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JULY 2012 NEWSLETTER

WISHING YOU ALL A WONDERFUL FOURTH OF JULY!

THE LOUBOUTIN SHOWDOWN

Think your shoe collection is worth fighting over? For one NYC couple, defeat is not an option for these soon-to-be lonely soles.
LINK TO ARTICLE

MATRIMONIAL CASE OF INTEREST

Jones v. Jones (Appellate Division, Second Department) – While the former marital residence was purchased prior to the marriage by the husband and deemed to be separate property, due to the fact that the property was used for running the couple's horse boarding business, Misty Mountain Farm, the appreciation of value of that property is deemed a marital asset subject to equitable distribution. The appellate court determined that because of the parties' joint contributions to the property through their work on the horse farm, the wife should be awarded 40% of the appreciation in value. As such, the value of the wife's share of the appreciation was increased from $37,500 to $290,000.
LINK TO DECISION

ENHANCED EARNINGS CASE OF INTEREST

Quarty v. Quarty (Appellate Division, Third Department) – The wife's enhanced earnings was calculated in error by the Supreme Court. While the Supreme Court was correct in all other matters relating to the calculation, it failed in its judgment by computing the enhanced earnings using a topline income of $92,000 based on anticipated earnings of the wife. However, no expert on either side used that amount and neither one testified to why that amount would even be valid for use in the calculation. Instead, the Appellate Court decided, that the topline to be used should have been based more on the previous earnings capabilities of the wife in

2009 and 2010, which totaled $70,000, the amount also used by both experts. This significantly reduced the value of the enhanced earnings subject to distribution from $376,000 to $108,000.
LINK TO DECISION

ESTATE & GIFT TAX CASE OF INTEREST

Estate of Ann R. Chancellor v. Commissioner (U.S. Tax Court) – Decedent's husband, who predeceased her in 1989, left decedent with most of the estate, except for the property placed in the Lester M. Chancellor Unified Credit Trust. The trust was to apportion trust income among the descendent as well as the couple's children and grandchildren 'in accordance with their respective needs'. Upon death of the decedent, the estate tax return showed a total gross estate of $1.3 Million, an amount which excluded the value of the trust, which was valued at the time at $1.2 Million. The court determined that since the beneficiaries of the trust include not only the decedent but also the children and grandchildren and that the co-trustees were authorized to invade trust corpus only to make 'necessary' support related expenditures for the beneficiaries, the limitations meet the exceptions of section 2041 (b) (1) (A) and thus, the decedent's estate should not include the value of the trust in question.
LINK TO DECISION

COMPUTER FORENSIC & eDISCOVERY ARTICLES OF INTEREST

Overcoming Potential Legal Challenges to the Authentication of Social Media Evidence – "Social media evidence is highly relevant to most legal disputes and broadly discoverable, but challenges lie in evidentiary authentication without best practices technology and processes. This whitepaper examines these challenges faced by eDiscovery practitioners and investigators and illustrates best practices for collection, preservation, search and production of social media data. Also highlighted in this paper are examples of numerous unique metadata fields for individual social media items that provide important information to establish authenticity, if properly collected and preserved."
LINK TO ARTICLE

Social Media Case Law Update: Volume of Cases Accelerating – This article covers three notable cases in the world of social media: (1) Bland v. Roberts, 2012 WL 1428198 (E.D. VA, Apr. 24, 2012), which extensively litigated the implications of "liking" specific items on Facebook, (2) People v. Harris, 2012 WL 1381238 (N.Y. Crim. Ct. Apr. 20, 2012), which establishes that users have no expectation of privacy and no proprietary interest in their Tweets, and (3) Loporcaro v. City of New York and Perfetto Contracting Company, 35 Misc.3d 1209(A), (N.Y.Sup. Ct. Apr. 9, 2012), where the claimant's public Facebook postings contradicted their assertions of serious injury, the court granted the Defense's motion to compel production of the Plaintiff's full Facebook account.
LINK TO ARTICLE

Jury Research and Social Media – "Just as the internet and social media appear to facilitate juror misconduct, the same tools have expanded an attorney's ability to conduct research on potential and sitting jurors, and clients now often expect that attorneys will conduct such research. Indeed, standards of competence and diligence may require doing everything reasonably possible to learn about the jurors who will sit in judgment on a case. However, social media services and websites can blur the line between independent, private research and interactive, interpersonal "communication." Currently, there are no clear rules for conscientious attorneys to follow in order to both diligently represent their clients and to abide by applicable ethical obligations. This opinion applies the New York Rules of Professional Conduct (the "Rules"), specifically Rule 3.5, to juror research in the internet context, and particularly to research using social networking services and websites."
LINK TO ARTICLE