

# MITCHELL M. GANS

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## EDUCATION

1974 HOFSTRA UNIVERSITY SCHOOL OF LAW  
Juris Doctor (with distinction)  
*Second in class; Law Review*

1971 HOFSTRA UNIVERSITY  
BBA (cum laude)

## ACADEMIC APPOINTMENTS

1978 – present HOFSTRA UNIVERSITY SCHOOL OF LAW  
Professor of Law  
*Rivkin Radler Distinguished Professor in Tax Law*

## OTHER POSITIONS

NYU SCHOOL OF LAW  
Teaching Estate and Gift Tax on an in-class and on-line basis  
Teaching IRS Chief Counsel on behalf of NYU School of Law

AMERICAN COLLEGE OF TRUST AND ESTATE COUNSEL  
Academic Fellow

AMERICAN COLLEGE OF TRUST AND ESTATE COUNSEL  
Academic Editor of ACTEC Journal

Academic Reporter, Advisory Committee to New York State Legislator on  
the reformulation of New York trust law

## PROFESSIONAL EXPERIENCE

Clerkship: Hon. Jacob D. Fuchsberg, New York State Court of Appeals.

Associate at Simpson, Thacher & Bartlett.

## PUBLICATIONS

**Book:**

2006 CIRCULAR 230 DESKBOOK (PLI 2006)

**Law Review Articles:**

- 2019 *Publicity Rights and the Estate Tax*, Colum. J.L. & Arts \_\_ (2018)
- 2018 *Powell and Section 2036: Our Reply*, 43 ACTEC J. 299 (2018)
- 2017 *Family Limited Partnerships and Section 2036: Not Such a Good Fit*, 42 ACTEC J. 253 (2017)
- 2015 *Asset Preservation and the Evolving Role of Trusts in the Twenty-First Century*, 72 WASH. & LEE L. REV. 257 (2015)
- 2013 *The Public Policy Doctrine: Drawing the Line Between Permissible and Impermissible Tax-Savings Clauses*, 80 Tenn. L. Rev. 655 (2013)
- 2011 *Sales to Grantor Trusts: A Case Study of What theirs and Congress can do to Curb Aggressive Transfer Tax Techniques*, 78 Tenn. L. Rev. 973 (2011)
- 2011 *Related Parties and the Need to Bridge the Gap Between the Income Tax and Transfer Tax Systems*, 62 Ala. L. REV. 405 (2011)
- 2010 *Sticky Copyrights: Discriminatory Tax Restraints On The Transfer Of Intellectual Property*, 67 WASH. & LEE L. REV. 25 (2010)
- 2009 *A Beneficiary as Trust Owner: Decoding Section 678*, 35 ACTEC J. 190 (2009)
- 2008 *The Estate Tax Fundamentals of Celebrity and Control*, 118 YALE L.J. POCKET PART 50 (2008), <http://thepocketpart.org/2008/09/29/gans.html> (Sept. 30, 2008)
- 2008 *Proposed Tax Return Preparer Penalty Regulations: A Comparison With Existing Guidance*, 34 ACTEC J. 77 (2008)
- 2008 *Postmortem Rights of Publicity: The Federal Estate Tax Consequences of New State-Law Property Rights*, 117 YALE L.J. POCKET PART 203 (2008), <http://thepocketpart.org/2008/04/01/ganscrawfordblattmachr.html>. (Apr. 8, 2008)
- 2007 *Estate Tax Exemption Portability: What Should the IRS Do? And What Should Planners Do in the Interim?*, 42 REAL PROP. PROB. & TR. J. 413 (2007)
- 2007 *Reforming the Gift Tax and Making it Enforceable*, 87 B.U. L. REV. 101 (2007)

- 2007 *New Penalties on Appraisers and Related Valuation Worries Spawned by the Pension Protection Act of 2006*, 32 ACTEC J. 285 (2007)
- 2007 *Family Limited Partnership: Dueling Dicta* 35 CAP U. L. REV. 1 (2006)
- 2006 *A New Model for Identifying Basis in Life Insurance Policies: Implementation and Deference*, 7 FLA. TAX REV. 569 (2006)
- 2002 *Deference and the End of Tax Practice*, 36 REAL PROP. PROB. & TR. J. 731 (2002)
- 1999 *Federal Transfer Taxation and the Role of State Law: Does the Marital Deduction Strike the Proper Balance?* 48 EMORY L. J. 101 (1999)
- 1992 *GRITs, GRATs & GRUTs: Planning and Policy*, 11 VA. TAX REV. 761 (1992)
- 1983 *Gift Tax: Valuation Difficulties and Gift Completion*, 58 NOTRE DAME L. REV. 3 (1983)
- 1981 *Re-Examining the Sham Doctrine: When Should an Overpayment Be Reflected in Basis?*, 30 BUFF. L. REV. 95 (1981)

#### **Other Publications**

- 2018 *The SALT Regulations and Deference*, \_\_ Tax Notes \_\_ (October 1, 2018)
- 2018 *Planning Opportunities with ESBTS: Saving State and Local Income Taxes*, \_\_ J. TAX'N 227 \_\_ (2018)
- 2018 *Real Estate Tax Deduction: Use Trusts to Bypass Limit on State and Local Tax Deduction*, 45 EST. PLAN. 3 (2018)
- 2016 *Treasury Proposes New Regulations to Restrict Valuation Discount Planning*, TR. & EST. 15 (November 2016)
- 2016 *Leimberg on-line: The Recently Proposed Section 2704 Regulation* (August 2016)
- 2016 *Leimberg on-line: How the Supercharged Credit Shelter Trust(sm) Avoids the Estate Tax Time bomb* (May 2016)
- 2016 *Leimberg on-line: Dieringer v. Commissioner, Estate Tax Charitable Deduction Reduced by Post-Death "Shenanigans" – A Flawed Result* (April 2016)
- 2015 *Leimberg on-line: Davidson v Deloitte: The Davidson Estate Sues Deloitte Over SCIN in GRAT Strategy* (October 2015)

- 2014 *Leimberg on-line: What if Perpetual Trusts Are Unconstitutional?* (December 2014)
- 2014 *Supercharged Credit Shelter Trusts Versus Portability*, 28 Prob. & Prop. 2 (ABA March/April 2014)
- 2014 *Leimberg on-line: Circular 230 Amendments* (May 2014)
- 2014 *Private Annuities and Installment Sales: Trombetta and Section 2036*, 120 J. TAX'N 227 (2014)
- 2013 *New Alaska Law will Enhance Nationwide Estate Planning – Part II*, 40 EST. PLAN. 20 (2013)
- 2013 *New Alaska Law will Enhance Nationwide Estate Planning – Part I*, 40 EST. PLAN. 3 (2013)
- 2013 *Imposition of the 3.8% Medicare Tax on Estates and Trusts*, EST. PLAN. (2013)
- 2013 *Leimberg on-line: Elkins and Fragmentation Discount* (March 19, 2013)
- 2013 *Congress Finally Gives Us a Permanent Estate Tax Law*, 118 J. TAX'N 75 (2013)
- 2013 *Trust Protector Powers: Tax Implications of the Fiduciary-Duty Issue*, New York State Bar Journal (Spring 2013)
- 2012 *Exemption Portability may be a Remedy for Decoupling Problem*, EST. PLAN. (2012)
- 2012 *Leimberg on-line: Decoupling, Portability and Rev. Proc. 2001-38* (May 22, 2012)
- 2012 *Leimberg on-line: An Analysis of CCA 201208026* (March 7, 2012)
- 2012 *Disclaimers: Unintended Effects of Disclaimers of Income Interests*, EST. PLAN. (2012)
- 2012 *Turner II and Family Partnerships: Avoiding Problems and Securing Opportunity*, EST. PLAN. (2012)
- 2011 *Leimberg on-line: Final 2036 Regulations* (November 9, 2011)
- 2011 *Family Limited Partnerships, A Practical Guide to Estate Planning*, Edited by Professor Jay A. Soled and published by the American Bar Association (contributed chapter)
- 2011 *Trust Protector Powers: Fiduciary Duty and Tax Issues*, \_\_ Tax Notes \_\_, 2011 TNT 177-11 (September 12, 2011)
- 2011 *Estate Planning After the 2010 Tax Relief Act: Big Changes, But Still No Certainty*, 114 JTAX 68 (February 2011)

- 2011 *Leimberg on-line: The Super-Charged Credit Shelter Trust: A Super Idea for Married Couples in light of the 2010 Act* (April 6, 2011)
- 2010 *Supercharged Credit Shelter Trustsm :A Super Idea for Married Couples Especially in Light of the 2010 Tax Act*, distributed at University of Miami Institute on Estate Planning in January 2011
- 2010 *Leimberg on-line: The Impact of The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 on the GST*
- 2010 *The Impossible Has Happened: No Federal Estate Tax, No GST Tax And Carryover Basis For 2010*, 112 J. TAX'N 68 (2010)
- 2010 *Final Regs on Deducting Expenses and Claims Under Section 2053, Part I*, 37 EST. PLAN. 3 (2010)
- 2010 *Final Regs on Deducting Expenses and Claims Under Section 2053, Part II*, 37 EST. PLAN. 3 (2010)
- 2010 *Retroactive Estate Tax: Can It Be Made Constitutional?* 2010 TAX NOTES 7-8 (Jan. 12, 2010)
- 2010 *IRS Rules Self-Settled Alaska Trust Will Not Be In Grantor's Estate*, 37 EST. PLAN. 3 (2010)
- 2010 *No Gain at Death*, 149 TR. & EST. 34-37 (Feb. 2010)
- 2009 *Celebrity, Death and Taxes: Michael Jackson's Estate*, 2009 TAX NOTES 200 (Oct. 19, 2009)
- 2009 *A Look at the Final Section 2053 Regulations*, WEALTH TRANSFER PLANNING (Nov. 2009), <http://www.flprobatelitigation.com/uploads/file/a%20look%20at%20the%20final%20section%202053%20regulations.pdf>
- 2009 *IRS Rules Self-Settled Alaska Trust Not In Grantor's Estate*, Leimberg On-Line (Nov. 20, 2009) (on the ruling I obtained)
- 2009 *Problems for Married Persons Who Die in 2010 in States with Independent Death Taxes*, Leimberg On-Line (Dec. 31, 2009)
- 2009 *Untangling Installment Payments of Estate Tax Under Section 6166*, 36 EST. PLAN. 3 (2009)
- 2009 *Notable Changes Seen With 2008 Amendments to Section 6694 and Treasury's Final Tax Return Preparer Penalty Regulations*, BNA DAILY TAX REPORT, No. 25 at J-1 (Feb. 10, 2009)
- 2009 *Final Return Preparer Penalty Regulations*, Leimberg On-Line (Feb. 5, 2009)

- 2008 *Final Regulations on Estate Tax Inclusion for GRATs and Similar Arrangements Leave Open Issues*, 109 J. TAX'N 217 (2008)
- 2008 *Another Look at Spousal Lifetime Access Trusts*, Leimberg On-Line (Dec. 18, 2008)
- 2008 *CRT Arrangement Deemed Transaction of Interest*, Leimberg On-Line (Nov. 11, 2008)
- 2008 *Analysis of Tax Amendment Carried in Bailout Legislation*, Leimberg On-Line (Oct. 22, 2008)
- 2008 *Notice 2008-13 IRS Fleshes Out New Return Preparer and Advisor Rules Under Section 6694*, Leimberg On-Line (2008)
- 2008 *Heath Ledger's Estate: Why Daughter Matilda, Who Was Left Nothing in Her Father's Will, Might Have a Claim to Everything*, FINDLAW (May 12, 2008)
- 2008 *Circular 230 and Preparer Penalties: Evil Siblings for Practitioners*, 119 TAX NOTES 397 (Apr. 28, 2008)
- 2008 *Notice 2008-13 Offers Interim Guidance on Tax Return Preparation and Advice*, 33 TAX MGMT., EST., GIFTS & TR. J. 79 (2008)
- 2007 *Treatment of GRATs Under the Section 2036 Proposed Regulations: Questions Remain* 107 J. TAX'N 143 (2007)
- 2007 *The Easiest Tax to Avoid*, 115 TAX NOTES 1061 (June 2007)
- 2007 *Proposed Retained Interest Regs: Much Left Unanswered* 116 TAX NOTES 127 (July 2007)
- 2007 *Supercharged Credit Shelter Trust*, 21-Aug. PROB. & PROP. 52 (July/Aug. 2007)
- 2007 *The World's Greatest Gift Tax Mystery, Solved*, 115 TAX NOTES 43 (Apr. 16, 2007)
- 2006 *What Estate Planners Need to Know About the New Pension Act*, 105 J. TAX'N 199 (2006)
- 2005 *Quadpartite Will Redux: Coping with the Effects of Decoupling*, 32 EST. PLAN. 15 (2005)
- 2005 *Making Spousal Estate Tax Exemptions Transferrable*, 19 PROB. & PROP. 10 (2005)
- 2005 *Circular 230 Redux: Questions of Validity and Compliance Strategies*, 107 TAX NOTES 1533 (June 20, 2005)
- 2005 *The Application of Circular 230 in Estate Planning*, 107 TAX NOTES 61 (Apr. 4, 2005)
- 2005 *Quadpartite Will: Decoupling and the Next Generation of Instruments Will*, 32 EST. PLAN. 3 (2005)

- 2005 *Deference and Family Limited Partnerships: A Case Study*, 39 HECKERLING INSTITUTE ON EST. PLAN. Ch.5 (2005)
- 2004 *Gifts by Fiduciaries by Tax Options and Elections*, 18 PROB. & PROP. 39 (2004)
- 2004 *Some Good News About Grantor Trusts: Rev. Rul. 2004-64*, 31 EST. PLAN. 467 (2004)
- 2004 Possible Strategy to Make Fuller Use of Each Spouse's Exemption, 16 PROB. PRAC. REP. 1, no. 7 (2004)
- 2004 *Estate Tax, Decoupling*, N.Y. L. J. (June 25, 2004)
- 2004 *The Final Income Regulations, Their Meaning and Importance*, 103 TAX NOTES 891 (May 17, 2004)
- 2003 *Strangi: A Critical Analysis and Planning Suggestions*, 100 TAX NOTES 1153 (Sept. 1, 2003)
- 2002 *Income Tax Effects of Termination of Grantor Trust Status by Reason of The Grantor's Death*, 97 J. TAX'N 149 (2002)
- 2002 *Deathbed Planning*, TR. & EST. 23 (2002)
- 2000 *Life Insurance: Some Common 2035/2036 Problems*, TR. & EST. (May 2000)
- 2000 *The Anti-Hubert Regulations*, 87 TAX NOTES 969 (May 15, 2000)
- 1989 *An Analysis of the TAMRA Changes to the Valuation Freeze Rules (Pt. I)*, 70 J. TAX'N 14 (1989)
- 1989 *An Analysis of the TAMRA Changes to the Valuation Freeze Rules (Pt. II)*, 70 J. TAX'N 74 (1989)
- 1989 *Will Administration Expenses Charged to Income Reduce the Marital Deduction?*, 71 J. TAX'N 90 (1989)
- 1988 *Putting the Heat on Freezes*, 2 PROB. & PROP. 12 (1988)
- 1988 *Disclaimers*, 46 N.Y.U. INST. ON FED. TAX ch. 52 (1988)
- 1988 *OBRA Will Require Revision of Some Estate Plans*, 2 PROB. & PROP. 50 (1988)
- 1987 *The Repeal of General Utilities: Estate Tax Implications*, 126 TR. & EST. 43 (1987)
- 1986 *Does a Wind-Up Trigger the Grantor Trust Rules in Spousal Remainder Trusts?*, 125 TR. &

EST. 46 (debating Stanley M. Johanson, Fannie Coplin Regents, Professor of Law, University of Texas Law School) (1986)

1985 *Marital-Property Settlements: The Implications of Cook*, 122 TR. & EST. 43 (1985)

**PRESENTATIONS BEFORE FOLLOWING GROUPS (approximately 100 presentations)**

- ALI-ABA
- Heckerling (University of Miami Institute on Estate Planning)
- American Bar Association
- New York State Bar Association
- University of North Carolina Tax Institute
- Notre Dame Tax Institute
- Association of the Bar of the City of New York
- New York County Lawyers' Association
- N.Y.U. Inst. on Federal Taxation
- PLI
- New York State Judges
- American Academy of Matrimonial Lawyers
- Advanced Practice Institute
- Nassau County Bar Association
- Queens County Bar Association
- Westchester County Bar Association
- Various other Bar Associations and private groups