

FEBRUARY 2010**MATRIMONIAL CASES OF INTEREST**

In [McAuliffe v. McAuliffe](#), decided on February 11, 2010 (Appellate Division, Third Department), the wife challenged the Supreme Court's distribution of the parties' enhanced earning capacities resulting from the degrees the parties acquired during their marriage. The Appellate Division found that the Supreme Court erred in awarding a percentage (15%) of the value of the wife's degrees to the husband. The lower court made no finding that the husband had contributed in a meaningful and substantial way to her efforts in obtaining her degrees. The court agreed with the lower court's determination that the husband's engineering degree did not enhance his earning capacity.

In [Rodriguez v. Rodriguez](#), decided on February 9, 2010 (Appellate Division, Second Department), the court agreed with the lower courts awards of 30% of the defendant's enhanced earnings derived from his medical license and 25% of defendant's medical practice. However, it found that the Supreme Court erred in failing to apply an appropriate "coverture fraction" to the enhanced earning valuation to account for the portion of the husband's medical education and training completed before the marriage. The Appellate court also agreed with the defendant that the Supreme Court impermissibly engaged in the "double counting" of income in valuing his medical practice, which was equitably distributed as marital property and in awarding maintenance to the plaintiff. The valuation of the defendant's business involved calculating the defendant's projected future excess earnings. In valuing and distributing the value of the defendant's business, the Supreme Court converted a certain amount of the defendant's projected future income stream into an asset. The Supreme Court also calculated the amount of maintenance to which the plaintiff was entitled based on defendant's total income, which necessarily included the excess earnings produced by his business. This issue has been remitted back to the Supreme Court to recalculate the maintenance and cash distributive awards.

ESTATE & GIFT TAX CASE OF INTEREST

Another taxpayer victory in [Keller v. United States of America](#). At trial, the federal district court agreed that the funding of the FLP could be assumed to have taken place, even though the decedent had died before the assets were transferred. A wealthy Texas widow established

a family limited partnership (FLP) to be funded with \$250 million in corporate investment bonds. In addition the federal district court approved the use of a combined 47.5% discount for lack of control and lack of marketability in the determination of the fair market value of two 49.95% limited partnership interests in the FLP.

COMPUTER FORENSICS

In an article in the [NY Post](#), divorce attorneys turn to Facebook for cheating evidence.

UPCOMING SPEAKING ENGAGEMENTS

David Gresen and Peter Theobald will be presenting a seminar “Working with Forensic Financial and Computer Experts”.

This seminar is hosted by [Esquire Bank](#)

Tuesday, March 16, 2010
8:00-8:30am – Coffee/Registration
8:30-10:10am - Seminar
Midtown Executive Club
40 West 45th Street (between 5th & 6th Avenues)
New York, NY

This course has been approved in accordance with the requirements of the New York State Continuing Legal Education Board through Klein Liebman & Gresen, LLC for a maximum of two (2) credit hours of which two (2) credits may be applied to skills.

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