NORTH CAROLINA LAW REVIEW

Volume 33 | Number 2 Article 16

2-1-1955

Taxation -- Effects of Federal Taxes on Partnership "Buy and Sell" Agreements Funded by Life Insurance

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XVI, Section 1600 *et seq.* of the Machinery Act[29] might be amended to include airlines, so as to allow state assessment and certification of apportioned value to local units for taxation.

THIRD: A special statute might be enacted specifically to encompass the flight equipment of airlines operating in and through North Carolina.[30] Such a statute should (1) require central assessment by a state board or agency, (2) include a formula by which to determine apportioned value allocable to this state, and (3) provide for central collection of taxes and distribution thereof to local authorities. The Nebraska statute[31] would be a valuable model for such an act because it is relatively simple and concise and because it has the sanction of the United States Supreme Court in the *Braniff* case.

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Taxation—Effects of Federal Taxes on Partnership "Buy and Sell" Agreements Funded by Life Insurance

In these days of high corporate taxes, many small and medium sized businesses prefer to operate as partnerships, thus avoiding the consequences of double taxation which are felt by closely held and small family corporations. In assuming the partnership form, the business associates are confronted with a problem with which corporate organizations are not concerned. That is that under the general law, upon the death of a partner, the partnership is automatically dissolved, unless otherwise provided for in the partnership agreement.[1] In case of dissolution, the surviving partners are trustees for the decedent's partnership interests and are accountable to his estate. This involves a valuation of the business and a possible sale of part or all of the assets in order to pay the estate its due. Even if provisions were made for continuance of the partnership, undoubtedly many a profitable business would be wrecked by the incompatible interests of the surviving partners and the decedent's representatives.

In order to solve this problem many partners have entered into "buy and sell," or "survivor purchase," agreements during their life-

[29] N. C. GEN. STAT. § 105-350 *et seq.* (1950).

[30] There is no apparent reason why such a statute should not include the trucks and busses of earth-bound carriers as well. Since the Machinery Act does not provide specially for such property, it would seem that the sections of that Act discussed in this note would be applicable to that property. Furthermore, in view of the number of highway carriers operating in this state, the need for a special tax provision regarding such carriers seems even greater than the need for such a provision applicable to airlines. However, the problems involved in the taxation of highway carriers are beyond the scope of this note.

[31] NEB. REV. STAT. §§ 77-1244 through 77-1250 (1950). See also ARIZ. CODE § 73-2001 *et seq.* (Supp. 1952); MINN. STAT. ANN. § 270.071 *et seq.* (1947).

[1] UNIFORM PARTNERSHIP ACT, § 31; N. C. GEN. STAT. § 59-61 (1943).

times, thereby assuring the survivor or survivors that they will acquire the decedent's interest, and that the business will be carried on under their control. Estate and income taxes cannot be ignored in drawing up such an agreement, and care taken in drafting the instrument may save the estate or the surviving partners many dollars in taxes. Another purpose which the agreement should serve is to give the decedent's interest a definite valuation, either by fixing a specific sum of money or by setting out the method by which the interest is to be evaluated.[2] This will avoid any subsequent dispute between the survivors and the decedent's executor and in addition may avoid protracted and costly litigation with the government, by pegging the valuation for estate tax purposes. Of course, the problem of valuation would not arise if a partner sold his interest during his lifetime.

One problem which arises immediately is: How will the survivor finance the purchase of the decedent's interest at the price agreed upon? Because of present high rates of personal income taxes, it is difficult for most individuals to accumulate and have on hand sufficient ready cash to enable them to purchase a partner's interest. Therefore, other methods of supplying purchase money must be found. It is here that insurance on the partners' lives has come into frequent use in the last thirty years. It provides the surviving partner a large sum of ready cash tax free. In turn this cash may be urgently needed by the decedent's personal representative to settle the estate, thus avoiding sale of non-liquid assets. It is universally recognized that a partner has an insurable interest in the life of a co-partner for this purpose, and some states have passed statutes expressly so providing.[3] Several plans and their variations are in use by partnerships, and all involve the following common elements: (1) policies of life insurance will be taken out on the partners' lives, the proceeds to be used for purchasing the deceased partner's interest; (2) the agreement will limit the value of the partner's interest; (3) an agreement is made by each partner not to sell his partnership interest during his lifetime except to the other partner or partners; (4) the agreement should be a bona fide business transaction; and (5) the deceased partner's estate is legally bound to sell the decedent's interest to the surviving partners.[4]

[2] For an excellent article on the different methods of valuation, see Forster, *Valuing a Business Interest for the Purposes of a Purchase and Sale Agreement*, 4 STAN. L. REV. 325 (1952).

[3] *E.g.*, N. C. GEN. STAT. § 58-204.2 (Supp. 1953).

[4] Under Section 1014 of the Internal Revenue Code of 1954, no capital gain results to the decedent's estate upon the transfer of his interest under a binding agreement because, upon death, the basis is changed from cost to fair market value at the time of death. If the decedent's estate under the agreement gets more than the fair market value of his interest, it is conceivable that it would have to pay a capital gains tax on the excess.

The value of the decedent's interest in the partnership for estate tax purposes is limited to the value specified in the agreement, whether it be a stated sum, book value at the time of death, or an amount reached by any other method of valuation,[5] but the interest is includible in his gross estate only to the extent it exceeds the sum received as proceeds from the insurance policy.[6] Had there been no binding agreement not to sell during decedent's lifetime, then the full value of his interest would be includible, but in any case that value is reducible by the amount of insurance proceeds received. The transaction must also be a bona fide business arrangement, not made with testamentary intent to give some favored friend or relative the decedent's interest at a cost below the fair market value. Thus in *Claire Gianini Hoffman v. Commissioner*[7] the decedent had given his brother a unilateral option to acquire his partnership interest upon his death at twenty per cent of its value, but reserved the right to dispose of his interest during his life. This option was assigned to the petitioner, the optionee's sister. The petitioner contended that the value of the interest was limited by the option agreement, but the Tax Court upheld the Commissioner in including the full value of the interest in decedent's gross estate, saying:

> "We are of the opinion that while a bona fide contract, based upon adequate consideration, to sell property for less than its value may fix the value of the property for purposes of the estate tax, a mere gratuitous promise to permit some favored individual, particularly the natural object of the bounty of the promisor, to purchase it at a grossly inadequate price can have no such effect."[8]

Where the taxpayer can successfully carry the burden of proving the transaction was bona fide and at arm's length, the court has disregarded the fact that the optionee or survivor who is receiving the interest at a price below the market value is a natural object of decedent's bounty.[9] In any case where a bona fide transaction is found to exist, the adequacy of the consideration must be measured at the time the con-

[5] Since the contract among the partners is specifically enforceable, the courts have recognized that the mutual agreements are determinative of value, as market value can be no more than the agreed price specifically enforceable by the agreement. See Helvering v. Salvage, 297 U. S. 106 (1935); Estate of Lionel Weil, 22 T. C. No. 158 (1954).

[6] The courts have held in many cases that it would be double taxation to tax both the value of decedent's partnership interest and the consideration paid for it. See Estate of Tompkins v. Commissioner, 13 T. C. 1054 (1949).

[7] 2 T. C. 1160 (1943). See also Estate of Mathews v. Commissioner, 3 T. C. 525 (1944).

[8] Claire Gianini Hoffman v. Commissioner, 2 T. C. 1160, 1179 (1943).

[9] See Bensel v. Commissioner, 36 B. T. A. 246 (1937), *aff'd*, 100 F. 2d 639 (3d Cir. 1938).

tract was entered into rather than the time the option was exercised.[10]

Each plan has different tax consequences and this note proposes to explain the operation and the tax results of the most common of these plans.[11] The applicable provisions of the Internal Revenue Code of 1954 are:

(1) the provisions of Section 2031, which deal generally with what property is includible in a decedent's gross estate;

(2) the specific provisions of Section 2042, dealing with the inclusion of life insurance proceeds in decedent's gross estate when they are payable to his estate or to other beneficiaries, if the decedent possessed any of the incidents of ownership;

(3) the provisions of Section 2043(a), covering transfers for insufficient consideration;

(4) the provisions of Section 101 and its subsections which concern the treatment of life insurance proceeds in the income tax field, where the deceased partner's estate has sold to the survivors the policies the decedent held on their lives.

The first plan we shall consider is the type in which the partnership applies for the policies and pays for the premiums out of partnership funds, but the insured in each case designates the first beneficiary and reserves the right to change the beneficiary or any other right incident to ownership of an insurance policy.[12] In this case the proceeds of the life insurance would be included in decedent's gross estate under Section 2042(2) of the Internal Revenue Code of 1954, which says that the proceeds of those policies, "with respect to which the decedent possessed at his death any of the incidents of ownership, exercisable either alone or in conjunction with another person," are includible in his gross estate. But, as has been noted, his interest in the partnership is not includible except as to the excess of its value over the amount received as insurance.[13]

Under this first type of plan, there is a possible trap into which the unwary partners may fall. In *Legallet v. Commissioner*[14] the partnership paid the premiums on policies of insurance on the lives of the two partners and charged their cost to the individuals equally. There

[10] *Ibid.*

[11] While this note deals with partnership interests, similar arrangements may exist in the case of stockholders of closely held corporations, and the discussions regarding the effects of such transactions are to a large extent applicable to both situations. See Ness, *Federal Estate Tax Consequences of Agreements and Options to Purchase Stock on Death,* 49 COL. L. REV. 796 (1949).

[12] A slight variation of this plan, with the same results, would be one in which the partners individually apply for the insurance, but the premiums are paid for with partnership funds.

[13] See note 6 *supra.*

[14] 41 B. T. A. 294 (1940).

was a binding agreement to the effect that the survivor would purchase the interest of the one first to die, the proceeds from the insurance policy to be applied to the purchase price by the decedent's estate. One partner designated his widow as the beneficiary of the proceeds from the policy on his life, and upon his death she received these proceeds from the insurance company. They went to her as part payment of decedent's partnership interest, the survivor, Legallet, giving his notes for the balance. Upon a subsequent sale of some of the merchandise and accounts receivable of the partnership, Legallet tried to include in his cost basis for income tax purposes the amount which the beneficiary received as life insurance. The Tax Court agreed with the Commissioner that Legallet had not paid for the insurance, the premium payments by the partnership being attributed to the decedent on the *alter ego* theory. Therefore, the survivor's basis was only the actual amount he had paid in notes. But the court admitted that had the survivor received the insurance proceeds himself, as beneficiary, and then turned them over to the decedent's estate, the result would have been different. Some writers, however, argue that the same result would not be reached by the court today if the partnership agreement clearly showed that it was a business arrangement, and that the proceeds were intended to be part of the purchase price *paid by the survivor*.[15] Others say that the partnership entity plan of purchasing insurance should be used when there are more than two partners because it is simpler, and the *Legallet* case would apply only if and when a partner sells his partnership interest during his lifetime.[16]

The second type of plan to be considered is also one in which the partnership applies for and takes out the insurance policy on each partner's life and pays all premiums out of partnership funds, but differs from the first plan in that the partnership designates itself as the beneficiary—the partners as individuals having no right to change the beneficiary, nor other incidents of ownership. The value of decedent's interest is limited here also by the agreement if it is found to be a bona fide transaction and if he was prohibited from selling to outsiders during his lifetime. The difference between this plan and the first plan is that here the insurance proceeds are not includible in decedent's gross estate as such. They are only considered as a factor which increases the value of his partnership interest, since in a similar case, *Atkins v. Commissioner*,[17] it was held that the policies belonged to the

[15] For some interesting arguments in favor of the entity approach to partnership insurance in certain situations, see Forster, *Entity Approach to Partnership Insurance*, 90 TRUSTS AND ESTATES 752 (1951).
[16] See BOWE, LIFE INSURANCE AND ESTATE TAX PLANNING 62-66 (Nashville: Vanderbilt University Press, 1952).
[17] 2 T. C. 332 (1943); *cf.* Doerken v. Commissioner, 46 B. T. A. 809 (1942).

partnership, and, therefore, the proceeds became an asset before they were turned over to decedent's estate. Under the Regulations[18] if the decedent paid the premiums directly or *indirectly,* whether or not he had any of the incidents of ownership, the proceeds are includible in his gross estate. Although the decisions[19] up to the present have held that decedent did not pay for the insurance indirectly when the partnership paid the premiums, it is possible that a contrary decision will be arrived at in the future under the *alter ego* theory. Such a decision would be particularly applicable in a case where the decedent owned substantially all the partnership.[20] In this situation both the insurance proceeds and the value of decedent's interest would be includible in his gross estate, in which case the court's avowed policy of not taxing both the interest and the consideration given for it would seem not applicable since the decedent, being considered to have paid for the insurance himself, the proceeds would not be consideration flowing from the surviving partners. The dangers of the *Legallet* case discussed above are also present in this second plan.

The third and last type of plan to be considered is perhaps the best for most partnerships under the present code and regulations.[21] Under this plan each partner applies for and takes out a policy on the life of every other partner, pays the premiums out of his own pocket, and reserves to himself all incidents of ownership, instead of having the partnership entity do these things as in the second plan. The major question presented under this "cross-insurance" plan is: Who should be made the beneficiary of the policy? There are several possibilities, and each presents its own peculiar problems.

If the estate of the decedent is made the beneficiary, the proceeds will be includible in the gross estate under Section 2042(1) of the Internal Revenue Code of 1954, and since the value of decedents' interest is limited according to the agreement, no additional estate tax problems would be presented. The possible application of the rule of the *Legallet* case should be forestalled, though, by the terms of a prior written agreement which clearly states that each partner, not the partnership, will pay the premiums on the policies he owns. Further, some provision should be made which will bind the decedent's personal representative to the purchase agreement. The terms of the

[18] U. S. Treasury Regulations 105, § 81.27(a)(1)(1954).
[19] Atkins v. Commissioner, 2 T. C. 332 (1943); Estate of Tompkins v. Commissioner, 13 T. C. 1054 (1949).
[20] "A decedent similarly pays the premiums or other consideration if payment is made by a corporation which is his alter ego or by a trust whose income is taxable to him, as, for example, a funded insurance trust." U. S. Treasury Regulation 105, § 81.27(a)(2) (1954).
[21] For a contrary argument in the case of a partnership consisting of many members see Forster, *Entity Approach to Partnership Insurance, supra* note 15.

original agreement or a clause in the decedent's will directing his executor to carry out the agreement should accomplish this.

Another possible beneficiary is the wife of the decedent. Since her husband did not pay for the insurance, and he had no incidents of ownership, the proceeds are not includible in his gross estate unless the Commissioner changes his position in the future concerning application of the *Lehman* cross transaction doctrine to partnership buy and sell agreements.[22] The full value of decedent's partnership interest as limited by the prior agreement is includible in his gross estate. The unpleasant possibility again arises that this arrangement may result in the same income tax problem as was presented in the *Legallet* case, although it could again probably be avoided by the terms of the binding prior agreement as above suggested. The *Legallet* case should be distinguished on the ground that there was personal insurance, instead of true business insurance. If it seems desirable to the partners, the widow can be paid the proceeds in installments, instead of in one lump sum. Each partner should retain the right, in the policy or policies which he owns, to determine settlement options and beneficiaries, but as a safeguard the policy should contain the provision that the owner cannot change the settlement plan or beneficiary unless he notifies his partners.[23] This provision gives the partners a check on each other and will not allow a plan to be defeated by a survivor. Care should be exercised, though, not to give the husband of the beneficiary any control or incidents of ownership in the policy. The hazards of these settlement plans where decedent's wife is made the beneficiary are that the decedent's executor may not be able to convey to the surviving partner without running the risk of having unsatisfied creditors or pretermitted heirs of the decedent surcharge him. There is also the possibility of litigation over the sale price if it is not expressly and clearly set out in the prior agreement. These pitfalls may be avoided by having the survivor retain the right to withdraw from the proceeds any amount required to satisfy the claims against decedent's estate. After the time has run within which creditors can file claims against

[22] In Lehman v. Commissioner, 109 F. 2d 99 (2d Cir. 1940), two brothers set up identical trusts for each other, neither one reserving any rights to himself, but each giving the beneficiary the right to withdraw a certain amount from the corpus during his lifetime. One of them died and the court upheld the Commissioner in including the corpus in his gross estate, saying that the person who furnishes the consideration for the creation of a trust is the settlor, even though in form the trust is created by another. In a special ruling made in 1947 the Commissioner said this did not apply to survivor-purchase agreements. See 5 P-H 1947 FED. TAX SERV. ¶ 76,311 (1947).

[23] Such a provision might raise the question whether the insured partner has an incident of ownership by indirect control of the policy on his life. Such control could arise by the threat of possible retaliation by the insured in changing the beneficiary in the policy he owns on his partner's life.

the estate, and the personal representative has made a satisfactory conveyance of decedent's interest to the survivor, then the survivor can assign his right of distribution under the policy to the wife. The only trouble with this method is that while the proceeds are in the survivor's hands, they are liable for his debts. An alternative would be to give the same rights to a trustee, and let him handle the transaction. In any case, the use of settlement options should not interfere with the basic plan.

Where the partnership is made the beneficiary and the agreement provides that the proceeds will be used to purchase decedent's interest, the payment to the estate will be included in decedent's gross estate up to the value of the business interest purchased. As has been said before, the fair market value of the business interest controls for estate tax purposes, but if under a bona fide business agreement a lesser amount were paid, this should be binding upon the Commissioner.[24] The only danger of making the partnership the beneficiary is that the rule of *Atkins v. Commissioner*[25] may be applied, to increase the value of decedent's interest. In that case it was held that the policies belonged to the partnership, and therefore, the proceeds became an asset before they were turned over to decedent's estate.

Another possible beneficiary is a trust, with an agreement that the trustee should use the proceeds to purchase decedent's share of the business from the estate. The tax consequences are the same as if the partnership were made the beneficiary, but possible advantages are (1) that the *Atkins* case would probably not be applied, and (2) that if the proceeds were unconditionally paid to the trustee for the purpose of paying the estate, they would never have become a part of the partnership assets and thus would not be subject to the claims of any partnership creditors. To insure this result, the trustee should never be one of the surviving partners.

The last, and probably the safest, beneficiary taxwise is the surviving partner who owns the policy as an individual. He can use the money to purchase decedent's interest according to the agreement, has no income tax on the proceeds,[26] and can include the proceeds in

[24] See note 5 *supra*. But in Estate of Trammell v. Commissioner, 18 T. C. 662 (1952), and Estate of Gannon v. Commissioner, 21 T. C. No. 121 (1954), the court said that although the agreement may be binding on the partners, it was not binding on the Commissioner in fixing valuation of the estate for estate tax purposes. In the Trammell case there was no binding agreement that the decedent would not sell during his lifetime, but this provision did exist in *Gannon v. Commissioner*. In both instances the surviving partner or partners were given the option to purchase decedent's interest at a specified valuation. Although the court made no mention of it, one reason for the decisions might be the fact that in both cases the survivors were closely related to decedent; his wife in one, and his brothers in the other.

[25] 2 T. C. 332 (1943).

[26] INT. REV. CODE § 101(a)(1).

his cost basis, thus avoiding the result of the *Legallet* case. This method would also avoid the possible application of the *Atkins* case, but again there is the danger that the proceeds in the survivor's hands will be subject to the claims of his creditors.

Under the cross-insurance plan, the decedent's estate will be left with policies which the decedent owned on the lives of the survivors. Provision should be made in the agreement for their disposition to the insured at the accrued cash value, or for their retention by the estate, in which case they will be valued at their surrender or accrued cash value. Under Section 22(b)(2) of the 1939 Internal Revenue Code, if the policies were sold to the insured, the proceeds received by the beneficiary less the purchase price and subsequently paid premiums would have been subject to income tax. This has been changed by Section 101(a)(2)(B) of the Internal Revenue Code of 1954, which in such situations excludes from gross income the entire amount of proceeds if the transfer of the policy is to the insured, to a partner of the insured, to a partnership in which the insured is a partner, or to a corporation in which the insured is a shareholder or officer.

The partners can set up a cross-insurance plan also by transferring to each other or to the partnership policies which they already hold on their own lives, and under this new Code provision no taxation of the proceeds will later result. This arrangement could save the parties a large amount of money because they can take advantage of the old premium rates, instead of having to take out new policies at higher rates. Any inequities which might arise from the difference in costs of the different premiums could be remedied by the partners in the distribution of profits or in any other manner they saw fit.[27] If the policies contain double indemnity clauses, provision should also be made for the disposition of the added proceeds in case the clause comes into effect. This will avoid possible litigation between the decedent's estate and the survivors.[28]

No matter what type of buy and sell agreement is used, if it is funded by life insurance the agreement should not provide that a higher price will be paid for a partner's interest upon his death than upon a termination of his interest during life, as this would be an admission that the parties are not actually agreeing to the true value of the business interest, and are carrying personal life insurance under the name of business life insurance.

[27] In case one or more partner is not insurable, some plan may be worked out whereby his estate or beneficiary will get the proceeds from an annuity, or annuities paid for by the other partners, or by the partnership.

[28] See Tompkins v. Commissioner, 13 T. C. 1054 (1949), where no provision was made for disposition of the added proceeds, but possible litigation was avoided by the survivor when he paid them to decedent's estate.

In a personal service partnership where the tangible assets are limited, the members may wish to provide for the decedent's estate by an agreement under which the estate is to receive a part of the partnership income for a stated period, instead of one lump sum. It is important that this agreement be written clearly so that it will be understood that the decedent's estate is sharing in the partnership income as a member,[29] and that the payments do not constitute a purchase of decedent's interest. If the latter situation is found to exist, the entire income of the partnership will be taxed to the survivors,[30] whereas a finding to the effect that the estate is sharing in the income as a partner will allow the survivor to exclude from his gross income the payments made to the estate. The estate in turn can take advantage of Section 691(c) of the Internal Revenue Code of 1954 which allows as a deduction from gross income the amount paid in estate taxes because of the inclusion of the right to the income in the estate. The agreement should provide that payments to the estate be in the form of a percentage of current profits in order to strengthen the idea that the payments are "income" to the estate. A plan under which the estate is to receive a predetermined lump sum payment, or a certain specified amount in each payment without regard to what the actual partnership income amounts to may raise the suspicion of a purchase.[31] These arrangements should be drawn with great care in order to reduce the danger of an adverse construction by the courts.[32]

In drafting these agreements, there are five basic rules which, if followed in planning a partnership buy and sell agreement, should give the desired tax results:

[29] Coates v. Commissioner, 7 T. C. 125 (1946).

[30] Wilkins v. Commissioner, 7 T. C. 519 (1946).

[31] Compare the cases in notes 29 and 30, *supra.*

[32] In a note in 47 Col. L. Rev. 289 (1947), the author suggests that the following provisions be included in the agreement for clarity:
(1) Recite clearly that the agreement is a substitution of the payments for a precise accounting on uncollected fees, unfinished work, etc., in which the deceased partner had an actual interest.
(2) If the state partnership laws permit, recite in the agreement that the estate of the deceased partner is considered a partner; otherwise that the payments over the period fixed are the equivalent of a formal winding up of the partnership.
(3) Provide that the estate will share losses as well as profits.
(4) Avoid such terms as "sale," "purchase," "interest," "assets," and "payment for good will"; conversely, use words like "profit," "share," and "gain and loss."
(5) Make the amount payable contingent—a percentage of prospective profits and losses.
(6) If the enterprise requires substantial capital, separate the capital account and make it subject to a separate accounting. (The author seems to have digressed from personal service partnerships in this suggestion.)
(7) After the death of the partner obtain a statement from his personal representative that the amount which is paid is considered by him as income to the estate.

1. Although mutual options may be given the partners to purchase or to liquidate upon the death of a partner, preferably the agreement should bind the decedent's estate to sell, and the survivor to purchase.
2. The agreement should provide a clear and definite basis for evaluating the decedent's interest.
3. The sale of the decedent's business interest should be restricted to the other partners during life as well as at death.
4. The agreement must preclude the sale of any partner's interest during lifetime at a price higher than that payable at death. It should not be a substitute for testamentary disposition.
5. The agreement should reflect a "business purpose."
6. The wills of the partners should be consistent with the agreement and should direct the executors to carry out its terms.

JOHN J. DORTCH.

Torts—Application of Emergency Doctrine in North Carolina

The following charge by the trial court as it related to the application of the doctrine of "sudden emergency" was approved by the North Carolina Supreme Court in a recent case:[1]

> "The Court instructs you that a person confronted with a sudden emergency is not held by law to the same degree of care as in ordinary circumstances, but only to that degree of care which an ordinarily prudent person would use under similar circumstances. The standard of conduct required in an emergency, as elsewhere, is that of a prudent person.
>
> The Court further instructs you that this principle is not available to one who by his own negligence, brought about or contributed to the emergency. That means, in simple language, that a person who creates an emergency, or contributes to it, cannot take advantage of the principle.
>
> The Court further instructs you that one who is required to act in an emergency is not held by law to the wisest choice of conduct, but only to such choice as a person of ordinary care and prudence similarly situated would have made."

The purpose of the doctrine of sudden emergency has been well stated by the West Virginia court:[2]

> "The general principles which require one to act in such a manner as to avoid injury to himself, and to take such steps to

[1] Barnes v. Caulbourne, 240 N. C. 721, 724, —— S. E. 2d —— (1954).
[2] Oldfield v. Woodall, 113 W. Va. 35, 37, 166 S. E. 691, 692 (1932).