Unique Property Annotated Bibliography

Nancy Levit
Robert R.M. Verchick, Loyola University New Orleans

Available at: https://works.bepress.com/robert_verchick/21/
This bibliography covers law review articles and supplemental A.L.R. entries published after 1997. We also include a handful of especially interesting pieces published in or before 1997, which we believe are just too good to pass up. A.L.R. entries, whose titles are usually self-explanatory, are cited, but not annotated. Similarly, articles that concern only a single case or a single state are cited, but not annotated.

Index

<table>
<thead>
<tr>
<th>Category</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Art, Heirlooms, and Jewels</td>
<td>590</td>
</tr>
<tr>
<td>Businesses</td>
<td>590</td>
</tr>
<tr>
<td>Career Assets</td>
<td>590</td>
</tr>
<tr>
<td>Educational and Professional Degrees</td>
<td>595</td>
</tr>
<tr>
<td>Farm</td>
<td>597</td>
</tr>
<tr>
<td>Gifts</td>
<td>597</td>
</tr>
<tr>
<td>Income</td>
<td>599</td>
</tr>
<tr>
<td>Insurance Benefits</td>
<td>599</td>
</tr>
<tr>
<td>Intellectual Property</td>
<td>600</td>
</tr>
</tbody>
</table>
Lottery Winnings

Miscellaneous

Oil, Gas, and Mineral Interests

Pets and Animal Companions

Reproductive Material

Student Loans

Tort Damages, Workers' Compensation, and Disability Benefits

Trusts

*590 Art, Heirlooms, and Jewels (see also Gifts)

Babette Cohen, Trash or Treasure: Valuing Personal Property--Art, Antiques, Jewelry, and Collectibles, 17 Fam. Advoc. 34 (Spring 1995) (suggesting methods to contact appraisers and ways to evaluate their credentials).


Ralph E. Lerner, Valuing Works of Art for Tax Purposes, 28 Real Prop. Prob. & Trust J. 593 (1993) (presenting federal valuation requirements which, if followed, should diminish the disputes that often arise with the Internal Revenue Service concerning art appraisals).


Businesses (see also Career Assets)


Charlotte K. Goldberg, Value and Volatility: The New Economy and Valuing Businesses at Di-
Career Assets

Megan Berry, Comment, Limited Classification of Human Capital as Marital Property, 11 J. Contemp. Legal Issues 881 (2001) *591 (analyzing three representative approaches to valuing human capital upon divorce from the perspectives of classical liberal theory and critical race feminism).


Joyce Davis, Enhanced Earning Capacity/Human Capital: The Reluctance to Call It Property, 17 Women's Rts. L. Rep. 109 (1996) (tracing courts' refusals to consider one spouse's investment in the other's career--human capital--as property and the theories under which some courts have permitted compensation at dissolution for the investing spouse, including reimbursement, equitable restitution, quasi-contract, support, maintenance, alimony, rehabilitative alimony, and maintenance that acknowledges future earning capacity; offering theoretical and practical reasons why enhanced earning capacity should be considered property).


Michael W. Kalcheim, Expert Testimony and Valuing Goodwill at Divorce, 88 Ill. B.J. 652 (Nov. 2000) (distinguishing between personal and enterprise goodwill, reviewing cases regarding the qualification of valuation experts, and explaining the market, income, asset, and capitalization of excess earnings approaches to valuation of goodwill).


Alicia Brokars Kelly, Sharing a Piece of the Future Post-Divorce: Toward a More Equitable Distribution of Professional Goodwill, 51 Rutgers L. Rev. 569 (1999) (suggesting that courts have been mistakenly using the concept of saleable or business goodwill in the dissolution context, and instead should recognize that in the divorce context, personal goodwill represents one spouse's investment in the other's career, which should result in the award of “a percentage ownership interest in the future income stream of the business” that the goodwill has generated).

Shari Lutz, Valuing Goodwill: Factors to Consider and Sources of Information, 27 Colo. Law. 45 (Dec. 1998) (surveying briefly factors considered in cases and IRS rulings regarding calculations of...
the value of goodwill, such as customer base, customer relations, earning power, nature, duration, and financial condition of the business, and patterns and sources of referrals; and recommending a source of information about goodwill in medical and dental practices, The Goodwill Registry).


Martin M. Shenkman, When Should Professional Goodwill Be Valued?, 15 Matrim. Strategist 1 (Mar. 1997) (arguing that cases indicate that only if goodwill is transferable from the professional spouse as a distinct business asset should it be divided as part of the marital estate).

Brett R. Turner, Classifying and Valuing the Goodwill of a Franchise Business in a Divorce Case, 11 Divorce Litig. 157 (Aug. 1999) (suggesting that while franchise business goodwill (if it is realizable) is divisible in most states, it poses particular classification and valuation issues; discussing the factors that typically influence valuation, such as control over operations, control over advertising, business location, and relative earnings).


Sebastian Weiss, Note, Preventing Inequities in Divorce and Education: The Equitable Distribution of a Career Absent an Advanced Degree or License, 9 Cardozo Women's L.J. 133 (2002) (examining judicial and legislative solutions toward the equitable distribution of enhanced earning capacity).


Randall B. Wilhite, The Effect of Goodwill in Determining the Value of a Business in a Divorce, 35 Fam. L.Q. 351 (2001) (exploring various definitions of goodwill (including a business's reputation, excess earnings, or liquidation value), sampling several states' (Arizona, California, Colorado, Illinois, Maryland, New Jersey, Pennsylvania, Texas, Utah, Washington, Wisconsin) approaches to the consideration of business goodwill as marital property, and suggesting that one of the most important features of accurately assessing goodwill is selecting an appropriate capitalization rate).


Martin J. McMahon, Divorce and Separation: Goodwill in Accounting Practice as Property Sub-


Martin J. McMahon, Divorce and Separation: Goodwill in Medical or Dental Practice as Property Subject to Distribution on Dissolution of Marriage, 76 A.L.R. 4th 1025 (1989, Supp. 2004).


*595 Educational and Professional Degrees


Eric E. Lewis & Jeffrey W. Lippitt, Valuing Intellectual Assets, 9 J. Legal Econ. 31
(Spring-Summer 1999) (comparing methods of assessing the value of educational degrees, including comparing earnings streams with and without a degree, cost restitution of contributions toward the education itself, and costs to reproduce the degree or license).

Katherine Wells Meighan, For Better or for Worse: A Corporate Finance Approach to Valuing Educational Degrees at Divorce, 5 Geo. Mason L. Rev. 193 (1997) (urging that the supporting spouse's contributions toward the other spouse's degree be viewed as a financial investment, analyzed not under matrimonial or tort principles, but under principles of corporate finance, with both debt and equity types of payments).


Richard Raymond, Valuing Intellectual Assets, 11 J. Legal Econ. 89 (Fall 2001) (criticizing the "reproduction cost approach" of valuing intellectual assets proposed by economists Eric Lewis and Jeffrey Lippett).

Whitney L. White, Note, *596Diploma Dilemma: The Possibility of Double Recovery From Multiple Awards of the Licensed Spouse's Future Earning Capacity, 35 U. Louisville J. Fam. L. 393 (1996-97) (focusing on the concern that the non-licensed spouse's contributions will be recompensed as double (or triple) recovery under the rubric of maintenance, a specific interest in the license, goodwill, and increased earning capacity).


Katherine M. Willis, Comment, The True Value of an Education: The Texas Approach to Characterizing and Valuing a Professional Degree upon the Dissolution of Marriage, 31 Tex. Tech. L. Rev. 1117 (2000) (comparing the Texas approach to valuing professional degrees upon divorce to the approaches of other states, including California's new statutory approach).


*597* Value of Law Degree Is a Factor in Division of Assets, 20 Matrim. Strategist 10 (June 2002) (Nebraska).

Michael G. Walsh, *Spouse's Professional Degree or License as Marital Property for Purposes of Alimony, Support, or Property Settlement, 4 A.L.R. 4th 1294 (1981, Supp. 2000).*

Farms

Steven C. Bahls, *Judicial Approaches to Resolving Dissension Among Owners of the Family Farm, 73 Neb. L. Rev. 14 (1994)* (proposing a judicial framework for resolving disputes involving family farms).


Susan A. Schnieder, *Who Owns the Family Farm? The Struggle to Determine the Property Rights of Farm Wives, 14 N. Ill. U. L. Rev. 689 (1994)* (considering the application of various states' property allocation systems to family farms).


Gifts


David M. Cotter, *This Diamond Ring Doesn't Shine for Me Anymore: Who Is Entitled to Possession of Engagement Presents when No Marriage Occurs, 8 Divorce Litig. 148 (2002)* (exploring the conditional nature of engagement presents and rings).

*598* Melvin Aron Eisenberg, *The World of Contract and the World of Gift, 85 Calif. L. Rev. 821 (1997)* (defending the law's refusal to enforce gratuitous promises on the grounds that gifts based on love or friendship are different from contractual promises and that in such cases donative promisees are morally obliged to release repenting promisors).

(reviewing case law on the disposition of engagement rings where the anticipated marriage does not occur).

Eric A. Posner, Altruism, Status, and Trust in the Law of Gifts and Gratuitous Promises, 1997 Wis. L. Rev. 567 (defending the law's refusal to enforce gratuitous promises on the grounds that much gift-giving is less socially valuable than commercial exchanges and that regulating it would diminish the social value that it does have).


Rebecca Tushnet, Note, Rules of Engagement, 107 Yale L.J. 2583 (1998) (arguing that “premarital law” is unfair toward women by contrasting mandatory ring-return rules, which favor men, with the general refusal to grant women restitution based on their prenuptial expenditures; a possible legislative solution is examined).


Interspousal Gifts--Revocable Living Trust, 16 Equitable Distribution J. 76 (July 1999) (Virginia).


Income

William E. Mullin & Alyn Bedford, What Is Invisible Income?, 26 Fam. Advoc. 12 (Fall 2003) (briefly describing examples of deliberately or inadvertently hidden income or assets of interest to divorce lawyers).

David N. Hofstein & Maris J. Weiner, Show Me the Money, 26 Fam. Advoc. 17 (Fall 2003) (offering brief advice on how to uncover a spouse's hidden assets in a divorce dispute).
Insurance Benefits

Kelvin H. Dickinson, Divorce and Life Insurance: Post Mortem Remedies for Breach of a Duty to Maintain a Policy for a Designated Beneficiary, 61 Mo. L. Rev. 533 (1996) (examining applicable legal and equitable remedies after the death of an insured who was subject to a life insurance mandate but failed to comply fully with its terms).

Domenico Zaino, Jr., The Practical Effect of Extending Revocation by Divorce Statutes to Life Insurance, 2 Conn. Ins. L.J. 213 (1996) (examining with approval the provision of the revised Uniform Probate Code that extends the doctrine of revocation by divorce to life insurance policies).


Intellectual Property

Ann Bartow, Intellectual Property and Domestic Relations: Issues to Consider When There Is an Artist, Author, Inventor, or Celebrity in the Family, 35 Fam. L.Q. 383 (2001) (offering introductory material on the components of patents, copyrights, and trademarks, the basic elements of patent, copyright and trademark infringement and trademark dilution, the treatment of patents as personal property and copyrights as community property, and the valuation of both copyrights and patents).

Dane S. Ciolino, Why Copyrights Are Not Community Property, 60 La. L. Rev. 127 (1999) (arguing that, according to federal statutory and constitutional law, copyright interests must be considered separate property under state community property laws).

Miranda Oshige McGowan, Property's Portrait of a Lady, 85 Minn. L. Rev. 1037 (2001) (employing the contrasting property theories of Locke and Hegel, and the social observations of novelist Henry James, to examine a series of property issues, including the treatment of federal copyright interests as community property).

Lydia Nayo, Revisiting Worth: The Copyright as Community Property Problem, 30 U.S.F. L. Rev. 153 (1995) (evaluating arguments by family law scholars and intellectual-property scholars concerning California rule that that allows federal copyright interests to be treated as community property).

Amanda Trefethen, Review: Copyright as Community Property, 11 J. Contemp. Legal Issues 256 (1999) (supporting the California rule that allows federal copyright interests to be treated as community property).

Brett R. Turner, Division of Intellectual Property Interests upon Divorce, 12 Divorce Litig. 17 (2000) (briefly surveying cases involving the disposition of intellectual property interests on divorce, with special attention paid to community-property jurisdictions).

Peter J. Wong, *Asserting the Spouse's Community Property Rights in Copyright, 31 Idaho L. Rev. 1087* (1995) (arguing that despite the federal copyright statute, copyright interests should be considered separate property under state community property laws).


Frank J. Wozniak, Copyright, Patent, or Other Intellectual Property as Marital Property for Purposes of Alimony, Support, or Divorce Settlement, 80 A.L.R. 5th 497 (2000).

**Lottery Winnings**

*Equitable Distribution of Lottery Winnings, 16 Equitable Distribution J. 133* (Dec. 1999) (examining the distribution of lottery winnings on divorce where lottery tickets are purchased before the marriage, during the marriage and before separation, or during the marriage and after separation).


Case Notes, 13 Divorce Litig. 117 (June 2001) (California).

**Miscellaneous**


Jeremy A. Matz, Note, We're All Winners: Game Theory, the Adjusted Winner Procedure, and Property Division at Divorce, 66 Brooklyn L. Rev. 1339 (2001) (reviewing a procedure, called Adjusted Winner, developed by Professors Steven J. Brams and Alan D. Taylor, which is intended to facilitate negotiations between divorcing spouses and result in an envy-free property distribution).


Brett R. Turner, Division of Frequent Flyer Benefits in Divorce Cases, 11 Divorce Litig. 148 (July 1999) (reviewing the developing case law on the treatment of frequent flyer benefits in divorce cases).


Laura Weinrib, Note, Reconstructing Family: Constructive Trust at Relational Dissolution, 37 Harv. C.R.-C.L. L. Rev. 207 (2002) (advocating a doctrine of constructive trust over one of contractual distribution for resolving property disputes on dissolution of intimate relationships).


Leslie Joan Harris, A “Just and Proper Division”: Property Distribution at Divorce in Oregon, 78 Or. L. Rev. 735 (1999) (Oregon).

Mary Charles McRae, Comment, Contribution or Transmutation? The Conflicting Provisions of


Oil, Gas, and Mineral Interests


Pets and Companion Animals

Gerry Beyer, Pet Animals: What Happens When Their Humans Die?, 40 Santa Clara L. Rev. 617 (2000) (chronicling the evolution of enforcing after-death gifts for the benefit of pet animals and re-
commending steps owners can take to maximize the chances of enforcement).


Geordie Duckler, The Economic Value of Companion Animals: A Legal and Anthropological Argument for Special Valuation, 8 Animal L. 199 (2002) (arguing that monetary value should be assigned to pet animals according to their special relationship to their owners rather than according to their often lower conventional market value).


David Favre, Equitable Self-Ownership for Animals, 50 Duke L.J. 473 (2000) (arguing for a new understanding of pet ownership in which legal and equitable title of the animal are split between the human companion and the non-human pet, making the human companion a “trustee,” who is then bound to act in the best interest of the pet).


Rebecca J. Huss, Separation, Custody and Estate Planning Issues Relating to Companion Animals, 74 U. Colo. L. Rev. 181 (2003) (examining several property-related issues pertaining to companion animals, including custody and support disputes arising out of the owners’ divorce).


Charlotte A. Lacroix, Another Weapon for Combating Family Violence: Prevention of Animal Abuse, 4 Animal L. 1 (1998) (arguing that acts of cruelty against family pets are a form of family vi-
olence and should be treated as such).


*607 Laura W. Morgan, Who Gets Fluffy? Division of Pets in Divorce Cases, 11 Divorce Litig. 113 (1999) (examining factors important to pet custody disputes, including title, past caretaking, and emotional attachment).


William C. Root, Note, “Man's Best Friend”: Property or Family Member? An Examination of the Legal Classification of Companion Animals and Its Impact on Damages Recoverable for Their Wrongful Death or Injury, 47 Vill. L. Rev. 423 (2002) (examining the damages recoverable for the wrongful injury to or death of a companion animal and advocating an expansion of such damages).

Jared Squires, The Link Between Animal Cruelty and Human Violence: Children Caught in the Middle, 8 Ky. Children's Rts. J 2 (Winter 2000) (reviewing the link between animal cruelty and violence against humans, the importance of this link to child advocates, and innovative therapies now used to address this issue).


Sonia S. Waisman & Barbara R. Newell, *608Recovery of Non-Economic Damages for Wrongful Killing or Injury of Companion Animals: A Judicial and Legislative Trend, 7 Animal L. 45 (2001) (advocating legislation to allow recovery for such non-economic injuries as emotional distress and loss of companionship in cases where animal companions have been wrongfully injured or killed).

Steven M. Wise, Hardly a Revolution--The Eligibility of Nonhuman Animals for Dignity-Rights


Steven M. Wise, Recovery of Common Law Damages for Emotional Distress, Loss of Society, and Loss of Companionship for the Wrongful Death of a Companion Animal, 4 Animal L. 33 (1998) (arguing that plaintiffs whose companion animals are wrongfully killed should at least be entitled to the same kind, though not necessarily the same magnitude, of common law damages-- including noneconomic damages--as are parents of young children wrongfully killed).


Reproductive Material


James E. Bailey, An Analytical Framework for Resolving the Issues Raised by the Interaction Between Reproductive Technology and the Law of Inheritance, 47 DePaul L. Rev. 743 (1998) (examining whether gametes, zygotes, pre-embryos, and embryos should be subject to bequest and, if so, how such bequests would be affected by filiation, pretermission, the rules of succession, and the Rule Against Perpetuities).


Naomi Cahn, Parenthood, Genes, and Gametes: The Family Law and Trusts and Estates Perspective, 32 U. Memphis L. Rev. 563 (2002) (arguing that disputes over preserved eggs, sperm, or pre-embryos be governed by pre-existing contract unless such contract would work a "substantial hardship" on one of the partners, with the understanding that having one's genetic children exist without a legal obligation to support them is not a "substantial hardship").

Carl H. Coleman, Procreative Liberty and Contemporaneous Choice: An Inalienable Rights Approach to Frozen Embryo Disputes, 84 Minn. L. Rev. 55 (1999) (criticizing the widespread view that a partner's interest in a frozen embryo may be waived by private contract, and instead advocating an "inalienable right to mutual consent" over decisions involving such embryos, which may not be waived by pre-existing contract).

Ruth Colker, Pregnant Men Revisited or Sperm Is Cheap, Eggs Are Not, 47 Hastings L.J. 1063 (1996) (arguing that in resolving disputes over frozen embryos, courts should generally side with the woman where she desires to use the frozen embryo to further her reproductive capacity).


Judith D. Fischer, Walling Claims In or Out: Misappropriation of Human Gametic Material and the Tort of Conversion, 8 Tex. J. Women & L. 143 (1999) (arguing that the tort of conversion should apply in cases involving the misappropriation of human eggs or embryos, but not in cases involving the misappropriation of human sperm).


Gail A. Katz, Protecting Intent in Reproductive Technology, 11 Harv. J.L. & Tech. 683 (1998) (examining the standards of intent used in resolving disputes over preserved sperm or embryos and advocating a framework in which sperm and embryos hold an intermediate status between property and “actual life”).


Christina C. Lawrence, Note, Procreative Liberty and the Preembryo Problem: Developing a


Tracey S. Pachman, Disputes Over Preembryos and the “Right Not to Be a Parent,” 12 Colum. J. Gender & L. 128 (2003) (examining law on the disposition of frozen embryos and concluding that a “right” against procreation would effectively discriminate against women).


Paul C. Redman II & Lauren Fielder Redman, Seeking a Better Solution for the Disposition of Frozen Embryos: Is Embryo Adoption the Answer?, 35 Tulsa L.J. 583 (2000) (examining ethical and legal issues raised by unneeded or abandoned embryos and proposing “embryo adoption” as a response).


Jamie Rowsell, Stayin' Alive: Postmortem Reproduction and Inheritance Rights, 41 Fam. Ct. Rev. 400 (2003) (analyzing the rapidly changing face of postmortem reproductive technology and supporting the right of posthumously conceived children to inherit from their deceased parent when certain criteria have been met).


Mary Lyndon Shanley, Collaboration and Commodification in Assisted Procreation: Reflections
on an Open Market and Anonymous Donation in Human Sperm and Eggs, 36 Law & Soc'y Rev. 257 (2002) (addressing whether persons created with third-party gametes should be able to learn the identity of their biological parent(s) and whether the sale of human eggs or sperm should be regulated).


Helene S. Shapo, Matters of Life and Death: Inheritance Consequences of Reproductive Technologies, 25 Hofstra L. Rev. 1091 (1997) (analyzing the inheritance consequences to children born of reproductive technologies, especially when one of the participating individuals dies intestate).


William A. Sieck, Comment, In Vitro Fertilization and the Right to Procreate: The Right to No, 147 U. Pa. L. Rev. 435 (1998) (arguing that contract analysis is inappropriate for resolving disputes over frozen embryos and that either donor-parent should have a right to veto implantation).

Lee M. Silver & Susan Remis Silver, Confused Heritage and the Absurdity of Genetic Ownership, 11 Harv. J.L. & Tech. 593 (1998) (proposing a framework for resolving disputes involving new or unorthodox reproductive techniques, based on whether the embryo is ex utero, in utero, or on whether a live child has already been born as a result of the technique).


David L. Theyssen, Balancing Interests in Frozen Embryo Disputes: Is Adoption Really a Reasonable Alternative?, 74 Ind. L.J. 711 (1999) (evaluating adoption as a relevant factor in the “reasonable alternatives” test used in recent disputes over frozen embryos).


David H. Fiestal, Note, AS o l o m o i D e c i s i o n :W h a tW i l l B e t h e F a t e o fP r e e m b r y o s ?, 6 Cardo zo Women's L.J. 103 (1999) (Kass v. Kass) (New York).


Renee H. Sekino, Posthumous Conception: The Birth of a New Class, Woodward v. Commission-


Elizabeth A. Trainor, Right of Husband, Wife, or Other Party to Custody of Frozen Embryo, Pre-Embryo, or Pre-Zygote in Event of Divorce, Death, or Other Circumstances, 87 A.L.R. 5th 253 (2001).

Student Loans

Brett R. Turner, Division of Student Loans in Divorce Cases, 13 Divorce Litig. 52 (Mar. 2001) (discussing the classification and division of student loans on divorce).


Tort Damages, Workers' Compensation, and Disability Benefits


Linda A. Chapin, Are All Fringe Benefits Community Property?, 41 Orange County Law. 13 (Feb. 1999) (California).


Dale Joseph Gilsinger, Spouse's Cause of Action for Negligent Personal Injury, or Proceeds Therefrom, as Separate or Community Property, 80 A.L.R. 5th 533 (2004).


Aloysius A. Leopold, “Loss of Earning Capacity” Benefits in the Community Property Jurisdiction--How Do You Figure?, 30 St. Mary's L.J. 367 (1999) (Texas).


Ralph Ogden, Update on Colorado Appellate Decisions in Workers' Compensation Law, 29 Colo. Law. 97 (Sep. 2000) (Colorado).


Trusts

Brett R. Turner, Division of Trusts in Divorce Cases, 15 Divorce Litig. 85 (May 2003) (providing an introduction to trust terminology for matrimonial lawyers, and considering the differences between revocable and irrevocable trusts, as well as the treatment of income and remainder interests upon dissolution).


[FNa1]. Edward D. Ellison Professor of Law, University of Missouri-Kansas City School of Law.
[FNaa1]. Ruby M. Hulen Professor of Law, University of Missouri-Kansas City School of Law.
18 J. Am. Acad. Matrim. Law. 589

END OF DOCUMENT