Marital Property Annotated Bibliography

© Nancy Levit*

This bibliography covers law review articles published, for the most part, after 2007. Articles for which the title is self-explanatory or that concern only a single case, state, or statute are cited, but not annotated.

Bankruptcy and Debt ........................................ 210
Businesses ......................................................... 213
Career Assets and Goodwill .................................. 216
Community Property ........................................ 217
Dissipation and Hiding of Assets ............................. 219
Educational and Professional Degrees ..................... 220
Equitable Distribution ........................................ 220
Estates, Trusts, and Inherited Property ................... 221

Trusts ............................................................. 225

Farms ............................................................. 228
Insurance Benefits and Claims .............................. 229
Intellectual Property .......................................... 230
Marital Property ................................................ 231
Marital Residence and Real Property ...................... 232
Migrating Spouses ............................................ 234
Miscellaneous Topics and Individual State Issues ....... 235

Pensions, QDROs, and Retirement Benefits .............. 237

QDROs ............................................................ 239
Pets and Animal Companions ................................ 240
Prenuptial Agreements ........................................ 240
Reproductive Material ......................................... 241
Taxation .......................................................... 243

Tort Damages, Workers’ Compensation, and Disability

Benefits .......................................................... 246
Unmarried Cohabitants ....................................... 246
Valuation .......................................................... 247
Virtual Property ................................................. 248

* Curators’ and Edward D. Ellison Professor of Law, University of Missouri-Kansas City School of Law.
Bankruptcy and Debt


Roger M. Baron & Cassidy M. Stalley, *The Top Ten Things the Family Law Attorney Should Know About the Recent Changes in Bankruptcy Law*, 67 J. Mo. B. 170 (June 2011) (addressing a number of the Bankruptcy Abuse Prevention & Consumer Protection Act (BAPCA) provisions, including the idea of expanding protection for debts related to marital support and adding exceptions to the automatic stay in situations relevant to divorce, such as withholding of income or intercepting a tax refund).

Rebecca Connelly, *Can a Business Reorganize Under Chapter 13?*, 28 Am. Bankr. Inst. J. 46 (Nov. 2009) (describing how individuals who own their own business can reorganize, as long as their secured debt is less than $1,010,650 and their unsecured debt is less than $336,900).

Fred Franke, *Asset Protection and Tenancy by the Entirety*, 34 ACTEC J. 210 (Spring 2009) (providing a state by state chart of the rules in jurisdictions recognizing tenancy by the entirety of the effects on asset protection from creditors).


James R. Ratner, *Creditor and Debtor Windfalls from Divorce*, 3 Est. Plan. & Community Prop. L.J. 211 (2011) (making the case that creditors in community property jurisdictions should only be able to reach “assets that would have been available had there been no divorce”).


Edward W. Vopat, *Domestic Support Obligations Under the Revised Bankruptcy Code*, 17 J. Bankr. L. & Prac. 3 Art. 1 (June 2008) (covering comprehensively not only domestic support obligations but also the bankruptcy court’s jurisdiction to decide claims related to domestic relations’ issues).


Mark S. Zuckerberg, *The Interplay Between Bankruptcy and Divorce*, 54 Res Gestae 40 (June 2011) (discussing the effects of BAPCA in allowing non-debtor ex-spouses to obtain support,
mortgage payments, car payments, and other expenses from the
debtor spouse during a bankruptcy).

Margaret M. Anderson, et al., The Creditor That Is Always
1 (July 2008).

James L. Boring et al., Protection of Inherited IRAs, 36 ACTEC
L.J. 577 (2010).

David Gray Carlson, The Chapter 13 Estate and Its Discontents,

Tom Featherston & Allison Dickson, Marital Property Liabilities,

Leigh J. Francis, Calling All Debtors, Want to Defraud Your
Creditors? Here Is How: The Tenancy by the Entirety Loophole
and the Nullification of Section 522(O), (P), and (Q) of the 2005

Christopher W. Frost, Reasonably Equivalent Value in Divorce
1 (Jan. 2010) (9th Circuit).

Mona Lewandoski, Barred From Bankruptcy: Recently Incarcer-
ated Debtors In and Outside Bankruptcy, 34 N.Y.U. Rev. L. &

James L. Musselman, Once Upon a Time in Bankruptcy Court:
Sorting Out Liability of Marital Property for Marital Debt Is No

James A. Patten & Craig D. Martinson, Avoiding Traps for the
Divorce Lawyer: Changes in Laws Affect Your Briefs on Domest-
ic Obligation, 34 Mont. Law. 8 (Sept. 2008).

Arthur W. Rummler, Understanding the Automatic Stay of Bank-
ruptcy for the General Practitioner, 22 DCBA Brief 18 (Nov.
2009).

David G. Shaftel, Comparison of the Twelve Domestic Asset Pro-
tection Statutes, 34 ACTEC J. 293 (Spring 2009).


**Businesses (See also Valuation)**

Donald J. Degrazia & Stacy Preston Collins, *The Double-Dipping Arguments*, 31 Fam. Advoc. 16 (Spring 2009) (discussing whether it is appropriate for a court to consider the value of an asset (such as a business, a license, or intangible property) for purposes of marital property division as well as for spousal support).


James DiGabriele, *Gender, Valuation of Private Companies, and State Specific Variables in the Division of Marital Assets*, 15 J. Legal Econ. 1 (Apr. 2009) (conducting a statistical analysis of 125 cases in which courts addressed division of closely held businesses upon divorce in community property and equitable distribution states, and concluding that while courts found for the wife in about two-thirds of these cases, the important considerations
were the type of property regime and whether the husband owned the business alone or with the wife).

Dwight Drake, *Transitioning the Family Business*, 83 Wash. L. Rev. 123 (2008) (considering various strategies to help control of a family business pass from one generation to the next, including organizational structure, stock ownership, and gifting, and the tax consequences of these different routes).

Cynthia A. Duncan, et al., *McCord to Holman—Five Years of Value Judgments*, 34 ACTEC J. 254 (Spring 2009) (covering Tax Court rulings regarding the valuation of closely held corporations, family limited partnerships, and family limited liability companies).

Michelle F. Gallagher, *Cracking the C-O-D-E: Understanding the Report*, 31 Fam. Advoc. 34 (Spring 2009) (explaining the qualifications required for various types of business valuators, such as CPAs and business appraisers, and illuminating various typical sections of a business report).

Chris Johnson, Comment, *Once You Enter This Family There’s No Getting Out: Ethical Considerations of Representing Family-Owned Businesses*, 75 UMKC L. Rev. 1085 (2007) (discussing the provisions of the Model Rules of Professional Conduct regarding the obligations of lawyers who represent family-owned businesses (which comprise almost ninety percent of all businesses in this country) and when lawyers owe duties to the entity and to the constituent parties).

Mary F. Radford, *Ethical Challenges in Representing Families in Family Limited Partnerships*, 35 ACTEC J. 2 (2009) (addressing issues of whom the lawyer for a family-owned business represents and potential conflicts of interest, as well as how to balance disclosure obligations).

Myron E. Sildon, *Dealing with Divorce and Nontraditional Relationships in the Family Business*, SS007 ALI-ABA 725 (Sept. 13-14, 2010) (discussing ways to set up a business with voting and non-voting stock, explaining a section 368(a)(1)(D) tax-free reorganization, and evaluating an alimony trust and other ways to compensate a divorced spouse).
Myron E. Sildon, *Getting the Family Business Ready to Sell*, SS007 ALI-ABA 601 (Sept. 13-14, 2010) (reviewing comprehensively a plan for preparing a family business for sale, from transferring stock to family members, asset freeze techniques, preparing business records, and selecting a broker, to considering whether to make an S corporation election, the structure of the purchase and sale agreement, and conflicts of interest among shareholders in a sale situation).


---

**Career Assets and Goodwill**


Community Property

Katherine D. Black et al., Community Property for Non-Community Property States, 24 Quinnipiac Prob. L.J. 260 (2011) (describing provisions in the Uniform Probate Code under which states allow a testator to choose what state’s property laws will control and the ways to enter into community property agreements in non-community property jurisdictions).

Charlotte K. Goldberg, Opting In, Opting Out: Autonomy in the Community Property States, 72 La. L. Rev. 1 (2011) (discussing formal and informal mechanisms to avoid community property rules, such as cohabiting without marriage or creating a premarital agreement, and addressing the efficacy of each).

Alvin J. Golden, Selected Problems in Planning with Retirement Benefits: Community Property Issues and Creditor’s Rights, 1 Est. Plan. & Community Prop. L.J. 169 (2008) (offering comparisons of the different laws of various community property jurisdictions regarding issues such as income from separate property and disposition at death, considering ERISA preemption of states’ community property rules, and addressing the Bankruptcy Abuse Prevention and Creditor Protection Act’s provisions regarding inherited IRAs).

J. Thomas Oldham, Should Separate Property Gradually Become Community Property as a Marriage Continues, 72 La. L. Rev. 127 (2011) (arguing against proposals to allow spouses in marriages of significant duration to share in premarital acquisitions, inheritances or gifts, but proposing instead consideration of a spousal support system like Canada’s that is based on advisory guidelines: “For example, for a divorce not involving minor children, the presumptive amount is 1.5-2% of the difference in the spouses’ respective gross incomes multiplied by the number of years the parties were married, with a maximum of 50%.”).

James R. Ratner, Distribution of Marital Assets in Community Property Jurisdictions: Equitable Doesn’t Equal Equal, 72 La. L. Rev. 21 (2011) (noting that equitable property division often departs from a 50/50 share, and examining factors—such as asset generation and perceived need—that cause courts to depart from strictly equal division).
218 Journal of the American Academy of Matrimonial Lawyers

Sara L. Alahmed, Banking Law—Whether a “Joint Tenancy” or “JT Ten” Account Designation Is Sufficient to Create a Right of Survivorship in Community Property in the Account and Certificates Issued from the Account, 43 TEX. J. BUS. L. 641 (Winter 2009) (Texas).


**Dissipation and Hiding of Assets**

Barbara Glesner Fines, *Criminal Acts & Ethical Dilemmas: Some Client Nightmares Sneak Up on You!*, 33 FAM. ADVOC. 32 (Spring 2011) (addressing a lawyer’s ethical obligations upon discovery that a client is hiding assets, as well as privilege and forfeiture rules).

Carleton R. Marcyan, *Discovering Unreported Income: Ethical, Practical, and Procedural Consequences*, 33 FAM. ADVOC. 12 (Spring 2011) (discussing the reach of the attorney-client privilege under the circumstances of suspicion and proof that a client has hidden assets).

J. Thomas Oldham, “Romance Without Finance Ain’t Got No Chance”: Development of the Doctrine of Dissipation in Equitable Distribution States, 21 J. AM. ACAD. MATRIM. LAW. 501 (2008) (comparing rules regarding dissipation in community property and non-community property jurisdictions, including dissipation through both legal (e.g., gambling) and illegal (e.g., drug use) activities, poor investments, and consumption decisions).

William B. Stewart, Jr. & Alison D. Gilmartin, *Think Like a Thief: Using Tax Returns to Find Hidden Assets*, 31 FAM. ADVOC. 21 (Spring 2009) (discussing various IRS forms, such as Form 4506 which can be used to request a copy of a tax return, and questions to raise when reviewing a tax return).


220 Journal of the American Academy of Matrimonial Lawyers


**Educational and Professional Degrees**


**Equitable Distribution**

David N. Hofstein et al., *Update to Equitable Distribution in Large Marital Estate Cases*, 21 J. AM. ACAD. MATRIM. LAW. 439 (2008) (examining statutory and common law factors considered
by courts dividing marital estates in equitable distribution states, particularly in high asset divorces).


**Estates, Trusts, and Inherited Property**


Anthony M. Brown, *Estate Planning for Same-Sex Couples: Practicalities, Precautions, Perils, and Proposals*, 12 FLA. COASTAL L. REV. 217 (2010) (discussing the components of a basic estate plan for same sex couples, including such documents as a will, health care visitation orders and powers of attorney, a living will,
a durable power of attorney, and an affidavit of burial or cremation, as well as tax planning strategies).


Mark Glover, *Formal Execution and Informal Revocation: Manifestations of Probate’s Family Protection Policy, 34 Okla. City U. L. Rev. 411* (2009) (arguing that a formal will execution process and substantial compliance with jurisdictional requirements protects testamentary intent, even if all of the formalities are not fulfilled).


Irene D. Johnson, *A Suggested Solution to the Problem of Intestate Succession in Nontraditional Family Arrangements: Taking the “Adoption” (and the Inequity) Out of the Doctrine of “Equitable Adoption,” 54 St. Louis U. L.J. 271* (2009) (proposing an expansion of inheritance rights to children who were not formally adopted but nonetheless raised as family members when they want to make a claim as intestate heirs).


Vol. 25, 2012 Annotated Bibliography 223

Edward L. Perkins, *Common Estate Planning Blunders—How to Correct and Avoid Them*, 81 PA. B. Ass’n Q. 169 (Oct. 2010) (listing the thirty most common errors, ranging from failure to create a life estate in the personal residence to failure to reserve cash to pay the estate tax).

Carla Spivack, *Let’s Get Serious: Spousal Abuse Should Bar Inheritance*, 90 OR. L. REV. 247 (2011) (proposing that evidence of spousal abuse and coercive control should raise a rebuttable presumption of duress that should bar inheritance).


**Trusts**

Marc S. Bekerman, *Credit Shelter Trusts and Portability: Does One Exclude the Other?*, 25 PROB. & PROP. 10 (June 2011) (discussing portability of the exemption on taxation of bequests to surviving spouses (the deceased spousal unused exclusion amount) enacted in the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010).


Frances H. Foster, *Trust Privacy*, 93 *Cornell L. Rev.* 555 (2008) (criticizing the ability to keep will-like trusts private when wills are required to be a matter of public record).


David Horton, *Unconscionability in the Law of Trusts*, 84 *Notre Dame L. Rev.* 1675 (2009) (urging the application to trusts of unconscionability principles from the law of contracts, particularly when provisions condition trust gifts on beneficiaries not challenging terms or when provisions require arbitration).

Alan Newman, *Revocable Trusts and the Law of Wills: An Imperfect Fit*, 43 *Real Prop. Tr. & Est. L.J.* 523 (2008) (addressing the use of revocable trusts in lieu of wills to dispose of property and issues that arise, such as a remainder beneficiary’s interests while the settlor is alive, effective exercise of revocation powers by the settler, and the rights of the decedent’s creditors).

Martin M. Shenkman, *Trust Situs: Planning, Drafting and Tax Considerations*, 356 *PLI/Est* 425, PLI Order No. 23066, Sept. 13-14, 2010 (explaining the differences between possible trust situs, and the issues that impacts, such as state income and intangibles tax as well as favorable state courts, and governing law, and discussing the Uniform Trust Code’s provisions regarding the “principal place of administration”).

advantages of foreign APTs, such as offshore trusts, to those established under U.S. law).


**Farms**

A. Bryan Endres et al., *The Legal Needs of Farmers: An Analysis of the Family Farm Legal Needs Survey*, 71 Mont. L. Rev. 135 (2010) (identifying important legal issues facing operators of family farms from surveys of more than 500 Illinois farmers, including the provisions of federal programs, tax, environmental, land use, and energy issues).

Barnes Gunn Kelley, Note, *Chapter 12: Entrepreneur Punishment and Family Favorites*, 15 Drake J. Agric. L. 485 (Fall 2010) (evaluating the ways farming debts are treated differently than debts of other business ventures).


Insurance Benefits and Claims

Jani Maurer, *Use and Disposition of Life Insurance in Dissolution of Marriage*, 16 Barry L. Rev. 57 (2011) (examining life insurance policies with cash value as a source of marital property, life insurance to protect child support and alimony obligations, trusts that own life insurance, entitlement to insurance proceeds upon the death of a former spouse, and equitable distribution of insurance proceeds).


H. Joseph Gitlin, Marital Property: Making the Pie Larger—Employer-Based Health Insurance Should Be Treated as Property Earned During the Marriage and Distributable at Divorce, 99 Ill. B.J. 367 (July 2011) (Illinois).


Sarah Frances King, Comment, Till Death Do Us Part or Otherwise Approved by the Court? Interpreting the Language of § 501(c) of the IMDMA Regarding Post-Death Maintenance Ob-

Alex Shibicky, Life Insurance as Leverage, 31 Fam. Advoc. 28 (Summer 2008).


**Intellectual Property**


Jonathan W. Wolfe & Kimber L. Gallo, The Treatment of Intellectual Property in Divorce, 258 N.J. Law. 24 (June 2009) (addressing considerations courts find important in dividing intellectual property assets at divorce, such as whether post-marital efforts are needed to realize the value of the property, and how courts treat income streams from previously divided intellectual property).

Karen Artz Ash, Treatment of IP Licenses in Bankruptcy, 996 PLI/Pat 381 (Feb.-Apr. 2010).


**Marital Property** (*See also* Community Property and Equitable Distribution)

Reuben A. Bernick, *When Property Becomes Income in Post-Judgment Divorce Litigation*, 98 ILL. B.J. 310 (June 2010) (discussing revenue-generating property, such as goodwill, stock, and IRA distributions).


James J. Harrington III, *Successful Strategies for Litigation and Trial of Marital Property Disputes*, 89 MICH. B.J. 20 (July 2010) (assessing the strategic impact of being the first to file, offering organizational strategies for tracking assets, and suggesting ways to streamline consideration of property issues).

Shari Motro, *Labor, Luck, and Love: Reconsidering the Sanctity of Separate Property*, 102 NW. U. L. REV. 1623 (2008) (proposing that courts consider all of a couple’s financial resources rather than divide according to separate property and suggesting that courts have the ability to divide inherited and gifted property if the parties shared these assets during marriage).


Marshal S. Willick, The Evolving Concept of Marriage and Coming Convergence of Marital and Non-Marital Property and Support, 19 Nev. Law. 6 (May 2011) (Nevada).

Marital Residence and Real Property


David W. Griffin, It’s Nearly Always About the House: Grasping the Givens of Real Property Interests, Considerations, and Concerns, 32 Fam. Advoc. 8 (Spring 2010) (addressing titling issues, types of real property, forms of ownership of real property (such as joint tenancy and tenancy in common), conveyancing, foreclosures, and ways to secure future payments of equitable distribution amounts).

Marcia Soto, A House Divided, 31 Fam. Advoc. 10 (Summer 2008) (considering, among other issues, the economics of reverse mortgages and the tax consequences of selling a home as a single person as opposed to as a married couple).

Stephanie M. Stern, Residential Protectionism and the Legal Mythology of Home, 107 Mich. L. Rev. 1093 (2009) (attacking the myth that the home has particular psychological importance with
empirical evidence that the home does not contribute significantly to psychological stability or “a rich web of territorial relationships”.


**Migrating Spouses**

Benjamin K. Erlick, Varying Levels of Protection Afforded: Disinherited Spouses in the Marital Property and Community-Property States, 1 PHOENIX L. REV. 501 (2008) (addressing the difficulties that arise for disinherited spouses when couples move from a common law to a community-property state).

Kenneth W. Kingma, Property Division at Divorce or Death for Married Couples Migrating Between Common Law and Community Property States, 35 ACTEC J. 74 (Summer 2009) (identifying the issues that surface when spouses who have married and acquired property in one state migrate to another state, maintaining that state rules that alter property rights do not amount to an unconstitutional taking, and providing two charts showing each community property state’s rules regarding how property acquired in a common law state will be divided at divorce and at death).

J. Thomas Oldham, What If the Beckhams Move to L.A. and Divorce? Marital Property Rights of Mobile Spouses When They Di-
vorce in the United States, 42 FAM. L.Q. 263 (2008) (examining European rules regarding marital property rights when spouses change domiciles and comparing those approaches to current American approaches, which rely on conflicts of laws analysis).

John M. Yarwood, Note, Breaking Up Is Hard to Do: Mini-DOMA States, Migratory Same-Sex Marriage, Divorce, and a Practical Solution to Property Division, 89 B.U. L. REV. 1355 (2009) (explaining different state approaches to property division when same-sex couples move to jurisdictions that do not recognize their marriages).


**Miscellaneous Topics and Individual State Issues**


236 Journal of the American Academy of Matrimonial Lawyers


David S. Dolowitz, Conundrum Revisited, 23 Utah B.J. 10 (June 2010) (Utah—regarding gifted, inherited, and premarital property).


Howard S. Klein, Parting of the Ways, 33 L.A. Law. 34 (June 2010) (California).


Kathleen B. Vetrano, Seeing Social Security as Income, 32 Fam. Advoc. 23 (Spring 2010).
Pensions, QDROs, and Retirement Benefits


Leon I. Finkel & Hailee R. Bloom, *Changing Pension Beneficiaries After Divorce: It’s More Important After Kennedy*, 97 ILL. B.J. 462 (Sept. 2009) (explaining the ruling in *Kennedy v. Plan Administrator for DuPont Savings and Investment Plan* that a divorce decree alone was not sufficient for an ex-spouse to waive his or her interests in an ERISA-covered pension plan, and explaining how to make sure that a specific pension waiver is effective).

Alvin J. Golden, *It Should Not Be This Hard: A Look at Trusts as Beneficiaries of Retirement Benefits*, 36 ACTEC L.J. 399 (2010) (covering the IRS rules regarding when various types of trusts (such as qualified terminable interest property trust, bypass trusts, or special needs trusts) are designated as beneficiaries for retirement benefits and the particular requirements for each type of trust).

John E. Kirchner, *Division of Military Retired Pay*, 43 FAM. L.Q. 367 (2009) (discussing the Former Spouses Protection Act and the wide scope of discretion afforded to judges dividing military pay; also explaining VA disability compensation and concurrent receipt of retirement and disability pay).


Mark E. Sullivan & Charles R. Raphun, *Dividing Military Retired Pay: Disability Payments and the Puzzle of the Parachute Pension*, 24 J. AM. ACAD. MATRIM. LAW. 147 (2011) (explaining ways to calculate the portion of military retirement pay that constitutes longevity pay, and is thus part of marital assets, as opposed to disability pay, which is not divisible).


David Salter, Note, *Can’t Get No Satisfaction: Practical Solutions to Dividing and Enforcing Alternate Payee’s Rights to United*


QDROs

Steven P. Smith, Traps for the Unwary: Avoiding Problems With Employee Benefit Plans in Divorce, 80 J. KAN. B. ASS’N 24 (Feb. 2011) (explaining briefly the IRS and ERISA rules governing pension benefit plans and addressing common problems that arise with QDROs).


Dorothy Voigt, What to Consider Before Drafting a QDRO for a Defined Contribution Plan, 23 DCBA BRIEF 36 (June 2011).
Pets and Animal Companions


Frances H. Foster, *Should Pets Inherit?*, 63 FLA. L. REV. 801 (2011) (examining the legal treatment of pets under the laws relating to inheritance and noting that while pets are “companions during life,” they are treated as “property at death”; making the case for recognition of inheritance rights by pets based on the decedent’s intent and the relationship between humans and their animal companions”).


Prenuptial Agreements


John B. Burns, *The Prenup as Estate Planning Tool or Trap?*, 33 FAM. ADVOC. 7 (Winter 2011) (covering the tax rules regarding premarital transfers, lifetime gift tax credits, and estate tax credits).


Paul S. Leinoff & Natalie S. Lemos, *The Perils of a Prenup*, 33 Fam. Advoc. 8 (Winter 2011) (explaining briefly the Uniform Premarital Agreement Act, the process of negotiating a prenuptial agreement, the need for documentation, and the perils of financial misrepresentations).


**Reproductive Material**

Some courts treat reproductive material, such as embryos, as property. For articles regarding courts’ approaches to assisted reproductive technologies, including property-based theories, see Nancy Levit, *Cutting Edge Issues in Family and Matrimonial Law: An Annotated Bibliography, 2008-2011*, 24 J. Am. Acad. Matrim. Law. 271 (2011).

Bridget M. Fuselier, *The Wisdom of Solomon: We Cannot Split the Pre-Embryos*, 17 Cardozo J.L. & Gender 507 (2011) (proposing a property model of an “extended tenancy by the entirety for pre-embryos,” which would allow “(1) the non-severable right of survivorship; (2) no right to partition at any time; (3) no ability to transfer the pre-embryo for adoption or donation to research absent an agreement by both parties; and (4) result in property that is not devisable or inheritable at the death of either party.”).


J. Brad Reich & Dawn Swink, *Outsourcing Human Reproduction: Embryos & Surrogacy Services in the Cyberprocreation Era*, 14 J. Health Care L. & Pol’y 241 (2011) (addressing in one part of a much larger article state regulations of embryos as property, but also considering state, national, international, and voluntary association regulations of surrogacy practices).

Steven H. Snyder, “I’m a Divorce Lawyer! So Why Should I Read About ART?,” 34 Fam. Advoc. 6 (Fall 2011) (noting that “[o]ne in five couples seeking a divorce has an assisted reproduction issue,” and that some courts have characterized embryos and stored sperm as property).


**Taxation** *(See also Estates, Trusts, and Inherited Property)*

Terrence Benshoof, *Tax Issues for the Non-traditional Couple*, 21 DCBA Brief 22 (May 2009) (explaining when a partner can claim the other partner as a dependent, the taxability of health and life insurance partner benefits, and the tax consequences of gifts and property transfers between partners).

Scott Andrew Bowman, *Five Tax Traps for Resident Noncitizens (and Their Attorneys)*, 84 *Fla. B.J.* 33 (Dec. 2010) (addressing issues such as U.S. taxation of international assets, the taxation of stock in U.S. shareholder controlled foreign corporations, the taxation of distributions from foreign trusts, and tax consequences of expatriation).


James A. Fellows, *Tax Issues*, 40 *Real Est. L.J.* 218 (2011) (discussing the tax consequences of property transfers at divorce, including matters such as mortgage or installment payments, sale of the marital residence, and allocation of first time homebuyer credit).

Charles D. Fox, IV & Adam M. Damerow, *The ACTEC State Death Tax Chart—Still Going Strong After Seven Years*, 35 *ACTEC J.* 53 (Summer 2009) (providing a chart of various state approaches to state inheritance and estate taxes).

treatment of stepchildren, who are included as family members for some purposes and excluded for others, such as estate and gift tax anti-abuse provisions).

Cicilie Gildersleeve, Comment, Speculation on Future Tax Liability in Valuation of Marital Property, 21 J. AM. ACAD. MATRIM. LAW. 697 (2008) (identifying tax consequences according to different ways of dividing marital property).


Brenda L. Storey, Even During Divorce, the Tax Man Cometh, 32 FAM. ADVOC. 28 (Summer 2009) (providing a brief introduction to tax rules relevant at the time of divorce).

Dennis J. Ventry, Jr., Saving Seaborn: Ownership Not Marriage as the Basis of Family Taxation, 86 IND. L.J. 1459 (2011) (emphasizing the principle articulated in Poe v. Seaborn that property ownership, as determined by state law, determines taxability under federal law and arguing that this principle could provide a basis for extending tax liability to same sex couples in community property states).


Joseph M. Dodge, Are Gift Demand Loans of Tangible Property Subject to the Gift Tax?, 30 VA. TAX REV. 181 (2010).

Jeffrey D. Fisher & Odette M. Bendek, Beyond the Imminent Sale Doctrine: Valuing Assets with Imbedded Tax Consequences, 84 FLA. B.J. 87 (June 2010) (Florida).
Vol. 25, 2012  Annotated Bibliography  245


Michael E. Morden, “Reallocating” Wealth After Christiansen: A Fresh Look at Formula Clauses, 35 ACTEC J. 97 (Summer 2009).


Tort Damages, Workers’ Compensation, and Disability Benefits

Michelle L. Evans, Note, Wrongs Committed During a Marriage: The Child That No Area of Law Wants to Adopt, 66 Wash. & Lee L. Rev. (2009) (addressing whether divorce courts should handle interspousal tort claims and urging use of alternative dispute resolution mechanisms to handle the tort claims within the context of the divorce proceeding).


Laurie Henderson, Protecting a Celebrity’s Legacy: Living in California or New York Becomes the Deciding Factor, 3 J. Business Entrepreneurship & L. 165 (Fall 2009).


Unmarried Cohabitants


Steven K. Berenson, Should Cohabitation Matter in Family Law?, 13 J. L. & Fam. Stud. 289 (2011) (drawing on social science research regarding cohabiting conditions, such as “living apart together” and “commuter marriages” to argue that it is not just the fact of cohabitation that should matter to courts evaluating claims to property acquired during periods of cohabitation, but many other circumstances as well).

Shahar Lifshitz, Married Against Their Will? Toward a Pluralist Regulation of Spousal Relationships, 66 Wash. & Lee L. Rev.
1565 (2009) (arguing against the equalization of obligations between married and cohabiting couples).

Candace Saari Kovacic-Fleischer, *Cohabitation and the Restatement (Third) of Restitution & Unjust Enrichment*, 68 WASH. & LEE L. REV. 1407 (2011) (addressing claims of cohabitants to property that is acquired jointly and exploring the equitable bases on which courts apportion such property).


Adam C. Hartmann, Comment, *The Yellow Brick Road to Nowhere: California Same-Sex Marvin Rights After Proposition 8*, 14 CHAP. L. REV. 483 (2011) (California).


**Valuation** *(See also Businesses)*

Donald J. Degrazia & Stacy Preston Collins, *The Double-Dipping Arguments*, 31 FAM. ADVOC. 16 (Spring 2009) (questioning whether income that is used to assess property value can be considered again in the award of spousal support).

Toni Hendricks, Comment, *Valuation Date in Divorces: What a Difference a Date Can Make*, 21 J. AM. ACAD. MATRIM. LAW. 747 (2008) (surveying various ways states determine valuation dates for property, such as the date of filing, the date of trial, and a variety of discretionary valuation dates).


**Virtual Property**


John Conner, Comment, *Digital Life After Death: The Issue of Planning for a Person’s Digital Assets After Death*, 3 *EST. PLAN. & COMMUNITY PROP. L.J.* 301 (2011) (urging estate planners to consider planning for disposal of digital assets and reviewing the practices of email, blogs, and social networking services with respect to the accounts of deceased users).

Justin A. Kwong, *Getting the Goods on Virtual Items: A Fresh Look at Transactions in Multi-User Online Environments*, 37 *WM. MITCHELL L. REV.* 1805 (2011) (explaining the basic struc-
tures of online worlds and virtual property items as well as revenue models from online social games).


Sally Brown Richardson, Classifying Virtual Property in Community Property Regimes: Are My Facebook Friends Considered Earnings, Profits, Increases in Value, or Goodwill?, 85 Tul. L. Rev. 717 (2011) (discussing the classification of virtual property, such as email accounts, and exploring issues such as whether an internet url is separate or community property and whether friends on Facebook can be considered goodwill).

Sally Brown Richardson, How Community Property Jurisdictions Can Avoid Being Lost in Cyberspace 72 La. L. Rev. 89 (2011) (addressing termination of the community and termination of economically and personally valuable blogs, Twitter accounts, and Facebook accounts).


