The year in trusts and estates was highlighted by the imposition of permanent estate and gift tax rules, notably with respect to threshold and rates, which should serve to finally stabilize the provisional tax remedies offered over the past decade.

**FEDERAL ESTATE TAXATION**

On January 1, 2013, Congress passed the American Taxpayer Relief Act of 2012 which was immediately signed into law by the president. In many ways it makes permanent aspects of the prior Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act, of 2010. The lifetime maximum exemption equivalent is set at $5,000,000 and indexed for inflation. As such, the exemption equivalent for this year is $5,250,000. All estates with less than that amount have no federal tax consequences. Further, the top tax rate was raised from 35% to 40%.

As was also the case under the immediately prior law, the step-up in basis was maintained. Thus, for purposes of computation of capital gains on a particular asset, the basis upon which such gain is computed shall be its fair market value as of the date of death. This continues to wipe away any and all gains occurring between acquisition of that asset and death.

**FEDERAL GIFT TAXATION**

The gift tax lifetime exemption continues to be reunified with the estate tax lifetime exemption, and is set as $5,250,000 for 2013. Thus, lifetime transfers continue to provide the same numerical tax free benefit as do testamentary transfers, subject to the unified cap. Further the gift tax annual exclusion, now $14,000 per person per year, was preserved. This remains a neglected planning tool. The exclusion, within its limits, is not chargeable to the estate/gift unified lifetime exemption, and essentially operates as a separate device for transfer of assets. A married couple may now transfer up to $28,000 to any individual every year completely free of gift tax and without reducing their lifetime threshold.

Finally the generation skipping tax exemption continues to parallel the federal exemption amount and is now set at $5,250,000. This tax applies to transfers 2 or more generations removed from the transferor and comprise a second level of taxation, often addressed in large estates.

**PORTABILITY**

A unique aspect of the new law preserved from the prior law, consists in the fact that any unused portion of a spouse’s exemption amount may be utilized by the surviving spouse. By example, in the event that spouse #1 (first spouse to die) only utilized $2,000,000 of his exemption equivalent, the surviving spouse would be able to utilize $8,500,000 of exemption equivalents (her own $5,250,000 plus the unused 3,250,000 from spouse #1).

This approach mirrors some facets of the traditional by-pass (credit shelter) trust in that the second spouse to die may use their exemption amount, plus the amount sheltered in trust in the first spouse to die’s estate. One of the remaining advantages of a by-pass trust, is that appreciation and accumulated income remain sheltered in said trust, and continue to avoid taxation in the estate of the second spouse to die.

Further, portability must be formally elected by the executor on the estate tax return of the first spouse to die (form 706). Thus, even if no estate tax is due at that level, such election and filing must occur.

**NEW YORK STATE**

New York State has not altered exemption equivalents in many years. The New York exemption equivalent (state credit) is $1,000,000. Presumably more New York estates will now be required to file a New York estate tax return, but not file a federal estate tax return. The state tax rates are significantly lower than their federal counterparts and are capped out at 16%.

**OVERVIEW**

It is apparent that any planning tools executed over the past 15 years or more, will have to be reevaluated in light of the present tax structure and the portability feature. For example, certain plans viable a few years ago may, by their language, wind up overfunding a by-pass trust and leaving nothing for the surviving spouse to utilize (Continued on page 15)
The Queens Bar Association has been certified by the NYS Continuing Legal Education Board as an Accredited Legal Education Provider in the State of New York.

Please note:

If you or someone you know is having a problem with alcohol, drugs or gambling, we can help. To learn more, contact QCBA LAC for a confidential conversation.

Confidentiality is privileged and assured under Section 499 of the Judiciary Laws as amended by Chapter 327 of the laws of 1993.

Lawyers Assistance Committee
Confidential Helpline 718 307-7828

CLE Seminar & Event Listing

April 2013

Wednesday, April 3
Immigration Seminar - Rescheduled

Monday, April 8
Judiciary, Past Presidents & Golden Jubilarian Night

Wednesday, April 10
Civil Court Seminar

Wednesday, April 17
Equitable Distribution Update

Thursday, April 18
Medical Malpractice Seminar

Thursday, April 23
Administrative & Federal Law Seminar

Thursday, April 24
Cooperative/Condominium Law Seminar

May 2013

Thursday, May 2
Annual Dinner & Installation of Officers

Friday, May 3
Law Day Information Fair at Civil Court

Monday, May 27
Memorial Day - Office Closed

June 2013

Thursday, June 20
Juvenile Justice Committee Seminar

September 2013

Monday, September 2
Labor Day - Office Closed

Monday, September 9
Annual Golf Outing at the Garden City Country Club

CLE Dates to be Announced

Elder Law

Insurance

Real Property

Supreme Court & Torts Section

Worker’s Compensation

New Members

Aveet A. Basnyat
Steven Thomas Beard
Bessie Chinhoukas
Shawn Clauther
Alexander Der Garabedian
Maria T. Gonzalez
Natalie Kachkarov
David J. Lawrence
Francisco E. Mundaca
Andrea A. Ogle
Brad M. Popick
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Editor’s Note: Articles appearing in the Queens Bar Bulletin represent the views of the respective authors and do not necessarily carry the endorsement of the Association, the Board of Managers, or the Editorial Board of the Queens Bar Bulletin.

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Dear Fellow Members:

I thank you for your support of the Queens County Bar Association. It truly is a pleasure to meet and socialize with each other at our events and seminars this year.

I believe the practice of law should be enjoyable, challenging, and rewarding. I believe there should be a desire within all practitioners to treat each other with courtesy, respect, and civility.

What is the reason for the lack of civility amongst members of our profession today?

Are emails making it too easy to de-humanize the practice of law and each other?

When was the last time you made a sit-down real estate contract signing? How many times have you sent out a Contract of Sale requesting to be advised if the other attorney desired changes and the following week a contract arrives with 20 hand written changes signed by the other side, none of which have been either discussed or agreed upon?

How often have you seen opposing counsel make this statement “I’m sorry but I have to follow the direction of my client?”

Is there not a desire to treat each other with courtesy, respect and civility?

We all need to make a conscious effort to practice civility. We should have that desire. It does make a difference for all of us.

Is the lack of civility a sign of dissatisfaction within our Profession?

Are we working harder making less? Is there too much competition? Are we failing to communicate with each other?

It actually takes more time and a lot more effort to make each other, our clients, judges, and Court personnel miserable!

Why be a gladiator when we can work with one another and arrive at a fair and just result.

Remind yourself, each other and your staff of the importance of being civil.

As a refresher, I am briefly outlining The Standards of Civility which are contained in 22NYCRR Part 1200: Appendix A which are guidelines and principles of behavior to which the bar, bench and Court employees are encouraged to aspire and observe.

LAWYER’S DUTIES TO OTHER LAWYERS, LITIGANTS AND WITNESSES

I. Lawyers should be courteous and civil in all professional dealings with other persons.

II. When consistent with their clients’ interests, lawyers should cooperate with opposing counsel in an effort to avoid litigation and to resolve litigation that has already commenced.

III. A lawyer should respect the schedule and commitments of opposing counsel, consistent with protection of the client’s interest.

IV. A lawyer should promptly return telephone calls and answer correspondence reasonably requiring a response.

V. The timing and manner of service of papers should not be designed to cause disadvantage to the party receiving the papers.

VI. A lawyer should not use any aspect of the litigation process, including discovery and motion practice, as a means of harassment or for the purpose of unnecessarily prolonging litigation or increasing litigation expenses.

VII. In depositions and other proceedings, and in negotiations, lawyers should conduct themselves with dignity and refrain from engaging in acts of rudeness and disrespect.

VIII. A lawyer should adhere to all express promises and agreements with other counsel, whether oral or in writing, and to agreements implied by the circumstances or by local customs.

IX. Lawyers should not mislead other persons involved in the litigation process.

X. Lawyers should be mindful of the need to protect the standing of the legal profession in the eyes of the public.

Accordingly, lawyers should bring the New York State Standards of Civility to the attention of other lawyers when appropriate.

LAWYER’S DUTIES TO THE COURT AND COURT PERSONNEL

I. A lawyer is both an officer of the Court and an advocate. As such, the lawyer should always strive to uphold the honor and dignity of the profession, avoid disorder and disruption in the courtroom and maintain a respectful attitude toward the Court.

II. A Judge should be patient, courteous and civil to lawyers, parties and witnesses.

DUTIES OF COURT PERSONNEL TO THE COURT, LAWYERS AND LITIGANTS

I. Court personnel should be courteous, patient and respectful while providing prompt, efficient and helpful service to all persons having business with the Courts.

I hope you will take the time to review and be guided by these guidelines to ensure that we as members of this honorable and respected profession remain healthy, happy and prosperous.

Sincerely,
Joseph Risi
President
The Five Dollar Solution to National Wealth Beyond All Dreams

BY PAUL E. KERSON

In legal, political, commercial and governmental circles today, there is much talk of "Immigration Reform." What should be the requirement to join us as American Citizens?

Coincidentally, this is the 100th Anniversary of the day my Grandfather Sol Kerson left Europe for America on foot. His journey took him three years, from 1913 to 1916.

Sol came from Orsha, Belarus, a town in the former Soviet Union where everyone was killed by Nazi gunfire in 1943. Sol and his descendants missed being exterminated.

He had survived the pogrom of 1905, at age 11, when houses of Jewish residents were burned to the ground with the people in them. He resolved then and there that he would come to America. Western Europe was difficult to get through, with its series of borders, guards and bureaucratic requirements.

So, at the age of 19, in 1913, Sol commenced walking East, across the Eurasian land mass that constitutes most of the land of the Earth. He reached Katrinaslav, Ukraine, where he got on the trans-Siberian railroad to Harbin, China.

Harbin is a city in China's Heilongjiang Province. This region sticks up into Russia much the way Maine is surrounded by Canada. The Russian Government had leased Harbin and sections of Heilongjiang Province to build a transcontinental railroad to their Pacific Ocean harbor city, Vladivostok. The railroad brought a small Russian Jewish community to Harbin, and it was there that Sol prepared for the rest of his trip to America.

He arrived in Japan, walked across the entire main Japanese island, and reached Kobe, where he boarded a freighter bound for Seattle, Washington.

Whatever the legal requirement to enter America was in 1916, the actual requirement was five dollars. Sol borrowed this sum from a fellow immigrant aboard ship, as Sol had absolute- ly nothing. The U.S. Immigration Agent on the dock in Seattle took Sol's borrowed five dollars and asked his name. Whatever Sol said in Russian came out with the pronunci- ation and spelling the U.S. Immigration Agent wrote and stated for Sol on that dock. And so that has been the family name ever since, a name devised by the U.S. Government for one of its millions of five dollar immigrants.

Sol picked apples in Washington State on the train farm to New York, where he had two uncles, Louis Kalmanoff and Louis Kaplowitz, who had come to America 11 years earlier. Kalmanoff & Kaplowitz were in the business of painting stores, apartments and schools. They lent Sol $100 to buy a barber shop on 116 St. and Seventh Avenue in Manhattan in 1917. Sol later owned barber shops, beauty parlors and wholesale barber shop and beauty parlor supply stores all over the Bronx – 1029 Boston Road, 998 Boston Road and 526 Tremont Avenue.

Sol's descendants included and include: a U.S. Army Captain, a hospital administrator, two doctors, one dentist and one medical student, an editor, a labor union leader, a city planner, a museum fundraiser, a public school teacher, a case- worker for the poor, a Port Authority administrator, a real estate agent, several young students and your Editor.

Collectively, over the past 100 years, Sol and his descendants have paid millions of dollars in taxes, and contributed far more in energy and effort. All from five dollars to the U.S. Immigration Agent on the dock in Seattle in 1916.

Sol's story is every American's story. Due to internecine and out-of-wedlock births, every citizen born here has an ancestor with a story just like Sol's. Americans have ancestors from every country in the world.

My wife, Marleen Kassel Kerson, teaches the History of China and Japan at Queens College, and she speaks these languages. So, in 2007, she arranged for us to go to Harbin. On the internet, I found that a Chinese Government had sent Prof. Dan Ben-Canaan to the University of Heilongjiang to teach English and Jewish History. He is also responsible for preserving the now empty Harbin synagogue, Hebrew School, hospital, burial grounds and related buildings. When the Communists took over China, the private businesses of the Harbin Jews were confiscated, and all fled to Israel. But in 2007, I told Sol's story to Prof. Ben-Canaan’s class at the University of Heilongjiang. I thanked them for the Chinese guide, the black bread, the salami and the bottle of vodka that sustained Sol in the rowboat across the Sea of Japan in 1916.

They gave me a Standing Ovation. Later that day, Prof. Ben-Canaan took Marleen and me to a banquet with the President of the University to thank us for coming all around the world to thank them for life itself, for the choices they had made. So, for me at least, the policy choice is obvious. Following should be our new immigration law:

1. Anyone in the world who wants to be an American is welcome and will be given a Green Card upon arrival.
2. The requirement is five dollars.
3. The five dollars is waivered for any immigrant who does not have the money.
4. All other immigration laws are hereby repealed.

Prediction: If this is our new immigration law, as it was actually in 1916, all of our Budget problems will be solved within one generation or less.

HISTORY CORNER

A lawyer without history or literature is a mechanic, a mere working masion; if he possesses some knowledge of these, he may venture to call himself an architect.

— Sir Walter Scott

One of the major reasons for my love of history is that it leads the reader to be surprised by items they think they know. Here are three I present to my colleagues for their enjoyment.

The Outerbridge Crossing

From time to time, many of us need to take the bridge which connects Staten Island (NY-440) and Perth Amboy, New Jersey. Most New Yorkers mistakenly assume the name derives from the fact that it is the most remote bridge in New York City and the southernmost crossing in New York State. Actually it is named after Eugene Harvey Outerbridge (1860 - November 11, 1932). He was a businessman, promot- er of patent fiberboard and the first chair- man of, what was then known as, the Port of New York Authority. He was a resident of Staten Island. His sister, Mary Ewing Outerbridge was the founder (in 1874) of American Lawn Tennis, which was the progenitor of modern lawn tennis.

As far as the bridge, it is a cantilever type construction which spans the Arthur Kill. It opened simultaneously with the Goethals Bridge on June 29, 1928. Both spans have a similar design. For further reading see:


William Rufus King: The First Gay Vice-President

You may be aware that King County, Washington State (home of Seattle) was once named after Vice President William Rufus DeVane King (1775-1843). He was elected to his office (as a Democrat) with President Franklin Pierce. He was the distinction of having served in the office for less time than anyone else - just 45 days. He actually took the oath of office in Cuba where he was attempting to cure his tuberculosis. He returned to the United States on April 17, 1853, but died the next day on his Alabama plantation at the age of 67.

King was an accomplished politician with a long history of public service. In 1811, he began as a congressman from North Carolina at the age of 25. In 1819, he became a Senator from the newly created state of Alabama. He remained in this position until 1844 when he became the minister to France. He returned to the Senate four years later where he remained until December of 1852 when he resigned to become Vice President. King was a highly respected Senator known for his probity and moderation.

King was a lifelong bachelor who lived with future President James Buchanan for fifteen years. At the time Washington insid- ers speculated as to the nature of their “friendship.” It was widely rumored that there was a romantic connection although the word “gay” was certainly not used back then. King was a strong supporter of slavery - not unusual for his time. He was so well respected that in 1852 the Oregon Territory named King County after him. A year later this became part of Washington territory which became a state in 1889. In fact, the Kingdome (1976 - 2000) Seattle’s baseball - football domed stadium was probably named in honor of William King. However, in recent years the County Board took action to rename the County after Martin Luther King. While opposed by the gay community it was reaffirmed on April 19, 2005. The change was not made to “diss” William King but rather to honor of Dr. King.

While it has been argued whether or not William Rufus King was gay, there is signif- icant evidence that both he and Buchanan were lovers. There is also a great deal to be found on the internet as to him. For further reading see:

http://googletests.com/26757/william-rufus-king-first-gay-us-vice-president/


Willie “The Actor” Sutton

For those of us that have appeared in the Long Island City Courthouse, there is a plaque that refers to the infamous bank robber William “Willie” Sutton. Sutton is known, albeit apoc- ryphally, for the state- ment that he robbed banks “because that’s where the money is.” However, he always stated that he never made this statement and that it was actual-
Volunteer Lawyers Respond To Sandy

Provide free consultations to Queens residents rebuilding after the storm

BY CHARLIE GIDIC

Repairing a storm-damaged home and advising disaster victims seeking assistance can be approached with the same goal in mind.

“It’s chaos, and you just have to keep pushing to bring order to it,” said Theresa Mohan, a senior regional counsel at IBM. Mohan organized one of the first clinics for survivors of Superstorm Sandy in the Rockaways. A native of Belle Harbor, Mohan’s mother’s house was among those affected by Sandy.

The idea behind the clinics was to provide “triage” — answers to basic questions and assistance in applying for aid.

“I really felt that there was this need for people to have someone to talk to about their legal issues” arising from Sandy, Mohan said. “Everybody was struggling with the same issues.”

Planning the response began almost as soon as Sandy had left the region. On November 1, Queens County Bar Association President Joe Risi participated in a statewide conference call, the first of many, where the New York State Bar Association and other local bar associations from different states, discussed the issues likely to come up in the recovery and what QVLP would be doing to help.

“Sandy relief panel for a volunteer attorney to undertake representation on a pro bono basis,” Mohan said. “You can’t do outreach like this unless you have the ability to follow up.”

Soon thereafter, Risi gave a statement to Reuters, indicating that QVLP would be coordinating on Sandy-related issues such as insurance problems, contractor fraud and consumer protection.

Since November, QVLP has provided free legal assistance to more than 200 Queen’s residents recovering from Sandy’s devastation. Beginning on November 10, QVLP staff and volunteer attorneys held legal clinics every weekend in the warm tent at St. Francis De Sales Roman Catholic Church. Starting in December, QVLP organized and held two additional clinics each week, with the Queens Borough President’s Mobile Disaster Response Unit and in the New York City Restoration Center/FEMA Recovery Center in Arverne. More than 30 clinics have been held to date. QVLP has committed to holding at least one free legal clinic each week that the FEMA Recovery Centers remain open.

Clinic visitors sign a waiver acknowledging that the scope of the assistance being provided by the volunteer attorneys is limited, that there is no charge for the consultation and that attorney-client confidentiality applies. Often, the consultation is a one-time service. However, in some situations, QVLP may provide additional assistance including canvassing the Sandy relief panel for a volunteer attorney to undertake representation on a pro bono basis.

“You can’t do outreach like this unless you have the ability to follow up,” Weliky said, pointing to some of the more egregious cases QVLP had encountered at the clinics. The first clinic was held in the tent at St. Francis De Sales on Saturday, November 10. QVLP staff and volunteer attorneys joined Mohan and volunteers from IBM, Skadden Arps, Jenner & Block and several other firms. Volunteer attorneys were named tags made from duct tape and created handwritten signs to inform visitors of the free legal assistance they were providing.

“It’s a surreal thing when I think back on it,” Mohan said.

Ali Arain, a litigation associate at Jenner & Block who was also volunteering that day, noted how challenging the situation. “I really felt that there was this need for someone to talk to about their legal issues arising from Sandy, people to have someone to talk to about Sandy,” Arain said. “But we made it work.”

The church, at Rockaway Beach Boulevard and Beach 129th Street, sat in the middle of several blocks of homes that burned as a result of the flooding. The church was mostly spared, but suffered damage in the flood. It became a central point of contact for survivors — a place where they could meet with representatives from FEMA, get a hot meal, and pick up food, blankets, and cleaning supplies donated to the relief effort.

“My own personal takeaway from this is how important legal clinics and limited scope legal assistance are because they are well suited to disaster assistance,” Arain said. “Getting answers to questions about eligibility is key to getting life-sustaining assistance.”

St. Francis De Sales continued as a central relief point until the final weekend in December. On Saturday, December 29, the tent was evacuated and closed as a precaution against exceptionally strong winds. David Shapiro and Peter Lomtevas, lawyers volunteering with QVLP as part of the relief effort, were evacuated even as they were providing advice.

Janet Ray Kalson, an attorney at Himmelstein McConnell Gribben Donoghue & Joseph in Manhattan, was driving down Cross Bay Boulevard on her way to volunteer at St. Francis De Sales on November 10. Almost two weeks after Sandy struck, she recalled, cleanup had barely begun.

Upon reaching Howard Beach, Kalson said, “I saw complete, utter devastation — flooding, no lights, businesses shuttered. Then I went over the bridge to Broad Channel and it was even worse.”

Sandy’s impact in Queens, however, was strongest on the Rockaway peninsula.

Attorneys interested in joining QVLP’s Sandy relief panel should email Executive Director Mark Weliky at mweliky@qcba.org or call (718) 291-4500 Ext. 225.

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The Yale Book of Quotations

By FRED R. SHAPIRO, EDITOR

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By FRED R. SHAPIRO, EDITOR

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Subject: LAW GENERAL

FRED R. SHAPIRO, of the Yale Law School, is probably the world’s leading authority on quotations and their origin. His two excellent books of quotations are: THE YALE BOOK OF QUOTATIONS and THE OXFORD DICTIONARY OF AMERICAN LEGAL QUOTATIONS. These are available inexpensively, either at a local bookstore of rare and used books or in both new and used condition through purchase at amazon.com under “Books.” In addition to FRED R. SHAPIRO’s two masterful works, THE YALE BOOK OF QUOTATIONS and THE OXFORD DICTIONARY OF AMERICAN LEGAL QUOTATIONS, my home library contains several rows of books of quotations, including: Bartlett’s Familiar Quotations [18th ed. by Geoffrey O’Brien, editor], Bartlett’s Familiar Quotes [13th ed. by Justin Kaplan, editor], ENCARTA Quotations, The Oxford Dictionary of Quotations, The Macmillan Book of Quotations, Words of Wisdom [by Safire and Safire], Good Advice [by Safire and Safire], Leadership [by Safire and Safire], The Oxford Dictionary of Political Quotations, Simpson’s Contemporaneous Quotations, The New Dictionary of Thoughts, The International Dictionary of Thoughts, Popular Quotes, The Philadelphia Quotations, The Quotable Lawyer, The Wisdom of the Supreme Court, The Concise Columbia Dictionary of Quotations, The Book of Legal Anecdotes, The Home

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Prof. Fred Shapiro of Yale Law School

FRED R. SHAPIRO is a world recognized authority on quotations. Just as etymologists can describe the origins of words and phrases, FRED R. SHAPIRO is a recognized expert in the history of quotations and where a phrase was first used. FRED R. SHAPIRO edited the outstanding THE YALE BOOK OF QUOTATIONS and the award winning OXFORD DICTIONARY OF AMERICAN LEGAL QUOTATIONS, and his researches on quotations and words have been the subject of numerous articles in The New York Times and other media, including a front page profile in The Wall Street Journal. FRED R. SHAPIRO was the principal investigator for a grant from the Andrew W. Mellon Foundation for study of the applications of Internet resources for research into quotations and terminology. FRED R. SHAPIRO is co-editor of Trial

Books at the Bar

BY HOWARD L. WIEDER

My March column is dedicated to books of quotations. When chosen properly and used smartly, quotations can enliven a memorandum of law, set of motion papers, appellate brief, and a judicial opinion. A fitting quotation, with proper attribution, can punch home a point, and leave your document memorable in the minds of your reader and target audience. That is what any litigator and judge should strive for.

In my experience, judges and law secretaries assigned to an Individual Assignment Part in the New York State court system will tell you that the average intake of motions per week is 25 to 40. The importance of that statistic for the working litigator is that a judge and law secretary has precious time and needs to get to the heart of a motion quickly.

Many factors go into writing a good set of motion papers. The statement of facts, favorably framed towards one’s client, is critical. Of course, while written document, and not just used gratuitously—like when well-chosen and placed in your motion papers, appellate brief, and a judicial opinion, the ethos of the facts, a well chosen quotation, exposition of the facts, a well chosen quotation, a large keyword index, will satisfy both the reader who seeks specific information and the curious browser who appreciates an amble through entertaining pages.

II. THE OXFORD DICTIONARY OF AMERICAN LEGAL QUOTATIONS

By FRED R. SHAPIRO, EDITOR

The practice of law rests heavily on the incisive, pithy, and occasionally witty language of the best technical writing, and law related themes are often found at the core of American quotations and its inclusion of items not only from literary and historical sources, but also from popular culture, sports, computers, science, and the social sciences. Anonymous authored items appear in sections devoted to folk songs, advertising slogans, television catchphrases, proverbs, and others.

For each quotation, a source and first date of use is cited. In many cases, new research for this book has uncovered an earlier date or a different author than had previously been understood. It was Beatrice Kaufman, not Sophie Tucker, who exclaimed, “I’ve been poor and I’ve been rich. Rich is better!” William Tecumseh Sherman wasn’t the originator of “War is hell!” It was Napoleon.

Numerous entries are enhanced with annotations to clarify meaning or context for the reader. These interesting annotations, along with extensive cross references that identify related quotations and a large keyword index, will satisfy both the reader who seeks specific information and the curious browser who appreciates an amble through entertaining pages.
Free Speech As A Defense Against Prosecutorial Abuses of Discretion

BY: THOMAS F. LIOTTI*

Ordinarily the First Amendment is not a defense to criminal charges because it is the actus reus which represents the gravamen of the substantive crime. Speech may be added as an element of proof to show the source and culpability of the defendant. But when the speech itself becomes the substantive crime or is solely used to prove a conspiracy to commit a substantive crime which is based upon speech, then the First Amendment is implicated.

On December 3, 2012, the United States Court of Appeals for the Second Circuit issued its long awaited opinion in U.S. v. Alfred Caronia, (Docket No. 09-5106-cr) vacating my client’s conviction on First Amendment grounds. The case is being widely reported and is rumored to be a likely contender for possible Supreme Court of the United States review. The case is considered to be a blockbuster for a variety of reasons but mostly because it puts in check the Government’s attempts to regulate commercial speech while also expanding the potential market of FDA regulated products.

Caronia was a sales representative for Ophan Medical, later Jazz Pharmaceuticals. He had been a teacher with no criminal record and with a Master’s in Education. His territory was the northeast. He was selling a pharmaceutical drug called Xyrem, approved for the treatment of Narcolepsy by the F.D.A. In his travels Caronia marketed the drug to Medical Doctors where, unbeknownst to him, he encountered a confidential informant. A Medical Doctor with a checkered past, striving to work off his own criminal charges. He was hired by the F.D.A., tape recording his conversations with Caronia and egging him on to speak “off label” as to the unapproved use of Xyrem. This is characterized as misbranding by the F.D.A. and is, or was, a crime. Manufacturers and sales representatives may not speak about off-label use and may prescribe any F.D.A. approved drug for an “off label” use.

“Off label” speech may include discussing scientific or medical studies involving the, as yet, unapproved use of a particular drug. So for example, if a drug has been F.D.A. approved for the treatment of heart disease but has been prescribed by physicians for other maladies for which a drug is not F.D.A. approved, a manufacturer and their sales representatives are precluded from discussing the additional uses with physicians or others. What they have to say “off label” may have to do with scientific studies or medical journal reports, both published and unpublished. Consumers, patients and Medical Doctors are free to read about or investigate these additional uses but manufacturers and sales representatives were not free to talk about them unless approved by the F.D.A. Thus, the F.D.A. has for many years extracted huge sums in settlements and fines from pharmaceutical companies allegedly deviating from the F.D.A. regulatory scheme regarding off label use. The penalties may include a company’s preclusion from the market place. It, therefore, made economic sense for companies to settle out of court rather than be subject to criminal prosecutions or injunctive relief that would in essence shut down their businesses.

Ophan and Jazz attempted to circumvent these constraints by hiring a Medical Doctor as a consultant who would then accompany Alfred Caronia to promotional meetings with Medical Doctors, including, in this case, a Government informant. Ophan and Jazz worked out a deal with the F.D.A. to pay $28,000,000.00 to settle the F.D.A.’s claims against them. Part of that deal included testifying against the Medical Doctor/consultant they had hired, namely Dr. Peter Gleason and their sales representative Alfred Caronia. The Government’s prosecutor at the time, Assistant United States Attorney Geoffrey Kaiser, elected to prosecute Gleason and Caronia on felony charges. Gleason wound up pleading to misdemeanor charges, but in 2010 succumbed to depression associated with the wrongful prosecution and committed suicide. Caronia was left to stand alone. He was fired from his job. He could not get his teaching job back so he tried to work as a handyman/contractor in his native Long Island community of Point Lookout, recently struck by hurricane Sandy. Caronia’s wife works in the pharmaceutical industry and has been embarrassed beyond repair. Their marriage has been severely damaged. But Caronia soldiered on.

The prosecution was assigned to Hon. Eric N. Vitilliano, a United States District Court Judge in the Eastern District of New York. Judge Vitilliano denied our pre-trial motions including those to dismiss on First Amendment grounds. U.S. v. Caronia, 576 F. Supp. 2d 385 (E.D.N.Y., 2008). The case went to trial in 2009 and Caronia was convicted of one misdemeanor charge of conspiracy to introduce a misbranded drug into interstate commerce. He was sentenced to probation which he has since completed and then appealed. The appeal focused on First Amendment issues with amicus curiae joining in on the appellant’s side. The amicus curiae on this case were the Washington Legal Foundation and the Medical Information Group. Collectively these amici represented more than fifteen major pharmaceutical companies.

One would think that these commercial free speech issues were decided long ago but that is clearly not the case where the government’s regulatory scheme and its financial interests by the imposition of fines, conflict with the economic interests of manufacturers of pharmaceutical products. Caught in the middle of this Constitutional log jam are the little people like Alfred Caronia, the sales representatives and agents for large pharmaceutical companies thrown into the vortex of this lion’s den, scapegoating corporate accountability and futhering the Government’s Orwellian program by pleas or findings of guilt. Corporations go free except for the payment of monies while the representatives they taught and trained run the risk of jail and other personal ruination.

(Continued on page11)
Hurricane Sandy and Relief Efforts

Photos by Charles Guidice
Hurricane Sandy and Relief Efforts

Thank You

Thank you to the following organizations and firms who have supported our Superstorm Sandy disaster relief efforts;

Queens County Bar Association Board of Managers
City Bar Justice Center
Skadden, Arps, Slate, Meagher & Flom LLP
Jenner & Block
Pro Bono Net
Center for New York City Neighborhoods
New York State Bar Association
St. John’s University School of Law

Feerick Center for Social Justice
IBM
GE
LawHelp.org/NY
Office of Queens Borough President
Federal Reserve Bank of New York
Office of New York State Attorney General
IOLA Fund of the State of New York

Current Developments in Law Affecting Representation of Servicemembers and Recently Separated Veterans

Wednesday, March 20, 2013

Thomas Principe introducing Col. (Ret.) Hon. Randall T. Eng, Presiding Justice of the Appellate Division, Second Department.

Col. (Ret.) Hon. Randall T. Eng, Presiding Justice of the Appellate Division, Second Department.
Marital Quiz

BY GEORGE J. NASHAJR.*

Question #1 - Plaintiff’s counsel failed to substantially comply with the matrimonial rules regarding periodic billing statements. Is the Plaintiff’s counsel precluded from seeking unpaid fees from the Plaintiff?

Your answer -

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Question #2 - In question #1 is Plaintiff’s counsel also precluded from seeking counsel fees from the Defendant?

Your answer -

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Question #3 - Is there a right to dispute an allegation of irretrievable breakdown under the no-fault divorce ground provided by DRL § 170 (7)?

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Question #4 - Is animosity between a grandparent and the grandchild’s parents sufficient to deprive the grandparent of visitation with the grandchild?

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Question #5 - Can a distributive award in a judgment of divorce be modified?

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Question #7 - In awarding temporary maintenance, should the court consider the care of disabled adult children that inhibited or continues to inhibit a party’s earning capacity or ability to obtain meaningful employment?

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Question #10 - In a child support proceeding in the Family Court, after a hearing, may the Support Magistrate order a party represented by assigned counsel, to pay attorneys fees to his assigned counsel?

Your answer -

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ANSWERS APPEAR ON PAGE 15.

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History Corner

(Continued from page 4)

By John C. Macklin

As many of you know our good friend John Casey died on September 16, 2012. I feel honored to have been his close friend for almost 40 years. His death at the age of 65 was sudden and chilling.

He was a zealous advocate for his clients. He was active in the Queens Bar Association and the Queens legal community. He was previously a Chairman of the Mental Health and the Law Committee, an active member of the Bar Panels Screening Committee and a former President of the Long Island City Lawyer’s Association.

He was a large presence in Queens Family Court, both in the Courtroom and in its corridors. His Irish wit and wisdom were qualities we all enjoyed tremendously. He could dish out the wise cracks. He could also take his share of playful verbal abuse.

As an experienced attorney he was always available to provide younger attorneys with encouragement and advice.

We respected John as an attorney. Nevertheless, for those of us who were his close friends we shall more vividly recall the ball games, cards games, lunches, Atlantic City trips, etc. John will be missed but not forgotten.

On our next Atlantic City sojourn, we will raise a glass to him. We will do so with the knowledge that he is with members of the Bar and at the Heavenly Bar. John will be having a cold one and sitting along with Joe Leary, Al Ammenberg, Floyd Sheeger and others.

As I stated at John’s Memorial Service, when I join you up there, I’ll bring a six pack and a deck of cards.

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History Corner

(Continued from page 4)

by the invention of a newspaper reporter.

Willie Sutton (born June 30, 1901) did rather well in his profession. It is estimated that he made millions of dollars worth of ill gotten gain. He was known as a daring and respectful robber who liked to use disguises and trickery. He was not a typical thug. Instead he was described as polite and even a gentleman.

He has also been described as a bright eyed little man who stood 5 feet 7 inches. He was talkative and a chain smoker. When he was in jail he did not have to worry about assault because his mafia friends looked after him.

Sutton was an accomplished bank robber. He usually carried a pistol or a Thompson submachine gun. However, they were never loaded because he was afraid he would hurt someone. From the late 1920s to his final arrest in 1952 he had robbed about 100 banks and also broken out of several prisons. In March of 1950 he also landed up on the brand new FBI Ten Most Wanted list.

In Queens County, Judge Peter T. Farrell presided over his 1952 trial in which Sutton was charged with the theft of almost $64,000.00 (worth ten times that today) from a Sunnyside Bank. He was sentenced to 20 to 120 years in Attica. Judge Farrell suspended the sentence in December, 1969 due to Sutton’s good behavior in prison and poor health from emphysema. At that time he was retired from his life of crime.

Sutton died on November 2, 1980 apparently regretting all his years in jail. However, when asked why he robbed banks, he stated “because I enjoyed it. I loved it.”

For further reading see:
http://www.nndb.com/people/116/000062927/
Edward Limb, Where the Money Was: The Memoirs of A Bank Robber (1976) [partly ghost written autobiography]

—Stephen David Fink, Esq.

Forest Hills, New York

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Insurance settlement checks are made out to both the homeowner and the mortgage hold- er when a mortgage is outstanding on the property. Even after the homebuyer date on the payments. This protects the mortgage holder’s interest in the property.

To ensure that the insurance proceeds are spent on repairs or the property after a hurricane and the油漆 has been removed from the walls, the homebuyer will need to ensure that the settlement is made to both the homeowner and the mortgage holder.

Unfortunately, many homeowners simply do not have the resources to pay out of pocket for repairs until the insurance proceeds are released. 

Risi first encountered this issue when volunteering at the tent at St. Francis. He immediately reached out to the New York State Department of Financial Services and the New York State Bar Association. Soon thereafter, Governor Andrew M. Cuomo announced that his administration had brokered a deal with banks and mortgage servicers to expedite the release of insurance proceeds to home- owners rebuilding from Sandy. Many other banks and servicers, however, were not as cooperative.

We still see people in Queens having the same problems,” Risi said, pointing out that the delay in getting the funds into the hands of the homeowners is “counter- productive” when trying to rebuild from a natural disaster like Sandy. “People are still waiting to be paid from their insurance carriers for their money to be released by their lenders.”

In addition to insurance matters, volun- teer attorneys have fielded a large number of legal questions that do not relate to the intended purpose – repairs to the damaged property. A major question has been whether tenants displaced by the storm still owed rent and, if so, how much rent they owed. Many Rockaway renters stayed in their apartments in the weeks following Sandy despite a lack of essen- tial services such as heat, hot water and electricity. Others evacuated before the electricity was restored.

In the most general of terms, a tenant displaced by the storm owes $0 in rent for the period when he or she was not living in the rental unit. This is considered a con- struction eviction under Multiple Dwelling Law § 227. Renters with leases that expire during the storm are entitled to a rent reduction or a rent abatement. QVLP advised tenants who remained in their rentals without essential services to attempt to negotiate rent abatements with their landlords. An tenant of essential services, landlords were asked to agree to reduce the amount of rent owed for the period that the services were not being provided.

Kimon Themos, a landlord-tenant practitioner in Astoria, drew up a form agreement that tenants could use in nego- tiating rent abatements. The goal of nego- tiation was to put any agreement to reduce the rent in writing and avoid disputes end- ing up in Housing Court.

Landlord-tenant is one of many areas in which volunteer attorneys have handled legal questions. “It really was a diverse set of legal issues that folks were facing,” Arzin said. “We found ourselves assisting small business owners with commercial leases, homeowners with insurance ques- tions, deed questions, estate issues and family law matters further complicated by the storm’s disruptions.”

Kalson, who previously chaired the New York City Bar’s Civil Court Committee, spoke about the “differing issues relating to their recovery from Sandy” that clients face. “People have been helped.”

Volunteering in the recovery effort has reinforced the already-strong commitment to public service among attorneys in Queens. In spite of busy practices and family commitments, lawyers have “risen to the occasion,” Kalson said. “You’ve got to give back to the commu- nity.” Shapiro said. “These people are really, really, really hurting.”

“Their willingness to go through the oppor- tunity to do this,” Kalson said.

*Charlie Giudice is a staff attorney at QVLP. He has been part of the Sandy relief effort since November.*

**Free Speech**

(Continued from page 7)

In Virginia State Board of Pharmacy v. Virginia Consumer Council, 425 U.S. 748 (1976) the Court struck down a state statute that required that a prescription pharmacist had to be physically present in the pharmacy when by telephone. The Court ruled that the statute violated the pharmacist’s right to free speech and forced the pharmacist to act as a "demonstrably necessary to achieve a compelling objective. See Littman Associates, Inc. v. Township of Willington, 431 U.S. 85 (1977) and Professor Laurence H. Tribe, American Constitutional Law, Second Edition (Vol. II, 1988) §§ 6-15, p. 893.

In addition to the legal issue of penalizing free speech, the Court also addressed the prob- lems with the charge to the jury and the verdict since Caronia was acquitted of the related charges. The Court found that both the charge and the verdict sheet led to

Inconsistent verdicts. The Court requested post oral argument submissions following the Supreme Court’s ruling in Bolger v. Youngs Drug Products Corp., 463 U.S. 60 (1983) which held that the First Amendment protected a pharmacist’s right to publish and distribute materials about prescription drugs that were not approved by the U.S. Food and Drug Administration. The Circuit Court concluded that “...the government could prosecute Caronia for his speech.”

Similarly in Gentile v. State Bar of Nevada, 501 U.S. 1030 (1999), the Court upheld an attorney’s First Amendment right and his duty to advocate for a client. Justices Breyer wrote: “An attorney’s duties do not begin inside the courtroom door. He or she cannot ignore the practical implications of a legal decision. To the extent that an attorney may recommend a plea bargain, or civil settlement to avoid the adverse consequences of a possible loss after trial, so too an attorney may take reasonable steps to defend a client’s reputation and reduce the adverse consequences of indictment, especially in the face of a prosecution based on admitted facts and no improper motives. A defense attorney may pursue lawful strategies to obtain dis- missal of an indictment or reduction of charges including an attempt at the court of public opinion that the client does not deserve to be tried.”

In Bolger v. Youngs Drug Products Corp., 463 U.S. 60 (1983) the defendants were distributing pamphlets containing information about product names and prices but also about venereal disease and contraception. The Court reasoned that this was protected speech under the First Amendment. "It sought to disseminate accurate and truthful information about important social issues such as family planning and the pre- vention of venereal disease [...] The First Amendment’s interest in promoting the health and not guilty of misbranding. Rule 29 and 33 - Commercial Speech Restriction Challenge to Charge of Promoting 'Off-label' Use Under FDCA. Defendant drug firm sale representative was charged with violating the Food, Drug and Cosmetics Act’s (FDCA) misleading provisions by promoting to a doctor for a doctor’s prescription for “off-label” uses not approved by the U.S. Food and Drug Administration (FDA). His dismissal motion

The case involved a doctor’s prescription for "off-label" uses not approved by the U.S. Food and Drug Administration (FDA). His dismissal motion

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SLOWLY GRIND THE WHEELS

BY ROBERT E. SPARROW

Drag your heels, Meditate!
Bench Conference - Procrastinate!

Due in another Court -
Please call my case -
Don’t need high blood pressure -
Don’t want to race!

Piles of indictments,
Files galore,
Cases and cases,
By the score.

Please are taken
Some guys balk -
“Go in the bullpen, counselor, Have a good talk.”

And if he won’t come out of the pen,
We can bring him tomorrow and start all over again!

Books at the Bar

(Continued from page 6)

works of literature, politics, and other fields. Pre-vious compilations of legal quotations have been limited, with significant gaps; many books quoted rarely from American sources. For example, Supreme Court Associate Justice Potter Stewart’s famous quip about pornography of “I know it when I see it” appears in no other work. THE OXFORD DICTIONARY OF AMERICAN LEGAL QUOTATIONS is the most scholarly and most complete legal quotation reference ever published. It includes a comprehensive collection of the most famous passages of American judges and legal commentators. This work also contains the Wittiest sayings from literature, humor, motion pictures, and even song lyrics relating to American law.

III. THE NEW 18TH EDITION OF BARTLETT’S FAMILIAR QUOTATIONS

by GEOFFREY O’BRIEN, EDITOR

BARTLETT’S FAMILIAR QUOTATIONS [18th ed.], edited by GEOFFREY O’BRIEN, EDITOR

Author: John Bartlett

Editor: Geoffrey O’Brien

Publisher: Little, Brown and Company
Published: October 2012
ISBN 10: 0316017590
ISBN 13: 9780316017596
Format: Oversize Hardcover
Copyright: 2012
Subject: REFERENCE QUOTATIONS

As most Jews know, the number “18” is very lucky. Any multiple of 18 is considered lucky [e.g., a donation to a charity of $36 or “two times cha” or $180 or “ten times cha” is considered lucky]. Hebrew letters have numerical equivalents, and the numerical equivalents for the letters in the Hebrew word for life called “chai” [the origin of the Hebrew name Chaim] add up to 18. According to Jewish tradition, the famous publishers of Little, Brown and Co., should be very lucky with the sales of the new, 18th edition of BARTLETT’S FAMILIAR QUOTATIONS. The name “Bartletts” is to quotations what Coke® is to cola beverages. For each new edition, stalwart publisher Little, Brown and Company selects an excellent editor for its printed famous book of quotations, and for the 18th edition, New York City author and editor GEOFFREY O’BRIEN was selected for the honor of compiling the new 18th edition. Mr. O’Brien has done a masterful job!

In 1863, John Bartlett joined Little, Brown and Company. In that same year, the house published the fourth edition of BARTLETT’S FAMILIAR QUOTATIONS, now the longest-lived and best-selling collection of quotations in history, and a favorite of academics, historians, newscasters, journalists, biographers, and students for more than 150 years. Ten years in the making and edited by the Library of America Editor-in-Chief Geoffrey and actually consented to the terms of the form presented to the client is a fallacy which is often endorsed by the judiciary because it appears that the attorney used such an opportunity. Ms. Radin argues that the real conditions under which one would consent to a contract would include facts that, if examined, would support the moral basis of contract law.

Ms. Radin does offer some solutions. She suggests that the jurist charged with reviewing a form contract that is the subject of a dispute is in the best position to achieve justice. For example, the Court could treat the abusive boilerplate treated as an intentional deprivation of basic legal rights. This is very similar to the way that courts often handle abusive restrictive covenant language in employment contracts: they red line the offensive parts and redraw the remaining terms as necessary. Frankly, it is surprising that some stronger advocates have not pressed more strongly on this issue.

The bar may argue that the reduced usage of forms will undoubtedly increase legal fees. Hence the conundrum is the unfair boilerplate form vs. the rule of law. Ms. Radin points out that our professionalism is riddled with these sorts of contradictions and tradeoffs. For example, she mentions the vast amount of procedural and substantive safeguards built into the public criminal trial before punishment is meted out. Yet despite these protections, “90% of felony convictions are based upon plea bargains” which often are a result of off the record, and anything goes negotiations involving the jurist and lawyers.

Ms. Radin argues that our toleration of boilerplate forms is a legal anomaly and that it is incompatible with the rule of law. Restricting usage of boilerplate forms would surely result in increased legal fees, a problem that the public wants to avoid. There is a real fear that we will continue to utilize existing legal forms, and surely new ones will be created in the future.

How all of these contradictions can co-exist with the rule of law is baffling. The bargained-for contracts must remain an important practice because the forms remove so many transactions from the realm of the law. Perhaps the best that we can do is to balance the onerous rule of law with the practical considerations that each case presents.

Editor’s Note: Stephen D. Hans is a Chairperson of the Labor Relations Committee and frequent contributor to the Queens Bar Bulletin. He is a senior partner of a firm that specializes in employment matters.

Just Use The Form

(Continued from page 3)

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Fifty Years of Family Court

(Continued from page 1)

ulation letter to Mayor Beame and some - how, to the benefit of our story of the Family Court, the letter ended up as an Op-Ed piece in The New York Times. Judge Golar said he was resigning because he took serious issue with the working conditions of the Family Court, so he was going to return to “the practice of law” and return to “being active in public affairs and politics.”

He went on to explain to the mayor, in his resignation letter, that when he sat in an intake part in Queens Family Court he often heard 125 cases in a day, which gave him an allotment of about three minutes per case.

Judge Golar, in rendering his final judgment on the Family Court, in his resignation letter from the bench, said that “a judge has the right to have two or two to decide whether to take away a mother’s child, or to have a man arrested or imprisoned for non-support, or to remand someone for psychiatric examination. Those who appear before the court...are entitled to better than this.” A lot of reasonable people might consider these edicts to be self evident — and based on what we can glean from the writings he left behind, Dickens would have been such a reasonable individual. The historical record, however, should reflect, that efforts to make these edicts self evident is still an ongoing process.

Judge Golar took particular issue with what he called the Family Court’s “great - failing” in the area of juvenile delinquency. He spoke of the system’s failure to neither punish nor rehabilitate. The Family Court’s “greatest contribution” over the past three generations had been to divert the “occasionally delinquent sons and daughters of the immigrant poor from adult criminal courts and jails.” They were mostly returned to communities where “schools...churches and synagogues....provided opportunities for “schools....churches and churches...”"
**ANSWERS TO MARITAL QUIZ ON PAGE 10**

**Question #1** - Plaintiff’s counsel failed to substantially comply with the matrimonial rules regarding periodic billing statements. Is the Plaintiff’s counsel precluded from seeking unpaid fees from the Plaintiff?

**Answer:** Yes, Rosado v. Rosado 2012 NY Slip Op 7977 (2d Dept.)

**Question #2** - In question #1 Plaintiff’s counsel also precluded from seeking counsel fees from the Defendant?

**Answer:** Yes, Rosado v. Rosado 2012 NY Slip Op 7977 (2d Dept.)

**Question #3** - Is there a right to dispute an allocation of irrevocable breakdown under the no-fault divorce ground provided by DRL § 170 (7)?


**Question #4** - Is animosity between a grandparent and the grandchild sufficient to deprive the grandparent of visitation with the grandchild?

**Answer:** No, Gray v. Varone 2012 NY Slip Op 9064 (2d Dept.)

**Question #5** - Can a distributive award in a judgment of divorce be modified?

**Answer:** No, Wasserman v. Wasserman 2013 NY Slip Op 1078 (2d Dept.)

**Question #6** - Can an equitable distribution award in a judgment of divorce be modified?

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**Answer:** Yes, DRL §236 B 5-a, c, (2) (xiv).

**Question #8** - In awarding temporary maintenance, should the court consider the care of elderly parents or in-laws that inhibited or continues to inhibit a party’s earning capacity or ability to obtain meaningful employment?

**Answer:** Yes, DRL §236 B 5-a, c, (2) (xiv).

**Question #9** - Can a substantial distributive award preclude the granting of counsel fees to the recipient of the distributive award?

**Answer:** Yes, Heymann v. Heymann 958 N.Y.S. 2d 448 (2nd Dept. 2013)

**Question #10** - In a child support proceeding in the Family Court, after a hearing, may the Support Magistrate order a party represented by assigned counsel, to pay attorneys fees to his assigned counsel?

**Answer:** Yes, DRL §236 B 5-a, c, (2)

**Estates Update**

(Continued from page 1)

during her lifetime. Allocation of assets between spouses will often have to be adjusted.

Some practitioners, in potential anticipation of the estate tax exemption amount plummeting, encouraged extensive gift giving during 2012. Many of these gifts may now prove to be non-feasible. The utilization of beneficiary disclaimer, (EPTL §2-1.11) as long as made within nine months of the transfer, may serve as a correction mechanism for these “accidental” gifts. Certain gifts can be disclaimed by the donee if done before acceptance of any of the benefits of the transfer. The state renunciation statute noted above satisfies all the requirements of the federal disclaimer statute (IRC§2518), and is sufficient.

Finally, the allocation of traditional estate tax deductions (i.e commissions, legal fees, accounting fees) will need to be reconsidered, as said deductions, may no longer be needed for the large benefits served on federal estate tax returns. If no federal tax is required, these deductions may either be taken on the New York State estate tax return or the federal estate income tax return (fiduciary return 1041) whereby they may now be more valuable.

Fiduciary income tax rates are generally significantly higher than state estate tax rates. In certain cases, if there is no necessity for filing a federal estate tax return at all, they may be taken on both.

**QUEENS COUNTY**

In consideration of the much delayed tax changes, our anticipated November Seminar on estate planning was justifiably and voluntarily postponed, and shall be offered in the spring. Further, we intend to offer a practical skills seminar next fall notably focusing on litigation practice and procedure in Surrogate’s Court. Surrogate Peter J. Kelly and his excellent staff continue to keep the Court functioning at an exceptional level, despite the recent wave of cutbacks over the past (2) two years. We wish all of our friends who continue to struggle in Sandy’s aftermath a peaceful and productive year.

David N. Adler is a Past President (98-99) of the Queens County Bar Association and Chairperson of its Surrogate’s Court, Estates and Trusts Committee.
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