



MATRIMONIAL CASE OF INTEREST

Nicodemus v. Nicodemus (Appellate Division, Second Department) - In awarding the plaintiff-husband only 30% of the marital property consisting of a property in Wappingers Falls, New York and F.E.N. Enterprises of NY, Inc., the Supreme Court improvidently exercised its discretion. The Appellate Court determined that while equitable distribution does not necessarily mean equal distribution, the long duration of the marriage and the contributions of each spouse to the marriage and the parties' automobile restoration business combined with the future financial circumstances of each party, an equal distribution of the property was more equitable.

[LINK TO DECISION](#)

ENHANCED EARNINGS CASE OF INTEREST

Jayaram v. Jayaram (Appellate Division, Second Department) - The husband contends that the Supreme Court erred in concluding that his MBA degree and NASD licenses provided him with an enhanced earnings capacity subject to equitable distribution. The Appellate Court determined in accordance with the Supreme Court, that while the husband presented some evidence that an MBA was not an actual prerequisite to his employment at the brokerage firm, there was ample evidence to support the fact that this degree made the husband more attractive as a candidate in investment banking. The husband's knowledge of the financial products, including options and derivatives, which were acquired during the MBA studies, assisted in his advancement. Furthermore, it was proper to award the wife 35% share of the enhanced earnings because she made substantial indirect contributions by supporting the husband's educational endeavors, worked full time and contributed her earnings to the family while also being the primary caretaker of the family's home and children.

[LINK TO DECISION](#)

ESTATE & GIFT TAX CASE OF INTEREST

Estate of Alfred Richard v. Commissioner U.S. Tax Court (U.S. Tax Court) - Decedent Alfred Richard and his wife, Mrs. Richard owned 600 and 140 shares of Class A preferred stock in A.J. Richard & Sons. Upon Mrs. Richard's passing on October 15, 1997, her will was not offered for probate until November 2010. At time of decedent's death, December 2004, the Form 706 filed reported all 740 shares of preferred stock (600 belonging to decedent and 140 to wife). The rediscovery of Mrs. Richard's will in September 2010 raised the issue of whether decedent's estate should include the 140 shares in his estate or if these shares should be included in Mrs. Richard's estate which would thereafter pass to a credit shelter trust created by her will. The Court determined that because of the rediscovery of Mrs. Richard's will, the lack of dominion and control that decedent had over her shares, and the fact that title still remained in Mrs. Richard's name in the company's ledgers as of the decedent's death, the 140 shares would best be included in the estate of Mrs. Richard.

[LINK TO DECISION](#)



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COMPUTER FORENSICS & eDISCOVERY ARTICLES OF INTEREST

Social Networking and eDiscovery: What's Acceptable? - "Communications made on Facebook and other social networking services (SNS) are increasingly being used as sources of evidence in courts. Recent use of this evidence has spurred debate over the legality and ethics of harvesting such information. For example, Facebook's "terms of use" specify that "the website is available for your personal, noncommercial use only," misleading some to believe that others may not use the site for conducting investigations. However, Facebook spokespeople have made it clear that Facebook is a public forum and all information published on the site should be presumed available to the general public. Legal experts agree that public information sources such as Facebook can be legally used in criminal or other investigations."

[LINK TO ARTICLE](#)

(NOTE: This article appeared in the September 2012 issue of New York County Lawyer [on pages 1 and 14] and this link is to that entire issue.)

Twitter Gives Occupy Protestor's Tweets to U.S. judge - "Twitter handed tweets from an Occupy Wall Street protestor to a New York criminal judge on Friday after months of fighting a subpoena from prosecutors in a closely watched case pitting privacy and free speech advocates against law enforcement."

[LINK TO ARTICLE](#)

Klein Liebman & Gresen, LLC - 6800 Jericho Turnpike, Suite 206E - Syosset, NY 11791

Phone (516) 364-3232 || **Fax** (516) 364-3186
New York City (212) 505-5770 || **White Plains** (914) 831-1555

Visit Klein Liebman & Gresen, LLC at www.goKLG.com

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Klein Liebman & Gresen, LLC | 6800 Jericho Turnpike, Suite 206E | Syosset | NY | 11791