

**JULY 2009**

## **Marital v. Separate Property – Appellate Court takes opposite views in *Fields v. Fields***

In [\*Fields v. Fields\*](#), by upholding an equitable distribution award, the Appellate court has muddied the waters regarding marital v. separate property.

## **Enhanced Earning Capacity**

In a recent case – [\*Purygin v Purygin\*](#), the court held that even though the husband had not yet obtained his license to practice medicine as of the date of action, his education that had been completed during the marriage was necessary to reach that goal, and thus determined that it was a marital asset subject to equitable distribution.

## **Bad Economy? For some, maybe not...**

In a down economy, one divorce [attorney](#) says that her practice is “jammed with clients”...

## **Computer Forensics – Courts Reject Attempts to Suppress Evidence Obtained From Hard Drives:**

In both *Boudakian v. Boudakian* (NYLJ, December 26, 2008, at 21, col. 3 [Sup Ct, Queens County 2008]) and *Moore v. Moore* (NYLJ, August 14, 2008, at 26, col 1 [Sup Ct, New York County]) the plaintiffs attempted to suppress material found on the hard drive of the spouse's laptop computer by expert Peter Theobald of KLG Computer Forensics. Both attempts to suppress relied on Penal Law Section 250.05 which prohibits

"intercepting" electronic communications. In both cases, the court found that no interception had taken place since the communications were saved on the hard drives and had not been intercepted while in transit.

## **Estate & Gift Tax Planning:**

In the [Estate of Litchfield v. Commissioner](#), T.C. Memo 2009-21, the U.S. Tax Court considered the appropriate built-in gains tax, lack of marketability and minority interest discounts that were applied to two family-owned companies which owned real estate and marketable securities. The decedent owned a minority interest in both entities. The Tax Court concluded that a 17.4% and a 23.6% discount for built-in gains tax, 11.9% discount for lack of control, and a 25% and 20% discount for lack of marketability were appropriate.

## **Upcoming Events: "Working with Financial & Computer Experts"**

Tuesday, August 11, 2009: 8:00 – 8:30 am Coffee/Registration 8:30 – 10:10am Seminar  
Intelligent Office 1225 Franklin Avenue Garden City, NY

*Speakers:*

Peter Theobald – KLG Computer Forensics, LLC

David Gresen, CPA/ABV/CFF, CVA, CFE – Klein Liebman & Gresen, LLC

Lawrence N. Berwitz, Esq. – Berwitz & DiTata, LLP

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