

JUNE 2012 NEWSLETTER

MATRIMONIAL CASE OF INTEREST

Gallagher v. Gallagher (Appellate Division, Fourth Department) – Both husband and wife appealed the decision of the Supreme Court. The husband felt that the court improperly calculated the value of the farm while the wife contended that the valuation date used by the court was in error. Furthermore, both parties stated that the court's determination to award the wife 45% of the farm was inequitable. Upon reviewing the details, the appellate court determined that the date of commencement valuation was correct since the farm did not undergo any type of radical alteration subsequent to the commencement of action to date of trial. Secondly, the appellate court found that the farm was indeed incorrectly valued as the debt portion of the real property should be factored into the total value of the farm. Lastly, it was decided that the Supreme Court correctly assessed a 45% to the wife in distribution of the farm asset.

[LINK TO DECISION](#)

ENHANCED EARNINGS CASE OF INTEREST

Esposito-Shea v. Shea (Appellate Division, Third Department) – After a trial, the Supreme Court, awarded the husband \$12,600, which was 10% of the value that was placed on the wife's law degree. While both parties had obtained experts in valuing the law degree that the wife had completed during the marriage, however while the wife's expert had used a baseline earnings of both her historical, pre-law earnings and a statistical bachelor's degree earnings, the husband's expert used only her historical, pre-law degree earnings. The husband's expert, by doing so, used baseline earning that was more than \$20,000 lower than the wife's expert, creating a greater value on the enhanced earnings. The supreme court and the appellate court determined that it was, however, correct to use the wife's expert's report as the wife would most likely have sought employment at her bachelors level rather than the lower paying jobs she was working prior to doing her law degree.

[LINK TO DECISION](#)

ESTATE & GIFT TAX CASE OF INTEREST

Estate of Beatrice Kelly v. Commissioner (US Tax Court) - Prior to death, Beatrice Kelly, decedent, transferred assets to four limited partnerships and retained over \$1.1 million in her own name. The Commission claimed that Ms. Kelly retained an interest in the assets and that these transfers were not bona fide sales and should be included in the gross estate. The court

determined that the transfer of assets was in fact a bona fide transfer as the decedent observed partnership formalities and retained sufficient assets for personal needs. The general partner of all the four limited partnerships, KWC Management, Inc., which the decedent has sole ownership was paid management fees for managing the assets in the FLPs. Despite the fact that there was not enough documentation to show that the decedent performed true management duties, it can be agreed that the relationship between the assets and Ms. Kelly changed significantly upon the formation and transfer of the assets to the FLPs. As such, only KWC should be included in the estate and not the transferred assets.

[LINK TO DECISION](#)

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COMPUTER FORENSIC & eDISCOVERY CASES OF INTEREST

Judge: An IP-Address Doesn't Identify a Person - In a landmark ruling, New York Judge Gary Brown explains in great detail why an IP-address is not sufficient evidence to identify copyright infringers. This case has significant influence outside of the copyright world due to the increasing number of devices with internet access (and therefore an IP address) and the increasing reliance on digital evidence in litigation. This case also exemplifies the need for judges and attorneys to fully understand the technology they are dealing with. Judge Brown's decision attests to his knowledge of wireless networks and how IP addresses are assigned.

[LINK TO ARTICLE](#)

When Taking Proprietary Information from Employers Isn't a Crime - In the cases of *United States v. Nosal*, -- F.3d --, 2012 WL 1176119 (9th Cir. April 10, 2012) and *United States v. Aleynikov*, -- F.3d --, 2012 WL 1193611 (2d Cir. April 11, 2012), the Second and Ninth circuits interpreted three different federal statutes: the Computer Fraud and Abuse Act (CFAA), the National Stolen Property Act (NSPA), and the Economic Espionage Act (EEA). Taken together, the Department of Justice – at least in the Ninth and Second circuits – will be unable to use the CFAA, NSPA, and the EEA to prosecute theft of trade secrets unless the information was obtained by hacking; consisted of more than intangible property; and was designed to enter or pass in commerce.

[LINK TO ARTICLE](#)

Court Orders Disclosure of Psychic Chat Records in Retaliation Case – Glazer v. Fireman’s Fund

- “The court says that a party can be compelled to produce information that is protected from third party disclosure under the Stored Communications Act... It’s good to see that the court did not require Glazer to turn over her passwords or log-in credentials to Fireman’s Fund. Other courts have taken this approach, ignoring the obvious dangers presented by allowing a litigant to freely rummage around in their opponent’s Facebook account.”

[LINK TO ARTICLE](#)