Advanced Property Issues in Family Law: An Annotated Bibliography

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**Athletes and Celebrities**


**Attorney’s Fees**

Sarah C. Acker, *All’s Fair in Love and Divorce: Why Divorce Attorney’s Fees Should Constitute a Dissipation of Marital Assets*
in Order to Retain Equity in Marital Property Distributions, 15 AM. U. J. GENDER SOC. POL’Y & L. 147 (2006) (presenting the effects attorney's fees have on a divorce proceeding and the differences among state rules determining whether marital funds spent on attorney’s fees count as dissipation).

Issachar Rosen-Zvi, Just Fee Shifting, 37 FLA. ST. U. L. REV. 717 (2010) (arguing that a progressive fee-shifting approach when awarding attorney’s fees would better assist economically vulnerable spouses).


K.B. Kaman, Annotation, Right of Former Wife to Counsel Fees upon Application After Absolute Divorce to Increase or Decrease Alimony, 15 A.L.R. 2D 1252 (1951, Supp. 2009).


Andrea G. Nadel, Annotation, Authority of Divorce Court to Award Prospective or Anticipated Attorneys’ Fees to Enable Par-


J.F. Riley, Annotation, Necessity and Sufficiency of Notice and Hearing as to Allowance of Suit Money or Counsel Fees in Divorce or Other Marital Action, 10 A.L.R. 3D 280 (1966, Supp. 2012).

Fidel Rodriguez, Jr. & Manuel C. Maltos, Attorney’s Fees and Judgments, 54 ADVOC. (Texas) 5 (Spring 2011).

T.C. Williams, Annotation, Right to Allowance of Counsel Fees to Wife in Action of Divorce or Separation, as Affected by Misconduct or Lack of Good Faith or Her Attorney, 150 A.L.R. 1181 (1944, Supp. 2006).


Bankruptcy and Debt


Joseph C. Barsalona II, The Fall of DOMA and the Code, 32 AM. BANKR. INST. J. 34 (Sept. 2013) (addressing the aftermath of United States v. Windsor and what a legally married same-sex couple should do with respect to bankruptcy filing if they move to a state that does not recognize their marriage).

securing property settlement obligations not constituting ‘domestic support obligations’ should be avoidable under § 522(f).”


Tiffany S. Franc & Jeff Nesson, *Bankruptcy Considerations in Family Law Practice*, 46 Md. B.J. 24 (Feb. 2013) (introducing basic bankruptcy concepts relevant to divorce, such as the automatic stay, domestic support obligations, attorney’s fees, and discharge).


Christopher A. Tiso, *Dischargeable Debts in Divorce—The Dissolution of Dischargeability*, 85 Fla. B.J. 26 (Mar. 2011) (addressing the 2005 BAPCPA revisions that made most nonsupport related obligations, such as car loans and credit card debt, non-dischargeable in bankruptcy).


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Sally S. Neely, *How BAPCA Changes Chapter 11 Cases for Individuals—or—No, This Is Not Your Mother’s Chapter 11!,* SS029 ALI-ABA 625 (Apr. 28-29, 2011).


**Business Assets**

Benjamin Means, *Nonmarket Values in Family Businesses*, 54 WM. & MARY L. Rev. 1185 (2013) (arguing that because family businesses have deep emotional values to the parties, the law “should recognize the importance of shared family values relevant to the parties’ expectations”).


Myron E. Sidon, *Dealing with Divorce and Nontraditional Relationships in the Family Business*, SS007 ALI-ABA 725 (Sept. 13-14, 2010) (reviewing the different methods of planning a family
business and various alternatives to compensating a divorced spouse).


Ronald A. Giller et al., *Yours, Mine, Ours, and Theirs: The Role of Spousal Guarantees and Consents in the Franchise Relationship*, 33 Franchise L.J. 71 (Summer 2013).

Michael W. Kalcheim, *Are a Closely Held Corporation’s Retained Earnings Fair Game for a Divorcing Spouse?*, 95 Ill. B.J. 30 (Jan. 2007).


**Child Support**


Katharine K. Baker, *Supporting Children, Balancing Lives*, 34 Pepp. L. Rev. 359 (2007) (suggesting shortcomings and incoherencies in current child support formulas due to the adherence to contemporary divisions of labor and proposing a new approach to address the issues).

Lauren C. Barnett, Comment, *Having Their Cake and Eating It Too? Post-Emancipation Child Support as a Valid Judicial Option*, 80 U. Chi. L. Rev. 1799 (2013) (developing the idea of partial emancipation, and arguing that children may have legitimate reasons to be emancipated and yet sue their parents for child support).


support methods used in some states fail to address particularly important questions, and proposing a deeper exploration of the principles underlying child support—such as children’s well-being, encouraging both parents to support children, avoiding gross disparities, and allowing people to keep portions of their earnings—to address differing situations).


Pamela Foohey, *Child Support and (In)ability to Pay: The Case for the Cost Shares Model*, 13 U.C. DAVIS J. JUV. L. & POL’Y 35 (2009) (arguing that the cost sharing model is more effective than child support guidelines currently in place).

Laura W. Morgan, “Double Dipping”: A Good Theory Gone Bad, 25 J. AM. ACAD. MATRIM. LAW. 133 (2012) (suggesting that based on business valuation methods, courts should not give credence to a double dipping claim that consideration of income for property division precludes consideration of income for spousal support or maintenance; concluding that “[o]nly when the asset is the income is the double dipping argument tenable.”).


Elizabeth Steiner, *Why Are Divorced Mothers Economically Disadvantaged? And What Can Be Done About It?*, 17 TEX. J. WOMEN & L. 131 (2007) (suggesting that women are generally in an economically worse position compared to men after a divorce, and exploring the reasons for this outcome and proposing different solutions to address the problem).


Leslie Joan Harris, Questioning Child Support Enforcement Policy for Poor Families, 45 FAM. L.Q. 157 (2011).


**Community Property** *(See also Property Division)*

M. Read Moore, *Coming Soon to Your State: Community Property*, ST042 ALI-ABA 807 (June 17-22, 2012) (providing an overview of community property laws in the states that have them).


Kenneth W Kingma, *Property Division at Divorce or Death for Married Couples Migrating Between Common Law and Community Property States*, 35 ACTEC J. 75 (Summer 2009).


Bryan Mackay, *Marriage and Minerals in Texas: Confronting the Community Property Presumption and Potential Improvements in*
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) (noting the duties of attorneys if they discover that a client is hiding assets).

Marlene Moses & Beth A. Townsend, Uncovering Hidden Assets in a Divorce: Secret Closets and Covering Your Bases, 48 Tenn. B.J. 25 (Sept. 2012) (suggesting legal doctrines that may help avoid the hidden assets problem—such as recognition of a confidential relationship between divorcing spouses that compels a higher affirmative duty of asset disclosure, and insertion in a dissolution agreement of language that covers later-discovered assets—as well as a list of unusual hiding places).

William B. Stewart, Jr. & Alison D. Gilmartin, Think Like a Thief: Using Tax Returns to Find Hidden Assets, 31 FAM. ADVOC. 21 (Spring 2009) (detailing how to read tax returns to search for assets).


**Educational Expenses** *(See also Child Support)*

Matthew Brandabur, Note, Getting Back to Our Roots: Increasing the Age of Child Support Termination to Twenty-One, 47 VAL. U. L. REV. 169 (2012) (surveying states’ approaches to child support termination and whether parents can be compelled to pay for educational expenses after high school).


**Educational or Professional Degree**


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Estates and Trusts

Estates

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 different treatment of disinherited spouses in common law and community property states, particularly with respect to spouses who migrate out of state).


Eric A. Manterfield, Estate Planning for Couples in a Second Marriage, CV004 ALI-ABA 939 (July 10-12, 2013).

M. Read Moore, Tax and Estate Planning Issues for U.S. Clients Who Own Foreign Property, SU036 ALI-ABA 395 (June 23-28, 2013).


Douglas L. Siegler & Lloyd Leva Plaine, Planning for Transfers to Non-Citizen Spouses, SP017 ALI-ABA 203 (July 31-Aug. 1, 2008).


**Trusts**

Richard C. Ausness, *The Offshore Asset Protection Trust: A Prudent Financial Planning Device or the Last Refuge of a Scoundrel?*, 45 DUQ. L. REV. 147 (2007) (reviewing offshore trusts and the policy arguments for supporting or against such trusts, then addressing various court cases where American courts have attempted to limit offshore asset protection).

Douglas G. Chalgian, *What Does “Asset Protection” Really Mean?*, 91 MICH. B.J. 32 (Oct. 2012) (explaining the various things from which assets may or may not be protected, including lawsuits, probate, divorce, nursing home costs, the “death tax,” and problem beneficiaries).


R. Craig Harrison, *Trusts: TBE or Not TBE*, 87 FLA. B.J. 30 (May 2013) (Florida).


Keith A. Herman, *How to Protect Trust Assets from a Beneficiary’s Divorce*, 63 J. Mo. B. 228 (Oct. 2007) (Missouri).


**Executive Compensation and Stock Options**


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**Farms**

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**Foreign Assets**


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**Foreign Judgments**

Michael A. Benedetto, *International Foreign Judgments in Divorce and Custody Cases: A Clash of Legal Cultures,* 25 DCBA Brief 22 (Oct. 2012) (noting that although courts should defer to international decisions under the doctrine of comity, courts often find ways to interpret facts differently and arrive at different outcomes than the foreign court did).


Rajni K. Sekhri, Aleem v. Aleem: *A Divorce from the Proper Comity Standard—Lowering the Bar That Courts Must Reach to*


Goodwill


W. Michael Garner & Elliot R. Ginsburg, Nailing the Blob of Mercury: Goodwill in Franchising, 33 FRANCHISE L.J. 149 (Fall 2013).

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**Insurance Benefits and Claims**

*Life Insurance*, 35 Fam. Advoc. 28 (Spring 2013) (providing suggested language regarding obligations to maintain life insurance as part of a dissolution decree).


**Intellectual Property**


Sally Brown Richardson, *How Community Property Jurisdictions Can Avoid Being Lost in Cyberspace*, 72 LA. L. REV. 89 (2011) (addressing the classification and division of virtual property such as blogs, Facebook profiles, and Twitter accounts).


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**Maintenance, Alimony, or Spousal Support**

Donald J. Degrazia & Stacy Preston Collins, *The Double-Dipping Arguments*, 31 FAM. ADVOC. 16 (Spring 2009) (explaining the issue of “double-dipping,” whether a court should consider the value of assets when determining spousal support and marital property division).


Emily M. May, Note, *Should Moving in Mean Losing Out? Making a Case to Clarify the Legal Effect of Cohabitation on Alimony*, 62 DUKE L.J. 403 (2012) (surveying various states’ rules regarding whether cohabitation with a new partner triggers cessation of alimony, and urging clarification that only when alimony is based on need should cohabitation be suspended, not terminated, during the period of cohabitation).

Judith G. McMullen, *Alimony: What Social Science and Popular Culture Tell Us About Women, Guilt, and Spousal Support After Divorce*, 19 DUKE J. GENDER L. & POL’Y 41 (2011) (exploring the decline of alimony and suggesting that partially due to guilt and shame, women face difficulties while pursuing alimony that interfere with their ability to negotiate a fair award).


and other considerations to position clients for post-judgment support as well).


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**Marital Property** (See also Community Property and Property Division)

James J. Harrington III, *Successful Strategies for Litigation and Trial of Marital Property Disputes*, 89 *MICH. B.J.* 20, (July 2010) (offering strategies and suggestions to use during the litigation of marital property).

Alicia Brokars Kelly, *Actualizing Intimate Partnership Theory*, 50 *FAM. CT. REV.* 258 (2012) (using social science research to examine patterns of economic interdependence in relationships, and arguing that courts should consider these aspects of partnerships to allow mutual claims to property acquired during the relationship).


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Miscellaneous

Abraham Bell & Gideon Parchomovsky, Property Lost in Translation, 80 U. CHI. L. REV. 515 (2013) (considering property ownership and allocation systems among the Bedouin, nomads, indigenous peoples, and collective regimes such as kibbutzim in Israel).

Francisco J. Morales, Comment, The Property Matrix: An Analytical Tool to Answer the Question, “Is This Property?”, 161 U. PA. L. REV. 1125 (2013) (offering a template for ways to characterize whether intangible interests, such as an educational degree or client lists, are property, including consideration of economic interests, autonomy interests, and the right to exclude).


**Pension and Retirement Benefits**


Linda J. Ravdin, *Making Pension Promises in a Prenup: The Impact of ERISA*, 33 FAM. ADVOC. 38 (Winter 2011) (providing an overview of ERISA and outlining key concepts that would be helpful for an attorney to effectively handle a premarital agreement with these benefits).

Nathan R. Ross, *A Power Struggle of Mythic Proportion: In the World of ERISA, Are Retirement Plan Administrators the Real Gods of Olympus?*, 46 VA. L. REV. 529 (2012) (examining how various circuits treat the situation when a plan administrator has failed to split the assets of divorced spouses and the plan participant dies).

Angela M. Shimek, *Married to the Military: How to Protect Your Property Interests After the Marriage Mission Fails*, 13 SCHOLAR 395 (2010) (discussing the differences between retirement pay...
and disability benefits and analyzing case law that has affected these benefits).


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John E. Kirchner, Division of Military Retired Pay, 43 Fam. L.Q. 367 (2009).

Adam J. Larson, Aid and Attendance Pension Benefits for Veterans and Surviving Spouses: Effective Methods to Defray Medical Expenses for Elders, 8 Naela J. 37 (Spring 2012).


Charles C. Marvel, Annotation, Pension or Retirement Benefits as Subject to Award or Division by Court in Settlement of Property Rights Between Spouses, 94 A.L.R. 3d 176 (1979, Supp. 2012).

Jani Maurer, Use and Disposition of Life Insurance in Dissolution of Marriage, 16 Barry L. Rev. 57 (2011).


A. Matthew Miller & Jerry Reiss, Determining the Nonmarital Portion of Retirement Benefits and Other Property, 81 Fla. B.J. 34 (Feb. 2007).

Teia Moore, Comment, When Happily Ever After Is Not Ever After, After All: Rectifying the Plan Documents Rule Under ERISA To Benefit the Right Person, 52 S. Tex. L. Rev. 127 (2010).


**QDROs**

David Clayton Carrad, *An Expert Witness on QDROs: Look for a Lawyer*, 29 Fam. Advoc. 34 (Spring 2007) (surveying different categories of plans and evaluating how a QDROs expert could be used to bolster a case).

Margaret R. Cooper, *A Family Practitioner’s Guide to Overcoming QDRO Phobia*, 8 Del. L. Rev. 213 (2006) (reviewing QDROs and providing the basic foundation to understand the operation of and policies behind QDROs).

Joan O. Vorster & Courtney Cruz, *Distribution of ERISA-Governed Life Insurance Benefits After Divorce: QDROs v. DROs*, 42 Brief 48 (Summer 2013) (providing a basic template for benefits under employer benefit plans that are controlled by ERISA and addressing procedural mechanisms, such as declaratory judgment actions and interpleaders, to obtain benefits determinations).


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”).

Emily Franklin, *How to Give the Dog a Home: Using Mediation to Solve Companion Animal Custody Disputes*, 12 PEPP. DISP. RESOL. L.J. 351 (2012) (applying research regarding child custody mediation to pet custody disputes, and identifying instances in which mediation is more or less likely to be useful).


Prenuptial, Postnuptial, and Cohabitation Agreements

Barbara A. Atwood & Brian H. Bix, A New Uniform Law for Premarital and Marital Agreements, 46 Fam. L.Q. 313 (2012) (providing the views of the Committee that drafted the Uniform Premarital and Marital Agreements Act and the Committee’s intent to provide greater procedural fairness, but not to create laws that invoke extreme protectionism).


Stephanie B. Casteel, Planning and Drafting Premarital Agreements, ST042 ALI-ABA 771 (June 17-22, 2012) (offering suggestions regarding how to draft an enforceable premarital agreement, including timing, representation of both parties, disclosure, and choice of law provisions).

Hila Keren, Consenting Under Stress, 64 Hastings L.J. 679 (2013) (examining the physiological phenomenon of stress to argue that courts should consider distressed consent in determining whether consent is voluntarily and knowingly given in various circumstances).


Franklin R. Garfield, Prenuptial Practice to Protect Against Malpractice Claims, Attorneys Should Add Separate Admonitions and Acknowledgements to Be Signed Along With the Prenuptial Agreement, 34 L.A. LAW. 22 (Nov. 2011) (California).

Stephen T. Gary, To Agree or Not to Agree: Treatment of Postnuptial Agreements Under Oklahoma Law, 63 OKLA. L. REV. 779 (2011) (Oklahoma).


Property Division


Alexander C. Morey & Dixie Grossman, Property Rights of Unmarried Cohabitants—Nothing New Under the Sun, 25 J. Am. Acad. Matrimonial Law 87 (2012) (drawing on theories from other areas of law, “[s]pecifically, the equitable remedy of a constructive trust and the business law remedies of implied partnerships and joint ventures,” to provide theories for an unmarried cohabitant to claim rights to property when the legal title to it is held by the other cohabitant).


Property, 35 Fam. Advoc. 34 (Spring 2013) (providing suggested language for property division, ranging from allocation of securities and custodial accounts for children to obligations regarding subsequently discovered property).


David S. Dolowitz, Conundrum Revisited, 23 Utah B.J. 10 (May/June 2010).


Lisa Milot, Accounting for Time: A Relative-Interest Approach to the Division of Equity in Hybrid-Property Homes, 100 Ky. L.J. 585 (2012).

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**Equitable Distribution**


**Tax Issues**

Patricia A. Cain, *Taxing Families Fairly*, 48 SANTA CLARA L. REV. 805 (2008) (analyzing the various states that have recognized new family statuses while also addressing the differences between state and federal tax laws and possible solutions to these issues).


James A. Fellows, *Tax Issues*, 40 REAL EST. L.J. 218 (2011) (analyzing property transfers at divorce and the tax consequences that stem from the transfers and offering suggestions regarding tax planning to avoid these issues).


Brenda L. Storey, *Even During Divorce, the Tax Man Cometh but You Do Have Filing Options*, 32 Fam. Advoc. 28 (Summer 2009) (providing different alternatives for tax filing options after divorce).


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Gregg D. Polsky et al., Tax Consequences of Distributing Equity Compensation Rights in Divorce, 88 Fla. B.J. 18 (Jan. 2014).


Yvonne Englard Zuber, Tax Matters and Ramifications in Divorce, 36428 NBI-CLE 121 (2007).

Valuation of Assets

Richard Dellinger, Business Valuation for the Practitioner: Identifying the Common Areas of Manipulation by the Valuator, 84 Fla. B.J. 59 (Oct. 2010) (discussing the three asset valuation methods while also providing tips for practitioners in how to prepare and cross-examine business valuation experts).


**Wealth**


Margaret Ryznar, *All’s Fair in Love and War: But What About in Divorce? The Fairness of Property Division in American and English Big Money Divorce Cases*, 86 N.D. L. REV. 115 (2010) (analyzing the difference between American and English distribution of marital assets during divorce and the varying impacts these different systems have on the spouse who has generated a majority of the assets).
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Lisa Hughes, Executive Divorce, 51 Orange Cnty. Law. 20 (Jan. 2009).
