

JANUARY 2010

MATRIMONIAL CASE OF INTEREST

In [Wyser-Pratte v. Wyser-Pratte](#), the Appellate Division, First Department, agreed with the lower courts 35% allocation to the wife of husband's brokerage and investment management companies. The Lower court's assessment was based on the husband's possession of substantial business assets and skills he had prior to the marriage. However the Appellate Division did not agree with the lower court's treatment of the deferred incentive fees owed to the investment management company as business assets subject to the 65%/35% division, and modified to equalize each party's share at 50%. Husband caused the company to defer receipt of payment from the fund to benefit the fund's performance by increasing the amount available for investment. The fees were earned during the parties' marriage and were considered marital property.

ESTATE & GIFT TAX

Estate Tax

For 2010 the estate tax will be temporarily repealed this year and restored in 2011 at a rate of 55% on estates valued at \$1 million or more.

The debate over the federal estate tax is expected to continue when Congress returns from recess.

Gift Tax Exclusion for 2010

- You may give up to \$13,000.00 to one individual or any number of people if you file as single.
- If you file married, then you may gift up to \$26,000.00 to one person or any number of people.

Recent Court Case on Discounts

Victory for Taxpayers (and Appraisers)

In [Murphy v. U.S. \(2009\)](#), the court also upheld substantial discounts to the decedent's interests. The decedent's interest in the FLP at death consisted of an approximately 95% limited partner interest and a 49% interest in an LLC that owned the approximately 2.3% general partnership interest. The court upheld a combined control and marketability discount of 41% for the 95% limited partnership interest. Also, the court allowed tiered discounts in valuing the decedent's 49% interest in the LLC that owned the 2.3% general partnership interest. The overall discount for the LLC interest was 52%.

COMPUTER FORENSICS

The Joint Committee on Electronic Discovery of the Association of the Bar of the City of New York has issued a [report](#) containing recommended changes to the CPLR to help clarify the often confusing or undefined responsibilities of parties with respect to E-Discovery. The changes address several topics including the duty to preserve, the scope of preservation, the scope of production, inadvertent disclosure, and the form of production.

UPCOMING SPEAKING ENGAGEMENTS

David Gresen and Peter Theobald will be conducting a seminar "Working with Forensic Financial and Computer Experts".

Monday, January 25, 2010
7:45 a.m. – 8:45 a.m.
The Celebrity Diner
312 Jericho Turnpike
Syosset, New York 11791

Please contact Scott Klein at (516) 719-7656 or e-mail scott.klein@stifel.com for more information

Ron Klein will be speaking at the New York County Lawyers' Association on February 4, 2010
9am – 1pm

His particular topic will be on [Keane v. Keane](#) and related cases regarding double-dipping issues.

Tax and other accounting issues can have a profound impact on the way divorcing couples' assets are apportioned and alimony and child support is calculated. Therefore it is incumbent upon matrimonial and other attorneys dealing with family-related cases to understand the

ramifications of valuations assigned to pensions, businesses, stock options, etc. and to learn how a "double dipping" situation can arise years after the conclusion of a divorce proceeding.

The following is the link to the course on the NYCLA's website:

http://www.nycla.org/index.cfm?section=CLE&page=CLE_Detail&itemID=1857&dateID=20100204

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