

REASSESSING SOME OF OUR APPROACHES TO FAMILY LAW CASES

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by

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I. INTRODUCTION. This Article explores different family law topics that need to be discussed in light of our changing economic circumstances. The Article covers different measures of value and different approaches to value in divorce, the effect of buy-sell restrictions, tax effects of property division, diversification of wealth in divorce, revisiting defined benefit pension plans in light of plan terminations and plan failures, and risks to consider in configuring the property division.

The companion article on the topic is Richard Orsinger's article from the 2009 AFLC, updated, entitled *Understanding the Economy.* Some of the topics discussed in this article are covered in detail in the companion article.

II. VALUATION ISSUES.

A. MEASURES OF VALUE. In Shannon P. Pratt, *VALUING A BUSINESS: THE ANALYSIS AND APPRAISAL OF CLOSELY HELD COMPANIES* (3rd Ed.) pp. 22-30, Pratt distinguishes seven types of value: (i) fair market value; (ii) fair value; (iii) investment value; (iv) intrinsic or fundamental value; (v) going-concern value; (vi) liquidation value; and (vii) book value.

B. THE EFFICIENT MARKET HYPOTHESIS. Larry J. Kasper, *BUSINESS VALUATIONS: ADVANCED TOPICS* (Quorum Books 1997) pp. 13-20, discusses the economic theory behind the premise of fair market value:

The efficient market hypothesis is the cornerstone for the foundation of modern financial theory. It also provides a basis for examining many well-established and long-held assumptions and concepts in the valuation of privately held businesses. The validity of the definition of fair market value, the basis for comparisons to publicly held companies, the development of capitalization rates, and the application of premiums and discounts can all be tested by reference to the efficient market hypothesis. As such, it, is the appropriate place to begin the study of advanced business valuation topics for privately held companies. This chapter is an overview of a topic that receives considerable attention in advanced financial courses in colleges.

The efficient market hypothesis states that security prices in a market reflect all relevant and ascertainable information about a company. Because the security

price reflects all relevant information about the security, that price must represent its fair market value. Security analysts of publicly held companies and business valuers of privately held companies must implicitly, believe in the correctness of the hypothesis each time they make comparisons to and draw inferences from the prices of other publicly traded stocks and securities. The efficient market hypothesis is one of the most tested hypotheses in the financial literature. This chapter discusses the origins of the hypothesis, its various forms, the results of some of those tests, and the implications for the valuation of privately held businesses.

Forms of the Hypothesis

Efficiency does not require perfect dissemination of knowledge, as is often required under the assumptions of perfect competition from economic theory. The efficient market hypothesis has been expressed at three different levels, each testable to some degree [3]. How widely available information needs to be for there to be efficiency in the market depends upon the form of the hypothesis.

* * *

Weak Form

The weak form asserts that stock prices already reflect all information that can be derived from studying market trading data, such as past transaction prices and trading volume.

* * *

Semi-Strong Form

The semi-strong form of the hypothesis states that all publicly available in-

formation regarding the prospects of a firm must already be reflected in the stock prices. All publicly available information includes not only trading information (weak form) but also published information regarding financial statements, product information, forecasts, and management. As this information is readily available, at least to professional analysts, one would expect it to be reflected in stock prices.

* * *

Strong Form

The strong form of the efficient market hypothesis states that stock prices reflect all information relevant to the firm, even including information available only to insiders.

* * *

IMPLICATIONS FOR VALUING PRIVATE SMALL BUSINESS

The implicit assumption in the efficient market hypothesis (in any form) is that there exists a market where securities can be traded with little effort or cost. When this is not true, efficient (information) markets cannot exist. Small private company stocks do not have an established market. If they did, there would be little need for business valuations.

However, there are lessons to be learned by examining the efficient market hypothesis. First, more is to be learned about the appropriate price of a stock by examining current events and information than by examining past events, including stock sales (weak form). Second, the more diligent the gathering of information and

analysis, the better the estimate of value for small companies (semi-strong form). Third, as with publicly held companies, the analyst hopes, through fundamental analysis, to attain insight into future performance of the firm in order to estimate the appropriate price for the company (semi-strong form). Finally, the small-company analyst, like the public security analyst, will probably never have access to all information (strong form).

Fundamental analysis will have a more fruitful role in a private company valuation than in a publicly held company valuation because little information is public. Furthermore, as there are not many other analysts competing for information about the privately held company, estimates of private-company value are likely to have much more variation than one would expect for estimates of the value of a publicly traded company by members of the security analysis industry. Expressed another way, the confidence that can be placed in a single estimate of value for a privately held company is less than that for a publicly traded company, and the range of estimates is likely to be wider.

Both financial analysts of publicly held companies and the small business appraiser must believe in the essential correctness of the hypothesis because they both rely upon comparisons of public company market data in their analysis. Financial analysts often use price-to-earnings ratios to judge whether a particular stock is over- or undervalued. Private company valuers compute the

price-to-earnings and other price-related ratios of guideline public companies for multipliers. One would not make judgments or base decisions upon statistics believed to be incorrect.

* * *

C. THE HIERARCHY OF VALUE DETERMINATIONS.

There are several different schemes for determining the value of assets and liabilities. The reason for, or planned use of, the valuation can affect the scheme that applies. Valuations are done for different purposes: for condemnation; for tax; for purchase/sale; for accounting; in determining minority shareholder's rights; for divorce; etc.

1. Pattern Jury Charges (Family Law). The Texas Pattern Jury Charges state one hierarchy of approaches to determining value for purposes of divorce.

PJC 203.1 Value

The value of an asset is its fair market value unless it has no fair market value.

"Fair market value" means the amount that would be paid in cash by a willing buyer who desires to buy, but is not required to buy, to a willing seller who desires to sell, but is under no necessity of selling.

If an asset has no fair market value, its value is the value of its current ownership as determined from the evidence.

2. IRS Regulations. The IRS Regulations set out a hierarchy of information to consider in estimating fair market value for estate and gift

tax purposes.

IRS Regulation § 20.2031-2 Valuation of stocks and bonds.

(a) In general. The value of stocks and bonds is the fair market value per share or bond on the applicable valuation date.

(b) Based on selling prices. (1) In general, if there is a market for stocks or bonds, on a stock exchange, in an over-the-counter market, or otherwise, the mean between the highest and lowest quoted selling prices on the valuation date is the fair market value per share or bond. [Editor's note: the closing price is not used to fix value for tax purposes.] If there were no sales on the valuation date but there were sales on dates within a reasonable period both before and after the valuation date, the fair market value is determined by taking a weighted average of the means between the highest and lowest sales on the nearest date before and the nearest date after the valuation date. The average is to be weighted inversely by the respective numbers of trading days between the selling dates and the valuation date. If the stocks or bonds are listed on more than one exchange, the records of the exchange where the stocks or bonds are principally dealt in should be employed if such records are available in a generally available listing or publication of general circulation. In the event that such records are not so available and such stocks or bonds are listed on a composite listing of combined exchanges available in a generally available listing or publication of general circulation, the records of such

combined exchanges should be employed. In valuing listed securities, the executor should be careful to consult accurate records to obtain values as of the applicable valuation date. If quotations of unlisted securities are obtained from brokers, or evidence as to their sale is obtained from officers of the issuing companies, copies of the letters furnishing such quotations or evidence of sale should be attached to the return.

* * *

(c) Based on bid and asked prices. If the provisions of paragraph (b) of this section are inapplicable because actual sales are not available during a reasonable period beginning before and ending after the valuation date, the fair market value may be determined by taking the mean between the bona fide bid and asked prices on the valuation date, or if none, by taking a weighted average of the means between the bona fide bid and asked prices on the nearest trading date before and the nearest trading date after the valuation date, if both such nearest dates are within a reasonable period. The average is to be determined in the manner described in paragraph (b) of this section.

(d) Based on incomplete selling prices or bid and asked prices. If the provisions of paragraphs (b) and (c) of this section are inapplicable because no actual sale prices or bona fide bid and asked prices are available on a date within a reasonable period before the valuation date, but such prices are available on a date within a reasonable period after the valuation date, or vice versa, then the mean between the highest and lowest available sale prices or

bid and asked prices may be taken as the value.

(e) Where selling prices or bid and asked prices do not reflect fair market value. If it is established that the value of any bond or share of stock determined on the basis of selling or bid and asked prices as provided under paragraphs (b), (c), and (d) of this section does not reflect the fair market value thereof, then some reasonable modification of that basis or other relevant facts and elements of value are considered in determining the fair market value. Where sales at or near the date of death are few or of a sporadic nature, such sales alone may not indicate fair market value. In certain exceptional cases, the size of the block of stock to be valued in relation to the number of shares changing hands in sales may be relevant in determining whether selling prices reflect the fair market value of the block of stock to be valued. If the executor can show that the block of stock to be valued is so large in relation to the actual sales on the existing market that it could not be liquidated in a reasonable time without depressing the market, the price at which the block could be sold as such outside the usual market, as through an underwriter, may be a more accurate indication of value than market quotations. Complete data in support of any allowance claimed due to the size of the block of stock being valued shall be submitted with the return. On the other hand, if the block of stock to be valued represents a controlling interest, either actual or effective, in a going business, the price at which other lots change hands may have little relation to its

true value.

(f) Where selling prices or bid and asked prices are unavailable. If the provisions of paragraphs (b), (c), and (d) of this section are inapplicable because actual sale prices and bona fide bid and asked prices are lacking, then the fair market value is to be determined by taking the following factors into consideration:

- 1) In the case of corporate or other bonds, the soundness of the security, the interest yield, the date of maturity, and other relevant factors; and
- (2) In the case of shares of stock, the company's net worth, prospective earning power and dividend-paying capacity, and other relevant factors.

Some of the “other relevant factors” referred to in subparagraphs (1) and (2) of this paragraph are: The good will of the business; the economic outlook in the particular industry; the company's position in the industry and its management; the degree of control of the business represented by the block of stock to be valued; and the values of securities of corporations engaged in the same or similar lines of business which are listed on a stock exchange. However, the weight to be accorded such comparisons or any other evidentiary factors considered in the determination of a value depends upon the facts of each case. In addition to the relevant factors described above, consideration shall also be given to nonoperating assets, including proceeds of life insurance policies payable to or for the

benefit of the company, to the extent such nonoperating assets have not been taken into account in the determination of net worth, prospective earning power and dividend-earning capacity. Complete financial and other data upon which the valuation is based should be submitted with the return, including copies of reports of any examinations of the company made by accountants, engineers, or any technical experts as of or near the applicable valuation date.

(g) Pledged securities. . . .

(h) Securities subject to an option or contract to purchase. Another person may hold an option or a contract to purchase securities owned by a decedent at the time of his death. The effect, if any, that is given to the option or contract price in determining the value of the securities for estate tax purposes depends upon the circumstances of the particular case. Little weight will be accorded a price contained in an option or contract under which the decedent is free to dispose of the underlying securities at any price he chooses during his lifetime. Such is the effect, for example, of an agreement on the part of a shareholder to purchase whatever shares of stock the decedent may own at the time of his death. Even if the decedent is not free to dispose of the underlying securities at other than the option or contract price, such price will be disregarded in determining the value of the securities unless it is determined under the circumstances of the particular case that the agreement represents a bona fide business arrangement and not a device to

pass the decedent's shares to the natural objects of his bounty for less than an adequate and full consideration in money or money's worth. See section 2703 and the regulations at § 25.2703 of this chapter for special rules involving options and agreements (including contracts to purchase) entered into (or substantially modified after) October 8, 1990.

* * *

3. FAS 157. The Financial Accounting Standards Board promulgated FAS 157 in September 2006. FAS 157 established a hierarchy of information to use in determining the “fair value” of assets or liabilities, under Generally Accepted Accounting Principles.

Here is the Federal Reserve Bank of New York’s summary of FAS 157:

FASB Statement No. 157, Fair Value Measurements (FAS 157), issued in September 2006, defines fair value, establishes a framework for measuring the fair value of assets and liabilities based on a three level hierarchy, and expands disclosures about fair value measurements. The FASB’s three-level fair value hierarchy gives the highest priority to quoted prices in active markets for identical assets or liabilities (Level 1) and the lowest priority to unobservable inputs (Level 3). Level 1 inputs are quoted prices in active markets for identical assets or liabilities that the reporting branch or agency has the ability to access at the measurement date (e.g., the FFIEC 002 reporting date). Level 2 inputs are inputs other than quoted prices included within Level 1 that are observable for the asset or

liability, either directly or indirectly. Level 3 inputs are unobservable inputs for the asset or liability.

<<http://www.newyorkfed.org/banking/regrept/2q08002.pdf>>

Note that the accounting profession no longer purports to determine fair *market* value. Quoted prices in active markets are given the highest priority in determining value, but they are just data used by the accountant to assess “fair value.”

Here is what FAS 157 itself says about the hierarchy for estimating fair value:

Fair Value Hierarchy

22. To increase consistency and comparability in fair value measurements and related disclosures, the fair value hierarchy prioritizes the inputs to valuation techniques used to measure fair value into three broad levels. The fair value hierarchy gives the highest priority to quoted prices (unadjusted) in active markets for identical assets or liabilities (Level 1) and the lowest priority to unobservable inputs (Level 3). In some cases, the inputs used to measure fair value might fall in different levels of the fair value hierarchy. The level in the fair value hierarchy within which the fair value measurement in its entirety falls shall be determined based on the lowest level input that is significant to the fair value measurement in its entirety. Assessing the significance of a particular input to the fair value measurement in its entirety requires judgment, considering factors specific to the asset or liability.

23. The availability of inputs relevant to the asset or liability and the relative reliability of the inputs might affect the selection of appropriate valuation techniques. However, the fair value hierarchy prioritizes the inputs to valuation techniques, not the valuation techniques. For example, a fair value measurement using a present value technique might fall within Level 2 or Level 3, depending on the inputs that are significant to the measurement in its entirety and the level in the fair value hierarchy within which those inputs fall.

Level 1 inputs

24. Level 1 inputs are quoted prices (unadjusted) in active markets for identical assets or liabilities that the reporting entity has the ability to access at the measurement date. An active market for the asset or liability is a market in which transactions for the asset or liability occur with sufficient frequency and volume to provide pricing information on an ongoing basis. A quoted price in an active market provides the most reliable evidence of fair value and shall be used to measure fair value whenever available, except as discussed in paragraphs 25 and 26.

25. If the reporting entity holds a large number of similar assets or liabilities (for example, debt securities) that are required to be measured at fair value, a quoted price in an active market might be available but not readily accessible for each of those assets or liabilities individually. In that case, fair value may

be measured using an alternative pricing method that does not rely exclusively on quoted prices (for example, matrix pricing) as a practical expedient. However, the use of an alternative pricing method renders the fair value measurement a lower level measurement.

26. In some situations, a quoted price in an active market might not represent fair value at the measurement date. That might be the case if, for example, significant events (principal-to-principal transactions, brokered trades, or announcements) occur after the close of a market but before the measurement date. The reporting entity should establish and consistently apply a policy for identifying those events that might affect fair value measurements. However, if the quoted price is adjusted for new information, the adjustment renders the fair value measurement a lower level measurement.

27. If the reporting entity holds a position in a single financial instrument (including a block) and the instrument is traded in an active market, the fair value of the position shall be measured within Level 1 as the product of the quoted price for the individual instrument times the quantity held. The quoted price shall not be adjusted because of the size of the position relative to trading volume (blockage factor). The use of a blockage factor is prohibited, even if a market's normal daily trading volume is not sufficient to absorb the quantity held and placing orders to sell the position in a single transaction might affect the quoted price.¹¹

[FN11] The guidance in this Statement applies for positions in financial instruments (including blocks) held by all entities, including broker-dealers and investment companies within the scope of the AICPA Audit and Accounting Guides for those industries.

Level 2 inputs

28. Level 2 inputs are inputs other than quoted prices included within Level 1 that are observable for the asset or liability, either directly or indirectly. If the asset or liability has a specified (contractual) term, a Level 2 input must be observable for substantially the full term of the asset or liability. Level 2 inputs include the following:

- a. Quoted prices for similar assets or liabilities in active markets
- b. Quoted prices for identical or similar assets or liabilities in markets that are not active, that is, markets in which there are few transactions for the asset or liability, the prices are not current, or price quotations vary substantially either over time or among market makers (for example, some brokered markets), or in which little information is released publicly (for example, a principal-to-principal market)
- c. Inputs other than quoted prices that are observable for the asset or liability (for example, interest rates and yield curves observable at commonly quoted intervals, volatilities, prepayment speeds, loss severities,

credit risks, and default rates)

- d. Inputs that are derived principally from or corroborated by observable market data by correlation or other means (market-corroborated inputs).

29. Adjustments to Level 2 inputs will vary depending on factors specific to the asset or liability. Those factors include the condition and/or location of the asset or liability, the extent to which the inputs relate to items that are comparable to the asset or liability, and the volume and level of activity in the markets within which the inputs are observed. An adjustment that is significant to the fair value measurement in its entirety might render the measurement a Level 3 measurement, depending on the level in the fair value hierarchy within which the inputs used to determine the adjustment fall.¹¹ The guidance in this Statement applies for positions in financial instruments (including blocks) held by all entities, including broker-dealers and investment companies within the scope of the AICPA Audit and Accounting Guides for those industries.

Level 3 inputs

30. Level 3 inputs are unobservable inputs for the asset or liability. Unobservable inputs shall be used to measure fair value to the extent that observable inputs are not available, thereby allowing for situations in which there is little, if any, market activity for the asset or liability at the measurement date. However, the fair value measurement objective remains the same, that is, an exit price from the perspective

of a market participant that holds the asset or owes the liability. Therefore, unobservable inputs shall reflect the reporting entity's own assumptions about the assumptions that market participants would use in pricing the asset or liability (including assumptions about risk). Unobservable inputs shall be developed based on the best information available in the circumstances, which might include the reporting entity's own data. In developing unobservable inputs, the reporting entity need not undertake all possible efforts to obtain information about market participant assumptions. However, the reporting entity shall not ignore information about market participant assumptions that is reasonably available without undue cost and effort. Therefore, the reporting entity's own data used to develop unobservable inputs shall be adjusted if information is reasonably available without undue cost and effort that indicates that market participants would use different assumptions.

D. "FAIR VALUE" FOR MINORITY DISSENTERS. Tex. Bus. Corp. Act Art. 5.12, "Procedure for Dissent by Shareholders as to Said Corporate Actions." provides:

A. Any shareholder of any domestic corporation who has the right to dissent from any of the corporate actions referred to in Article 5.11 of this Act may exercise that right to dissent only by complying with the following procedures:

(1)(a) With respect to proposed corporate action that is submitted to a vote of shareholders at a meeting, the shareholder

shall file with the corporation, prior to the meeting, a written objection to the action, setting out that the shareholder's right to dissent will be exercised if the action is effective and giving the shareholder's address, to which notice thereof shall be delivered or mailed in that event. If the action is effected and the shareholder shall not have voted in favor of the action, the corporation, in the case of action other than a merger, or the surviving or new corporation (foreign or domestic) or other entity that is liable to discharge the shareholder's right of dissent, in the case of a merger, shall, within ten (10) days after the action is effected, deliver or mail to the shareholder written notice that the action has been effected, and the shareholder may, within ten (10) days from the delivery or mailing of the notice, make written demand on the existing, surviving, or new corporation (foreign or domestic) or other entity, as the case may be, for payment of the **fair value** of the shareholder's shares. **The fair value of the shares shall be the value thereof as of the day immediately preceding the meeting, excluding any appreciation or depreciation in anticipation of the proposed action. In computing the fair value of the shares under this article, consideration must be given to the value of the corporation as a going concern without including in the computation of value any control premium, any minority discount, or any discount for lack of marketability.** If the corporation has different classes or series of shares, the relative rights and preferences of and limitations placed on the class or series of shares, other than relative voting rights,

held by the dissenting shareholder must be taken into account in the computation of value. The demand shall state the number and class of the shares owned by the shareholder and the fair value of the shares as estimated by the shareholder. Any shareholder failing to make demand within the ten (10) day period shall be bound by the action. [Emphasis added.]

D. WHEN THERE IS NO MARKET. In *Wendlandt v. Wendlandt*, 596 S.W.2d 323, 325 (Tex. Civ. App.--Houston [1st Dist.] 1980, no writ), the court said:

Fair market value has been consistently defined as the amount that a willing buyer, who desires to buy, but is under no obligation to buy would pay to a willing seller, who desires to sell, but is under no obligation to sell. *City of Pearland v. Alexander*, 483 S.W.2d 244 (Tex.1972). This standard or test presupposes an existing, established market.

In *Strenk v. Strenk*, 2001 WL 1379924, *6 (Tex. App.--Austin 2001, no pet.) (unpublished opinion), the court said:

Swanson's expert, Peña, testified as to the stock's "book value"; he did not calculate its fair market value. Strenk objected to the evidence of book value and questioned Peña regarding his failure to analyze the stock's fair market value. Strenk cites authority for the proposition that the value of an asset is its fair market value. See *City of Pearland v. Alexander*, 483 S.W.2d 244 (Tex. 1972); *Wendlandt v. Wendlandt*, 596 S.W.2d 323 (Tex. Civ. App.--Houston [1st Dist.] 1980, no writ).

Neither case holds that fair market value is the only basis for valuing a closely held stock; indeed, *City of Pearland* involved the narrow question of valuation damages for severed property in an eminent domain proceeding. See *City of Pearland*, 483 S.W.2d at 245-46.

The case of *Elliott v. Whitten*, 2004 WL 2115420 at *12 (Tex. App.--Houston [1st Dist.] 2004, pet. denied) (mem. op.), says:

There can be no cash market value of corporate stock where it has not been sold in sufficient quantities to establish a prevailing sales price.

The case of *Roberts v. Harvey*, 663 S.W.2d 525, 528 (Tex. App.--El Paso 1983, no writ), says:

There can be no cash market value of corporate stock where it has not been sold in sufficient quantities to establish a prevailing sales price. Where there is no evidence of market value, it is error to submit to the jury an issue on market value. *Continental Oil and Cotton Co. v. Wristen & Johnson*, 168 S.W. 395 (Tex. Civ. App.--Fort Worth 1914, no writ). In the absence of testimony or evidence of a reasonable cash market value of corporate stock, the method employed in determining the worth or value of such stock is to determine the difference between the value of the assets and the amount of liabilities of the corporation. *Citizens National Bank of Lubbock v. Maxey*, 461 S.W.2d 138 (Tex. Civ. App.--Amarillo 1970, writ ref'd n.r.e.).

Beavers v. Beavers, 675 S.W.2d 296, 299 (Tex. App.--Dallas 1984, no writ), said:

Mr. Beavers' third point of error addresses the proper valuation to be placed on the community one-third interest in all outstanding stock of Great West Energy, Inc. The valuation problem arises because the sale of these shares is restricted by a requirement that they be offered first to other shareholders at book value. Experts from both parties testified that essentially because of this restriction, the market value of the stock was zero. This does not mean, however, that the trial judge erred in assigning a value of \$170,000.00 to the stock for the purpose of making an equitable division of the community property. While market value is usually the best evidence of the value of the personal property, in the absence of a market value, the actual value of the property to the owner may be shown. *Bryant v. Stohn*, 260 S.W.2d 77, 83 (Tex. Civ.App.--Dallas 1953, writ ref'd n.r.e.); *Ft. Worth and D.C. Railway v. Hapgood*, 210 S.W. 969 (Tex. Civ. App.--Amarillo 1919, no writ). There is expert testimony from Mrs. Beavers' witness that, based on the value of the assets of the company, a one-third interest would be worth as much as \$395,850.00. Even according to Mr. Beavers' expert witness, the book value of the company was \$173,000.00 when substantial oil reserves were valued at only development costs. In assigning values to closely held corporations in contested divorce actions, those considerations given here by the trial judge to company assets and to the realities of corporate control are

appropriate. *Dorfman v. Dorfman*, 457 S.W.2d 417 (Tex. Civ. App.--Texarkana 1970, no writ). The third point of error is overruled.

Becky Beaver's comments:

Lenders are now asking appraisers to determine "fair value" to ascertain a number for foreclosure purposes, as there is no market and thus no "fair market value" for many properties.

In determining the value of interests in commercial and/or other investment property, one needs to look at occupancy trends, not just current occupancy, the status and structure of financing, the size of the investment group and whether it is sufficiently capitalized to weather economic stress on the property, carrying costs associated with the property, incentives which have to be offered to tenants. All of these are as important in determining value to the owner as comparable sales and replacement costs.

In this market, the most important analysis is the "investment value" to the owner, based on the predicted actual rate of return on a particular property.

Be very cognizant of trends in your particularly market. Austin is different from Galveston. Small markets have not been as affected as large markets in Texas by the downturn as they were traditionally not as overbuilt.

On residential properties, appraisers are looking more to listings than they have

ever done before, as there are so few comparable recent sales in many areas. For instance, if every listing is more than 15% less than the last sale of a comparable property, it is pretty clear that the sales price would not provide a good comparable in this market. Appraisers are also adjusting based on how long properties in the area are staying on the market before sale.

E. EFFECT OF BUY/SELL RESTRICTIONS.

1. Texas Case Law. Texas cases on the effect of buy/sell provisions on divorce value include:

-- *Earthman's, Inc. v. Earthman*, 526 S.W.2d 192, 201-202 (Tex. Civ. App.--Houston [1 Dist.] 1975, no writ):

The legal justification for the refusal to effectuate transfer of the 1300 shares of capital stock of *Earthman's, Inc.* was based upon a provision of Article V of the articles of incorporation of that company which provides as follows:

'The shares of stock of the corporation are to be held by each shareholder upon the condition that he will not sell, assign, transfer, pledge or in any way dispose of or encumber any of such shares without first offering (in writing, mailed to the Corporation's office) the same for sale to the Corporation which shall have the right to purchase all or any portion of such shares within sixty (60) days from the date of the offer. . . . If for any reason the Corporation does not purchase any shares

of stock which it has the right to purchase under any provision of this Article, the remaining shareholders of the Corporation so electing shall have the right to purchase all or any portion of such shares (prorata, according to their stock ownership, or as they may otherwise agree) within ten (10) days following the end of the time during which the Corporation had the right to purchase such shares under this Article . The price for purchase of shares of stock under any provision of this Article shall be the book value of such shares as at the close of the month preceding the date of the offer . . . such book value to be determined by the certified public accountants serving the Corporation at such time, in accordance with the accounting practices followed in preparing the most recent annual financial statement to the corporation. Such purchase price shall be paid in cash forthwith after notification of the election to purchase or, at the option of the purchaser, 20% Of the purchase price may be so paid in cash and the balance may be paid in no more than four equal annual installments with interest at the rate of 6% Per annum.'

In the letter of April 5, 1972 counsel for Earthman's, Inc. stated that Earthman's, Inc. construed the delivery of the two certificates representing 1300 shares of the company stock as an attempt by J. B. Earthman, III to transfer stock to Mrs. Earthman in derogation of Article V, that the company was therefore entitled to purchase such stock at book value and that it exercised its right and option to purchase such stock on terms as stated in the article.

A provision which restricts a stockholder's right to sell or transfer his stock, particularly one which affords a prior right of purchase to the corporation or to another stockholder, is not looked upon with favor in the law and is strictly construed. *Casteel v. Gunning*, 402 S.W.2d 529 (Tex. Civ. App.1966, writ ref'd n.r.e.); *Gulf States Abrasive Manufact-uring, Inc. v. Oertel*, 489 S.W.2d 184 (Tex. Civ. App.--Houston (1st), 1972, writ ref'd n.r.e.). It has generally been held that such a restriction is inapplicable to a transfer occurring as a result of an involuntary sale or by operation of law unless by specific provision in the restriction it is made applicable. 18 C.J.S. Corporations s 391 (1939); 2 A.L.R.2d 745, 754, Restrictions on Corporate Stock.

In *Messersmith v. Messersmith*, 229 La. 495, 86 So.2d 169 (1956), it was contended that certain community owned stock should not be divided in kind, as decreed by the divorce court, and that the husband should be permitted to retain the stock and to pay his wife one-half its book value in accordance with a restrictive clause in the corporate charter requiring a stockholder, who wished to sell his stock, to first offer it to the other stockholders or officers of the corporation. The Louisiana Supreme Court determined that the restrictive provision of the charter could not prevent the recognition of the wife's share of ownership in the corporation and held that she was entitled to have delivered to her in kind the interest awarded to her under the divorce decree. In so holding that court stated:

‘. . . The restriction in the charter cannot affect the status of the stock purchased during the existence of the community or the rights the wife may assert thereunder. Such a restriction cannot negative the wife's present interest as a co-owner, and as a co-owner in community she is clearly entitled to be recognized as such and obtain the exclusive management and control of her vested interest. (citing cases).’ (86 So.2d p. 173)

We are of the opinion that the restrictive provision in question should not be construed so as to preclude Mrs. Earthman's right to have her shares of ownership reflected on the books of the corporation and to have the stock certificates evidencing her ownership issued to her. We hold that the trial court properly determined that this provision did not afford to the corporation the right or option to purchase the shares of Earthman's, Inc. so awarded to Mrs. Earthman.

--*Finn v. Finn*, 658 S.W.2d 735, 742, 749-750 (Tex. App.--Dallas 1983, writ ref'd n.r.e.):

VANCE, Justice.

The lack of any legal right of the husband to realize the value of the firm's goodwill is a decisive factor. It distinguishes the present case from *Geesbreght* wherein the corporate structure provided a mechanism which enabled Dr. Geesbreght to realize the value of accrued goodwill by enhancing the value of his stock. In the present case

the only mechanism through which the husband may possibly realize the value of the accrued goodwill is through continuing to practice law as a member of the firm, a circumstance depending not only on his own individual capacity, but also on the uncontrolled discretion of his partners. Thus his position is no better than that of the physician in *Nail*, in which the supreme court found the value of accrued goodwill in an individual professional practice to be realized only through enhanced future earning capacity. Such realization in the future is no more than an expectancy entirely dependent on the husband's continued participation in the firm, and, therefore, is not property in the community estate. *Nail*, 486 S.W.2d at 764. Consequently, we hold that the trial court properly instructed the jury not to consider the law firm's accrued goodwill or future earning capacity FN3 when placing a value on the community interest in the husband's law practice.

STEWART, Justice, concurring.

The partnership agreement does not control the value of the individual partnership interests. The asset being divided is the husband's interest in the partnership as a going business, not his contractual death benefits or withdrawal rights. *Slater v. Slater*, 100 Cal.App.3d 241, 160 Cal.Rptr. 686, 688-689 (1980). The formula in the partnership agreement may represent the present value of the husband's interest, but it should not preclude a consideration of other facts. *Slater*, 160 Cal.Rptr. at 689; *Stern v. Stern*, 66 N.J. 340, 331 A.2d 257 (1975).

The value of the husband's interest should be based on the present value of the partnership entity as a going business, which would include consideration of partnership goodwill, if any. Goodwill is property and, although intangible, it is an integral part of a business, the same as its physical assets. *Taormina v. Culicchia*, 355 S.W.2d 569, 573 (Tex. Civ. App.--El Paso 1962, writ ref'd n.r.e.); *Ordway-Saunders Co. v. Little*, 568 S.W.2d 711, 717 (Tex. Civ. App.--Amarillo 1978, writ ref'd n.r.e.). Whether the law firm possessed goodwill, and, if so, its value are fact questions for the trier of facts. *Taormina*, 355 S.W.2d at 574.

The majority are concerned with future contingencies. All assets of the community estate are valued as of the time of dissolution of the marriage. There is no valid reason to exclude a professional partnership interest from this basic rule when the partner intends to continue as a member of the firm.

--*Keith v. Keith*, 763 S.W.2d 950, 953 (Tex. App.--Fort Worth 1989, no writ):

Charles asserts in point of error number three that the trial court erred by failing to find the market value of the partnership by applying the formula set forth in the partnership agreement, since his wife, Glenda, signed the agreement stating her approval of the agreement and her acceptance of its provisions, agreeing to be bound by it.

The partnership agreement entered into between Charles and Ty provided a

method for determining the value of the business in the event it was terminated due to the withdrawal, other act, or death of one of the partners. The trial court did not use the method provided in determining the value of the partnership. Since the partnership is not being terminated, we do not find this provision of the agreement has any applicability to the matter before the trial court. Accordingly, the trial court did not err in failing to use the formula.

--*R.V.K. v. L.L.K.*, 103 S.W.3d 612 (Tex. App.--San Antonio 2003, no pet.):

Opinion by: SARAH B. DUNCAN, Justice.

Contrary to R.V.K.'s argument, the divorce proceeding has not triggered the buy/sell agreements. There has not been an "operative event"--an attempted sale, transfer, gift, mortgage, or pledge of stock without the corporations' consent; termination of R.V.K.'s employment; or termination of his marriage by death or divorce in a manner that dictates that R.V.K. will not succeed to L.L.K.'s community interest in the Medical Practice Group and the Medical Equipment Business stock.

* * *

Concurring and Dissenting opinion by: ALMA L. LÓPEZ, Chief Justice.

I concur in the majority's conclusion that the trial court erred in failing to properly derive a fair market value for R.V.K.'s ownership interest, but I agree with the dissent that we should address whether Finn or Keith should be followed

in determining whether goodwill should be included in valuing a professional practice. I also agree with the dissent that we should follow the holding in Keith and the reasoning in Justice Stewart's concurring opinion in Finn.

* * *

Dissenting opinion by: SANDEE BRYAN MARION, Justice, joined by CATHERINE STONE, Justice.

I respectfully dissent and I would affirm the trial court's judgment. [FN1] I believe this court should answer the question presented at trial and on appeal: should the Finn decision or the Keith decision be followed when determining the value of a professional practice upon divorce? I agree with Annette Stewart's concurring opinion in Finn and the court in Keith, and would hold that the value of R.V.K.'s interest should be based on the present value of the entities as ongoing businesses, which would include such factors as limitations associated with the buy/sell agreements and consideration of commercial goodwill.

--*Von Hohn v. Von Hohn*, 260 S.W.3d 631 (Tex. App.--Tyler 2008, no pet.):

Based on these facts, we agree with the concurrence in Finn that the Nix Law Firm partnership agreement does not control the value of the individual partnership interests in the event of a divorce. See Finn, 658 S.W.2d at 749. The Nix Law Firm was an ongoing partnership as of the time of divorce, Edward had not died nor had he withdrawn from the partnership, and, thus, none of the triggering events

specified in the partnership agreement had occurred. See R.V.K., 103 S.W.3d at 623; Keith, 763 S.W.2d at 953. Consequently, the formula in the partnership agreement was not determinative of the value of Edward's interest in the Nix Law Firm. See Keith, 763 S.W.2d at 953. Therefore, the trial court did not err when it determined that the proper measure of the value of the community interest in the Nix Law Firm could include methods other than those set forth in the partnership agreement.

F. ALTERNATIVES TO STATING A SINGLE VALUE. Does an appraiser have to state only one value, or can the appraiser state different values, based on different assumptions, and allow the fact finder to determine which assumption is best? Can the appraiser state a probable range of values that form a bell curve shape as the numbers get much higher or much lower than the most probable value?

III. TAX EFFECTS OF PROPERTY DIVISION.

§ 7.008. Consideration of Taxes

In ordering the division of the estate of the parties to a suit for dissolution of a marriage, the court may consider:

- (1) whether a specific asset will be subject to taxation; and
- (2) if the asset will be subject to taxation, when the tax will be required to be paid.

Becky Beaver comments:

- Section 7.008 of the Texas Family Codes states that in the division of the community estate, the Court may consider whether a specific asset will be subject to taxation and if so, when the tax will be required to be paid. Prior to the enactment of this statute in 2005, the Courts had generally held that the calculation of the future tax liability was too speculative to consider in the division of the community estate. (For instance, see the *Grossnickle* case).

- Some of the common tax liabilities that the property could be subject to include:

1. Capital gains or losses if the property will be sold or exchanged later.
2. If the asset will generate future gross income that is subject to income tax liability (for instance if the asset is an IRA or pension or 401K)
3. If the asset is subject to tax penalties for early withdrawal and will need to be withdrawn.
4. One timely issue is if an asset has a loss associated with it, then that asset could actually be a tax benefit also.

- Predicting future tax liability is difficult for a number of reasons including, but not limited to the following reasons:

1. Changing tax rates and laws;
2. Changing asset values;

3. No guarantee on whether party will hold or sell asset;

4. Party could die before asset sold and have not to pay capital gains;

5. Difficulty in determining what the correct discount rate or tax rate is for present value;

6. Party could have ability to shelter losses through other assets;

7. The timing of when tax liability will occur; and

8. Party's movement from one tax bracket to another.

- Forgiveness of debt income as potential tax liability on foreclosure, short sales or deeds in lieu of foreclosure.

26 CFR 1.1001-2(a)(1). Discharge of indebtedness income is taxed under 26 USC 108.

The tax case most often cited as seminal in this area is *Commissioner. v. Tufts* (461 U.S. 300, 1983).

IV. DIVERSIFICATION OF WEALTH APPLIED TO DIVORCE. One of the fundamental principles of investment is diversification. See *Understanding the Economy*, p. _____. Divorce lawyers face diversification issues in our practice.

Becky Beaver raises these points:

- Should investors be required to diversify

investments?

- Can a court order diversification of investments during the pendency of a divorce as part of temporary orders?

- Lim, Paul J. "It May Not Look That Way, but Diversification Still Works." *The New York Times*, December 7, 2008.

- "Private Pensions. Key Issues to Consider Following the Enron Collapse." United States General Accounting Office, Statement of David M. Walker, Comptroller General of the United States, February 27, 2002.

- Strauss, Gary. "10 Lessons for Investors From Enron's Fall," *USA Today*, February 19, 2002.

V. DEFINED BENEFIT RETIREMENT PLANS IN TODAY'S WORLD.

A. DO *TAGGART* & *BERRY* STILL APPLY? More and more employers are suspending or closing defined benefit retirement plans. If a plan is suspended, then the employees cease to accrue a benefit while they continue to work. If a plan is terminated, the plan may be converted to a defined contribution plan with a starting balance based on the old benefit.

What is the effect of these events on *Taggart* and *Berry* calculations?

B. RISK OF NOT COLLECTING FULL BENEFITS. In today's economy, and in the future, we cannot continue to assume that all defined benefit pension (DBP) plans will

fulfill all of their obligations.

Becky Beaver contributes:

- "Delta, Northwest pensions underfunded by \$16.3 billion." *AFX News Limited*, September 16, 2005.

- "AUTOS: Pension Benefit Guaranty Corp. to Cover Metaldyne." *Detroit Free Press*, August 1, 2009.

- Hughes, Darrell. "UPDATE: US Pension Insurer Takes Over Auto Supplier's Plans." *Dow Jones Newswire*, August 12, 2009.

For a discussion of the PBGC, the caps when the PBGC takes over a plan, and its current severe insolvency, see *Understanding the Economy* pp. ____.

VI. RISK IN STRUCTURING THE PROPERTY DIVISION.

In today's economic environment, the assessment of risk associated with debts can be as important as characterizing and valuing marital assets.

A. RISK ANALYSIS.

1. Assessing Risk. To assess risk in a particular case, you must engage in a risk assessment process. There are several important factors operating here. First, risk is basically uncertain, so you are estimating risk rather than calculating it. Second, often you cannot eliminate all risk so you have to determine how to make the risk tolerable. The risk assessment process involves identifying risks, assessing the likelihood of each risk occurring, calculating the harm that may arise from the risk, putting safeguards in place, and

maintaining these safeguards over time. In a divorce property division, there can be the risk of loss of value of an asset, or risk of loss of property to a creditor, or risk that the opposing party may fail to perform obligations created in the divorce settlement or award.

2. Responding to Risk. The typical responses to risk are: avoidance, transfer, mitigation, and acceptance.

B. THIRD-PARTY CREDITORS.

1. Effect of Divorce on Creditors' Rights. A divorce decree does not diminish or limit the rights of creditors to go against what was previously marital property to satisfy debts. *Stewart Title Co. v. Huddleston*, 598 S.W.2d 321, 323 (Tex. Civ. App.--San Antonio 1980), *aff'd*, 608 S.W.2d 611 (Tex. 1980) (per curiam); *Rush v. Montgomery Ward*, 757 S.W.2d 521, 523 (Tex. App.--Houston [14th Dist.] 1988, writ denied); *Anderson v. Royce*, 624 S.W.2d 621, 623 (Tex. App.--Houston [14th Dist.] 1981, writ ref'd n.r.e.); *Inwood National Bank of Dallas v. Hoppe*, 596 S.W.2d 183, 185 (Tex. Civ. App.--Texarkana 1980, writ ref'd n.r.e.); *Dorfman v. Dorfman*, 457 S.W.2d 417, 423 (Tex. Civ. App.--Texarkana 1970, no writ). This issue was discussed in *Wileman v. Wade*, 665 S.W.2d 519 (Tex. App.--Dallas 1983, no writ), where the panel majority appears to have misunderstood the distinction between community property liability and personal liability.

2. Collateralized Debt. Where a debt is secured by a marital asset, the better choice is usually to award the debt to the party receiving the collateral. That way the desire to

continue to own the collateral provides an incentive for the party receiving the collateral to pay the debt. Awarding the collateral to one spouse and the debt to the other eliminates that incentive. Furthermore, separating the debt from the asset also creates a situation where post-divorce litigation may be required, with its attendant costs and delays. And the separation of debt from collateral can also result in an ex post facto change in the property division. A possible solution is to require the payment of collateralized debt at the time of divorce.

3. Uncollateralized Debt. If the debt is not collateralized, then the creditor may choose to move against any non-exempt community property that is subject to that type of creditor's claim. In a property division, the non-debtor spouse would want to receive assets that are exempt from creditors' claims, or assets that are not subject to marital property liability for that claim. Also the non-indebted spouse may want to insist that debt be paid off at the time of divorce.

4. Personal Liability. It is very important to determine whether your client is personally liable on a debt. If not, then the maximum exposure for your client is the loss of joint management community property or the sole management community property and separate property of the liable spouse that is awarded to your client in the divorce. If your client is personally liable on the debt, then the debt can be collected out of all non-exempt property that your client may receive in the divorce or may acquire after the divorce, as well as property subject to that creditor's claim that is awarded to the other spouse.

5. Marital Property Liability. Texas Family Code Section 3.202 provides:

(a) A spouse's separate property is not subject to liabilities of the other spouse unless both spouses are liable by other rules of law.

(b) Unless both spouses are personally liable as provided by this subchapter, the community property subject to a spouse's sole management, control, and disposition is not subject to:

(1) any liabilities that the other spouse incurred before marriage; or

(2) any nontortious liabilities that the other spouse incurs during marriage.

(c) The community property subject to a spouse's sole or joint management, control, and disposition is subject to the liabilities incurred by him or her before or during marriage.

(d) All the community property is subject to tortious liability of either spouse incurred during marriage.

A chart of marital property liability is appended to this Article.

6. Contingent Liability. Contingent liabilities (such as personal guarantees) may not be due at the time of divorce. The opposing party may take the position that the liability, being contingent, is not to be considered. If the case is settled on that basis, and the contingent liability is later triggered, then the property division is ex post facto altered by the amount

that the spouse must pay on the contingent claim. A good response to a claim that a contingent liability is not real is to ask that the spouse claiming that to indemnify the liable spouse, just in case the contingent liability is triggered. If the other spouse won't share that risk, then the claim of "no risk" is a hollow one.

7. Tax Liability. Each spouse is liable for income and social security and Medicare taxes on his or her income. In community property states, like Texas, an additional complication sets in. A spouse in a community property state owns only one-half of his/her community income, and also owns one-half of the other spouse's community income. If the spouses file separate returns, each spouse must report one-half of his income, and one-half of the other spouse's income. Each spouse will be personally liable for the tax liability on one-half of the community income, and on any of the spouse's separate property income. If the spouses file a joint return, then all income will be combined into one figure, and each spouse who signs the joint return will be personally liable for all taxes owed on all income reported on the joint tax return. A spouse, by signing a joint return, makes himself/herself personally liable for payment of the other spouse's tax liability. "Innocent spouse" protection is available in some circumstances, but it is difficult to meet the conditions for "innocent spouse" treatment.

8. Partition Agreement Versus Agreement Incident to Divorce. As discussed in Section VI.B.1 above, the rights of creditors to collect debts from available assets are not impaired by a divorce and property division. Thus, an agreement incident to divorce may be seen as

being subject to the rights of creditors. On the other hand, Texas Constitution article XVI, section 15, provides that spouses can partition or exchange their community property into separate portions, if this is done without the intent to defraud preexisting creditors. See also Tex. Fam. Code § 4.106 (partitions or exchanges void as to creditors who are defrauded thereby). Can a divorce be settled with a partition agreement instead of an agreement incident to divorce, and have the better protection afforded partitions under the Texas Constitution?

9. Use of Assets to Pay Debts. The parties may agree that assets will be liquidated and used to pay debts. The divorce court also can order this. However, the court cannot require spouses to liquidate property which is exempt from the claims of creditors and require them to use this money to pay unsecured creditors. *Delaney v. Delaney*, 562 S.W.2d 494 (Tex. Civ. App.--Houston [14th Dist.] 1978, writ dismissed); *Klein v. Klein*, 370 S.W.2d 769 (Tex. Civ. App.--Eastland 1963, no writ).

Where cash is going to be used to pay debts, or assets liquidated and the proceeds used to pay debts, cautious lawyers will want to assure that the money or assets targeted for this purpose are in fact used for this purpose. As to cash, require that it be paid at or before the decree of divorce is signed by the Court, or put it in a trust account or joint account requiring two signatures. As to assets to be liquidated, either put title in escrow or make the spouses joint payees, so that one spouse cannot misdirect the proceeds.

10. Refinancing. In some instances it may be possible for one spouse to refinance a joint

debt so that it becomes a sole debt of one spouse. If the refinancing occurs after divorce, the new debt will be separate property debt.

11. Indemnification. If debts are awarded to Spouse #1 in a divorce, Spouse #2 can attempt to get an indemnity from Spouse #1 in case the creditors come against Spouse #2 or his/her assets. If the indemnity is uncollateralized, it is not worth much, as the indemnity will trigger only after the indemnified spouse has defaulted on paying the debt, so that the indemnifying spouse would probably be trying to enforce the indemnity against a judgment-proof ex-spouse. If the indemnity is collateralized, it provides an incentive for the indemnifying spouse to pay the debts, to avoid repossession or foreclosure by the indemnified spouse.

C. RISKS IN SETTLING FOR FUTURE PERFORMANCE. If the property division cannot be resolved by a division of existing assets free from creditors' claims, then the settlement may require one spouse to make payments or other promises of future performance. This creates risk in the property division.

1. Default Risk. Performance risk is the risk that the other party will not perform their obligations under the Agreement Incident to Divorce and Decree of Divorce. If the obligation is to pay interest or principal, pay alimony, or pay off a debt owed to a third party, the risk is called "credit risk" or "default risk." This type of risk is ameliorated by structuring the divorce settlement to add incentives to performance, such as rewards and/or penalties. The obligation can also be collateralized or guaranteed by third parties or

entities. The possibility of bankruptcy can be protected against by (i) collateralizing the obligation; or (ii) expressing the obligations as a non-dischargeable claim (like child support or alimony).

2. Inflation Risk. “Inflation Risk” is the risk that general increases in prices of goods and services will reduce the value of money you are to be paid in the future. One way to avoid this inflation risk is to purchase is to include an inflation adjustment in the obligation, so that the principal and interest keep pace with inflation. For example, the amount of the principal balance of a note could be adjusted in keeping with changes in the Consumer Price Index, or Implicit Price Deflator. See *Understanding the Economy*, pp. ____ - ____ . If the obligation is an alimony obligation, the alimony could change as the inflation index changes. See *Understanding the Economy*, Section VI.A.13. If the rate used in a promissory note is taken from market rates, an inflation premium will already be built into the market interest rate. An “inflation premium” is the portion of the interest rate that is attributable solely to expected increases in the general price level of goods and services.

3. Liquidity Risk. In the context of a payout of a property division, “liquidity risk” is the risk of not being able to liquidate the obligation in question quickly for a price that reflects the true intrinsic value of the asset. An alimony stream is not transferrable, but a promissory note is. The liquidity risk in taking a long-term promissory note from the opposing party in a divorce is the risk that the obligee may develop a need to cash that requires him/her to sell the note at a discount

for cash. Recognizing liquidity risk leads to the idea of a “liquidity premium,” which is an additional component added to the interest rate to compensate for that risk.

D. PROPER INTEREST RATE ON INTERSPOUSAL PROMISSORY NOTES.

There are several different ways to determine what is an appropriate risk associated with an interspousal promissory note. You can use the passbook savings rate. You can use the U.S. government bond rate. You can use private corporate bond rates, all the way from A to junk bond rates. You can use the prime lending rate. You can add points to each of these rates to account for different degrees of risk. The interest rate on the note may be affected by security offered for the debt, like personal guarantees from wealthy individuals or businesses, or collateral.

E. DISCOUNTING ALIMONY TO PRESENT VALUE.

Frequently in offering or accepting alimony as part of a divorce settlement, both sides will determine the net after tax present value of the alimony stream. The discount rate is considered to be the present value of the future payments. Seldom is risk of non-collection factored into the discount rate. From an investor's viewpoint, however, the appropriate discount rate to use for any stream of future payments includes not only the time value of money but also credit risk (i.e., default risk), inflation risk, and liquidity risk. All of these risks would tend to increase the discount rate for future alimony payments.

VIII. DIAGRAM OF MARITAL PROPERTY LIABILITY.

	Husband's Separate Property	Husband's Sole Management Community Property	Joint Management Community Property	Wife's Sole Management Community Property	Wife's Separate Property
Husband's Separate Debt					
Husband's Pre-Marital Liabilities					
Husband's Non-Tortious Liabilities During Marriage					
Husband's Tortious Liabilities During Marriage					
Wife's Tortious Liabilities During Marriage					
Wife's Non-Tortious Liabilities During Marriage					
Wife's Pre-Marital Liabilities					
Wife's Separate Debt					
Join Liabilities of the Spouses					