - Claims
      - Funeral and Administrative Expenses
      - Homestead Allowance
      - Exempt Property
      - Family Allowance per Court order

   3. Line 1 less Line 2—Net Probate Estate

II. Value of property transferred to others (other than surviving spouse without adequate and full consideration in money or money's worth by the decedent during marriage.

4. Property worth $100,000.00 transferred to A and B ($50,000.00 to each) on September 1, 1965—value as of October 1, 1977 $150,000.00—value includable (transferred to others before marriage)

5. 80 acres transferred to A on May 1, 1967 reserving a life estate in H—value on May 1, 1967 $32,000.00—value on October 1, 1977 $40,000.00—value includable

6. Revocable Inter vivos Trust established for B on June 15, 1967—value when set up $35,000.00—value as of October 1, 1977 $40,000.00—value includable

7. Shares of stock given irrevocably to grandson J on December 1, 1975—value as of date of gift $23,000.00—value on October 1, 1977 $30,000.00—amount includable $23,000.00 less an exclusion of $3,000.00 for 1975

III. Surviving spouse must account and include following property as part of the augmented estate:

8. H and W purchased a residence on September 1, 1965 (prior to marriage) for $40,000.00—½ of the funds were furnished by W from her own estate—title was placed in joint tenancy with right of survivorship—value on October 1, 1977 $60,000.00—value includable

9. Life insurance proceeds on life of husband payable to W—$50,000.00—premiums paid by W out of her
own estate—all incidents of ownership in policy owned by W from date policy was issued—value in-
ccludable

10. Pension plan with H's employer—proceeds payable to W—commuted value of $8,000.00—cost paid by
H's employer—value includable

11. Value of augmented estate—sum of Lines 3 through
10

12. Elective share of W—one-third of Line 11

IV. The surviving spouse is charged with:

13. One-third of the net probate estate under H's Will—
$8,000.00

14. Line 8

15. Line 10

16. Total of Lines 13 through 15

Since the amount chargeable to W at line 16 is
$8,000.00 less than the elective share of 1/3 of the aug-
mented estate—Line 12—W is entitled to a total con-
tribution of $8,000.00 from A, B and J. This $8,000.00
will be equitably apportioned in accordance with the
amount includable in the augmented estate and
chargeable against each—

A is chargeable with $20,000 of probate property and
with $40,000.00 at Line 5

B is chargeable with $20,000 of probate property and
$40,000.00 at Line 6

J is chargeable with $20,000.00 at Line 7

A owes 60,000

140,000 or 42.86% of $8,000.00 = 3,429.00

B owes 60,000

140,000 or 42.86% of $8,000.00 = 3,429.00

J owes 20,000

140,000 or 14.28% of $8,000.00 = 1,142.00

Total 8,000.00

NOTE: If any of the three are bankrupt at time of election—
others only pay their share.

NOTE: W gets the full $8,000.00 in addition to homestead allow-
ance, exempt property, and family allowance.