



MATRIMONIAL CASES OF INTEREST

JOHNSTON v. NAKIS (Monroe Supreme Court)

The parties dispute the status of Plaintiff-wife's individually titled Cantella bank account in which wife concedes that joint tax refunds were deposited into the account during the marriage in 2004 and in 2009. Aside from those two deposits, the Cantella account was comprised of wife's separate property including pre-marital savings, gifts from her father, and inheritance. While the husband argues that the deposit of the joint tax refunds into the Cantella account constituted comingling of marital funds with wife's separate funds, the court disagrees.

The court held that joint tax refunds generally are "regarded as separate property of which each party is entitled to a pro rata share." Therefore, because the husband also admitted that the account was largely separate property of the wife, the separate property and any appreciation during the marriage due to market forces was deemed separate.

[LINK TO DECISION](#)

WHITTAKER v. CASE (Appellate Divison, 3rd Dep't)

Wife maintains that the Supreme Court erred in awarding the husband two bank accounts he opened jointly, one with his daughter and the other with his son. Both accounts were funded with initial deposits totaling \$100,000. The Supreme Court found that the husband funded the majority of the two accounts with \$187,000 of husband's separate funds which he obtained from his aunt's inheritance. However, upon appellate review, the bank records indicated that the funding of the daughter's account was actually from the parties' joint SEFCU account and therefore, the wife should be entitled to an increase in distributive award of \$50,000.

The son's account, on the other hand, was funded from the husband's separate funds which he inherited from his aunt. Wife contends that because the inherited funds were initially held in a safe in the marital home of which she also had a key, they were transformed into marital property. The Appellate Court, in affirming the decision of the Supreme Court, deems the argument unconvincing and the asset to still be husband's separate property.

[LINK TO DECISION](#)

J.R. v. E.M. (Manhattan Supreme Court)

Parties had executed a prenuptial Matrimonial Property Agreement before the Spanish Consul at the Spanish Consulate located in New York City which elected the "property separation" regime of Spanish law to govern their marriage. As such, the husband argues that all individually titled property remained separate and all jointly titled property would be

distributed 50/50. Although the parties do not dispute the intent and premises in which the agreement was entered into and Spanish law was "painstakingly followed" in preparing the prenup, the wife contends that New York law governs the agreement. The court held that where there is dispute about choice of law, modern courts have adopted a "center of gravity" theory in which the law of the state with "the most significant relationship to the transaction and the parties" governs. Therefore, in this instance, New York law applies in determining the validity of the prenuptial agreement.

The court, thereafter, held the prenup as invalid pursuant to DRL §236(B) which requires that matrimonial agreements be "acknowledged or proven in the manner required to entitle a deed to be recorded." Because the Spanish Consul who oversaw the execution of the prenup in question is not a person authorized to take acknowledgements in New York State under Real Property Law §298, the prenup fails to meet an essential element necessary for it to bind the parties.

[LINK TO DECISION](#)

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