

DECEMBER 2011**MATRIMONIAL CASE OF INTEREST**

Keil v. Keil (Appellate Division, Third Department - June 2, 2011) – The Appellate Division found among other things, that the Supreme Court erred in further reducing the value of the business determined by the plaintiff's expert by 20%, due to the fact that the business is heavily tied to defendant who was 67 years old at the time of the trial and has health concerns, concluding that his ability to continue to run the business is "uncertain." ([Link to decision](#))

ENHANCED EARNINGS CASE OF INTEREST

Huffman v. Huffman (Appellate Division, Second Department - May 10, 2011) – The Appellate Division found that the Supreme Court properly concluded that the MBA degree defendant obtained during the marriage enhanced his earning capacity. While the defendant presented some evidence that an MBA degree was not an actual prerequisite to his employment, there was also ample evidence to support the Supreme Court's finding that the attainment of this degree made the defendant a more attractive candidate. ([Link to decision](#))

ESTATE & GIFT TAX CASE OF INTEREST

Estate of Turner, Sr. v. Commissioner (U.S. Tax Court – August 30, 2011) – The primary issue for decision was whether the value of the property the decedent transferred to a family limited partnership is included in his gross estate under section 2035, 2036, or 2038. The Tax Court concluded that the value of the property transferred to the FLP is included in his gross estate under section 2036(a). Because section 2036 includes in a decedent's gross estate the fair market value of the transferred property, no discount for lack of control or lack of marketability is appropriate. ([Link to decision](#))

COMPUTER FORENSICS

This month, we wanted to highlight an increasingly common event: the implication of cybercrime laws in divorce cases. There are three main reasons why cybercrime laws are becoming involved in matrimonial cases: 1) the discovery process can often be rife with questions of rightful ownership and access, 2) the increasing usage of spyware and/or

surveillance software, and 3) the admissibility of evidence obtained through illegal or unethical means. This article, written by Sean Harrington of the Minnesota State Bar Association's Computer and Technology Law Section, specifically addresses these issues and outlines five cases that deal with them. Because certain cybercrime laws are federal laws, it is worthwhile to understand their treatment in jurisdictions outside of New York.

Specifically of note, KLG Computer Forensics was the computer forensics expert in the second cited case, Moore v. Moore. In that case, we started our examination by looking for evidence that the computer provided to us was in fact a family computer. In that case, we helped establish that fact by finding user profiles for the wife on the computer. The Court ultimately agreed with our assertion and determined that the computer was a family computer and not a work computer as alleged by the husband. [\(Link to decision\)](#)

All of the Partners and Staff of KLG would like to wish everyone a Happy and Healthy Holiday Season