Texas Entertainment and Sports Law Journal

State Bar of Texas
Entertainment & Sports Law Section

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Notes...

The statements and opinions in the Texas Entertainment and Sports Law Journal are those of the editors and contributors and not necessarily those of the State Bar of Texas, or the Entertainment & Sports Law Section. This publication is intended to provide accurate and authoritative information with respect to the matters covered and is made available with the understanding that the publisher is not engaged in rendering legal or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought.

Join the Section

All members of the Entertainment & Sports Law Section are encouraged to make sure that their dues are paid. All dues payments are to be made directly to the Section's Treasurer. An application for joining the Section is provided at the end of this publication.

Invitation to Publish

Anyone think they have the talent to write an article? This is your invitation to put that talent to use. The Entertainment and Sports Law Journal is soliciting articles to publish in upcoming issues. Article formats vary from long footnoted analyses to more informal discussions, and topics may span the spectrum of the sports and entertainment fields. Contact the editor and discuss the possibility of writing an article on a subject that interests you.

Articles may be submitted to:

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Chairman's Report

On behalf of the Officers and Directors of our section, I would like to welcome you to another issueof the Journal. By now you have probably already received flyers promoting our annual **Entertainment Law Institute** to be held again in Austin. Please note that for the first time the conference has been increased to 1 ½ days - beginning on Friday, March 20th and ending Saturday March 21st. The extra time will allow for a more in-depth treatment of certain topics while at the same time allowing for a broader scope of topics to be covered including music, film and screenwriting issues. As was the case last year, the seminar is being sponsored by the Section and the University of Texas School of Law. Special thanks to the planning committee and the University of Texas CLE Department.

You will also want to watch for future notices appearing in the *State Bar Journal* concerning the CLE program at the State Bar Annual Meeting in Corpus Christi this June. The Program will consist of entertainment and sports law topics.

As you may be aware, there has been a great deal of discussion recently dealing with the degree to which the Council of Chairs has input in State Bar governance matters. The Section Council is currently reviewing two alternatives which I shall report on at the June meeting in Corpus Christi.

The Council is currently developing an internet presence for the section. The next issue will include an internet address for your reference. The Section is investigating reproducing past articles from previous journals to publishing general Section information and notices. Please feel free to contact me regarding comments or suggestions for how we can best serve your needs through the net presence.

Through the years, the States of California and New York have evolved special legislation allowing minors in certain instances to contract as adults with entertainment entities such as recording companies. The Section is currently working toward either the sponsorship or development of legislation that would allow Texas entertainers under the age of 18 to enter such agreements without having to resort to the common remedy of petitioning the court for removal of the disability of minority status. I should have a report on the status of such undertakings at the June meeting.

Finally, the Council has voted to accept a proposal from the Entertainment and Sports Law Society of the University of Texas to publish a supplement to be included in an upcoming Journal edition. The Council shall extend invitations to similar law societies at law schools on and around the State of Texas to participate in the creation of supplements for future issues. This venture will allow students the opportunity to research, author and edit timely articles of interest while working with our crack editorial team. The bottom line is that the arrangement will result in more articles for the Section members. If successful, such a program may be an on-going enterprise with several law schools participating on a rotating basis.

As always, I encourage you to contact me directly with suggestions regarding ways that we can make your Section more responsive to yours needs, I look forward to seeing you in Austin March 20th and 21st.

Russell E. Rains

ENTERTAINMENT & SPORTS LAW SECTION of the STATE BAR of TEXAS MEMBERSHIP APPLICATION

The Entertainment & Sports Law Section of the State Bar of Texas was formed in 1989 and currently has over 600 members. The Section is directed at lawyers who devote a portion of their practice to entertainment and/or Sports law and seeks to educate its members on recent developments in entertainment and sports law. Membership in the Section is also available to non-lawyers who have an interest in entertainment and sports law.

The "Entertainment & Sports Law Journal", published three times a year by the Section, contains articles and information of professional and academic interest relating to entertainment, sports, intellectual property, art and other related areas. The Section also conducts seminars of general interest to its members. Membership in the Section is from June 1 to May 31.

To join the Entertainment & Sports Law Section, complete the information below and forward it with a check in the amount of $20.00 (made payable to ENTERTAINMENT & SPORTS LAW SECTION) to Christopher A. Kalis, Treasurer, 2512 Boll Street, Dallas, Texas 75204-2512

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FOR THE LEGAL RECORD

It is recommended that future spouses, spouses, and their lawyers read the article featured in this issue of the Journal written by Texas board certified lawyer Katherine A. Kinser regarding matrimonial law, it may redefine the way you view sports law.

Redefining sports law? Green Bay Packers football player Gilbert Brown apologized to his live-in girlfriend and stayed out of jail on charges of striking her. The 350-pound Brown was given probation and ordered to take anger management counseling ... After allegedly grabbing his wife by the hair and then hitting her a few times, Oakland Athletics player Jose Canseco, was charged with simple battery and faces one year in jail. The power hitting player for the Toronto Blue Jays signed a new contract with a reported base salary of about $750,000.00 and incentives of about $2.2 million, a slight bit less than his 1997 contract worth $4.7 million ... Former University of Oklahoma football star Billy Sims was given one month in jail for failing to pay child support. U. S. District Judge Sven Erik Holmes also ordered Sims to pay $14,025.85 in restitution to the mother of Sims' daughter. Citing Sims' "flaunting" of previous court orders and "his moral obligations" Judge Holmes declined to given Sims probation on the misdemeanor charge ...

Redefining sports competition? Casey Martin will be allowed to ride a cart on the pro golf tour. After putting into evidence "a pale, withered stick of a right leg that gives him constant pain, shrunken from a circulatory disorder," a federal magistrate in Eugene, Oregon, ruled that Casey Martin could use a golf cart in tour competition. The magistrate was not persuaded by PGA Tour lawyer William Maledon's argument that allowing Martin to ride a golf cart "would give him an unfair advantage, dismantle the professional tour's rules and diminish its integrity." Martin's case was supported by testimony that the use of carts was in keeping with accommodations as required by the Americans with Disabilities Act. The PGA's use of some of the biggest names in golf, e. g., Arnold Palmer and Jack Nickalus, was not enough to persuade the magistrate that Martin's use of a golf cart was against the "rules or unfair ..."

Redefining contracts? The NBA was generous in only taking $5,000.00 from Denver Nuggets player Danny Fortson for shoving Dallas Mavericks center Shawn Bradley ... No lawsuit, no complaint from the players' union ... Chicago Blackhawks hockey player Gary Suter cross-checked opposing player Paul Kariya resulting in Kariya suffering a concussion and missing several games. No penalty was assessed on the play, but the National Hockey League suspended Suter for four games without pay and a $1,000.00 fine ... No lawsuit, no complaint from the players' union ... Latrell Sprewell lost the three remaining years of his $32 MM dollar contract with Golden State (approximately $25 MM) for allegedly choking and threatening to kill Warrior coach P. J. Carlesimo. The Warriors terminated Sprewell's "guaranteed contract" and let Sprewell go without pay. A complaint was filed with the Players' Union and the case remains with arbitrator John Feerick. Does the term "guaranteed contract" take on a new definition as result of the Sprewell case? Is any "guaranteed contract" in professional sports safe if the termination of Sprewell's contract is upheld? If Golden State wins, is the arbitration merely a prelude to the courtroom? ... Not only is the term "guarantee" being redefined in professional basketball, but a San Diego County grand jury has called for the renegotiation of the "ticket guarantee" between the city of San Diego and the NFL San Diego Chargers. City council member Christine Kehoe was quoted as saying "in the long run the ticket guarantee is bad for the city, bad for the team and bad for San Diegoans." What about the sanctity of the contract? What about the Chargers who negotiated a good deal and got a break on the rent? ...

Redefinition of sentencing for athletes? Any doubt that freshman football player Antowoine Womack fondled a co-ed at a fraternity party was removed, when Judge William G. Barkley found the Virginia football player guilty of misdemeanor assault and battery. The judge not only gave the player a 30-day suspended jail sentence but also suspended him from the team. Can we expect that judges will become a force in redefining teams by removing or suspending players from teams for violations unrelated to sports competition? Harris County District Court Judge Ted Poe, known for his creative sentences, given the right circumstances, may be the Texas judge to try such an approach ...

Players redefining themselves? Charles Barkley, pleaded innocent to charges he threw a bar patron through a window, after being charged with battery, disorderly conduct, criminal mischief and resisting arrest, then decided to quit drinking for the remainder of the NBA season. Not only has the Houston Rocket forward improved his play on the court, but it also appears that he is redefining his image as a "role model" despite his run-ins with the law ... Redefining control of his life and business affairs Mike Tyson hired a new team of attorneys and accountants headed by Los Angeles based agent Jeff Wald. Facing Tyson of course is his defined contract with Don King ... Agent business may be subject to redefinition if Ted Turner and NBC are able to get a new football league off the ground. With NBC and Turner Broadcasting losing the NFL, how to fill weekend and Monday nights are hot issues for TNT and NBC ...

Legal issues defined with an international flare? Police in Rio Janeiro, Brazil, seized more than 100,000 items of clothing with NBA logos, pirated from the factories where they were made ... Sumo wrestling in Japan faces a tax scandal among its wrestlers, and 10 of Japanese top baseball players were indicted by Japanese prosecutors for allegedly evading taxes ... An Italian doctor has reported research results which may detect the banned performance-enhancing drug erythropoietin (EPO). The test was not available for the Winter Olympics. The test may be available for future Olympics which may not be good news to Chinese athletes. The suspension of four Chinese swimmers for drug use at the world championships in Perth, Australia, together with the high number of doping charges against Chinese athletes in recent years, makes the Chinese prime targets for doping tests conducted by the International Olympic Committee ... Redefinition of Canadian tax laws and their application to NBA players is necessary for Canadian teams in Toronto and Vancouver to overcome the economic tilt against playing in Canada, according to agent Steve Woods of Sumerian Sports in Atlanta. In an Economic Parity Plan, Woods proposes that the NBA provide refunds to players playing for teams located in Canada to offset Canadian tax rates. Claiming that Canadian teams cannot be competitive without economic parity, Woods argues that the league should subsidize players who play or are traded to teams in Canada, because when a player is traded to a team in Canada, his contract is worth 20 to 30% less than when the contract was signed. In support of the Economic Parity Plan, Wood said, "A level playing field is the essence of sports. And we don't have that in this situation." ...

Institutional redefinition? The NCAA, known for its cumbersome, obfuscatory, and seemingly endless regulations, has redefined how high schools will decide which courses meet core-course requirements. Rather than the NCAA clearinghouse determining whether incoming freshmen satisfy the requirements, the signature of the high school principal will attest that the courses submitted satisfy the core-course requirements. Whether this change will work remains to be seen. The Clearinghouse will still verify the principal's attestation ... After the Texas University Interscholastic League adopted a new reclassification and realignment plan, 4 appeals were granted. The most common reason for granting an appeal is the new travel demands imposed on high schools. The UIL, however, does not grant appeals based on "unfair competition" in any one sport ...

The more sports law is redefined, the more it stays the same. Former Dallas Cowboy football coach Barry Switzer is the target of a civil lawsuit claiming he made racial slurs against two men in a hotel in 1994 ... Barney vs. The Chicken, Texas-based Lyons Partnership, filed a copyright and trademark infringement lawsuit claiming that the San Diego Chicken's assault on a Barney-like character during sporting events violated state and federal law. Lyons is seeking a permanent injunction and monetary damages ... Mickey Mantle's family sued Greer Johnson, the New York Yankee's former companion, to stop the auction of socks, shoes, eye-glasses and other personal items. The suit in Manhattan, New York federal court, seeks unspecified damages and an injunction against sale of Mantle's personal items ... Despite all of the coaching vacancies in the National Football League, a group of black assistant coaches considered filing a class-action discrimination lawsuit. Forming the basis for such a suit includes the fact that of the 11 coaching vacancies after the 1996 season and at least 4 coaching vacancies after the 1997 season, none went to black coaches. There are only three black head coaches in the NFL, despite more than 60% of the 1,500 players being black ...

Sylvester R. Jaime

RECENT CASES OF INTEREST

Prepared by the Texas A&M University Law Center
Sports and Entertainment Law Society

Propriety of Administration's Assigning Grade to Athlete Upheld

In *Bates v. Dallas Independent School District*, 952 S.W.2d 543 (Tex. App.—Dallas 1997), the Dallas Court of Appeals held that a teacher's refusal to assign a grade to a student athlete as instructed by his superiors is not a principle of academic freedom protected by the First Amendment.

In 1988, Carter High School in Dallas was the subject of an investigation by the Texas Education Agency (TEA) and the University Interscholastic League (UIL) as the result of an anonymous tip regarding its grading policies. Wilfred Bates, a math teacher at the school, had refused to give a student athlete a passing grade despite the instruction of the school principal. Bates testified about this incident during public hearings held by investigators. The result of the investigation was Carter High's disqualification from the state football playoffs – a sanction later voided by court order.

However, Bates did not avoid any sanctions. In January 1989, he was transferred to a middle school, placed on probation with his salary frozen, given an unsatisfactory rating for the school year, and prohibited from teaching math while on probation.

After unsuccessfully pursuing administrative appeals for more than two years, Bates filed a 1991 suit in state district court alleging violations of his First Amendment rights, due process and equal protection, and claims of breach of contract, constructive termination, tortious interference with an employment contract, and violation of a covenant of good faith. The district court granted summary judgment in favor of the Dallas Independent School District (DISD) on all claims other than breach of contract. Bates subsequently dropped the breach of contract claim and appealed, contending that the grant of summary judgment was erroneous because genuine issues of material fact existed.

In affirming the trial court's judgment, the court of appeals found that, while liability in a civil rights action under 1983 may be based on violations of academic freedom, a school district is only liable for such violations if the plaintiff's injury is caused by an established custom or policy. Here, because only the school board of trustees had final policy-making authority, the actions of the principal and superintendent against Bates were not found to be DISD policy.

The court explained that "[a]cademic freedom has its roots in the First Amendment insofar as it protects against infringements on a teacher's freedom concerning classroom content and method, [but] a teacher's refusal to assign a grade to a student as instructed by his superiors is not a teaching method."

The court of appeals also considered Bates' claims of constructive discharge and tortious interference with a contract and found no issues of material fact to warrant a reversal of the summary judgment.

By Jim Intermaggio

* * *

Nothing Fishy Here: Contestants Awarded $14,000 in Fishing Tournament Dispute

In *Century Bass Club v. Millender*, 949 S.W.2d 841 (Tex. App.—Waco 1997), the Waco Court of Appeals affirmed the district court's award of $14,000 to plaintiffs who were denied a first place prize by the defendants in a bass-fishing tournament. The court held the rules of the tournament did not require the participants to carry their fishing licenses on them during the contest, and the plaintiffs complied strictly with the tournament rules.

Plaintiffs Randy Millender and Marc Holmes entered as a team in a bass-fishing contest sponsored by the defendant Century Bass Club. On April 2, 1995, Millender and Holmes reeled in the best stringer of fish that day and stood ready to claim their first place prize. As visions of a new boat and trailer danced in their heads, the plaintiffs were dealt a cruel blow. To their shock and dismay, the plaintiffs were disqualified by tournament officials because Millender did not have his state fishing license on his person during the contest. Tournament officials initially gave Millender thirty minutes to produce his license. Millender did so, yet the plaintiffs were still disqualified. Millender and Holmes sued, and a jury awarded them $14,000 in actual damages and $10,000 in attorneys' fees. The plaintiffs requested and were denied punitive damages because the jury determined no willful conduct occurred. Century Bass raised a twelve-point appeal that focused primarily on three issues.

First, the defendant argued the plaintiffs did not comply with the strict rules of the tournament because (1) Millender did not carry his fishing license on his person on the day of the tournament, and (2) neither Millender nor Holmes had completed all of the blanks on their licenses. Section 46.001 of the Parks and Wildlife Code provides no person may fish in the public water of the state unless he has obtained a valid fishing license. The court found that both plaintiffs held valid fishing licenses on the day of the tournament. The rules of the tournament did not explicitly require the participants to carry their fishing licenses on them during the tournament. Rather, the rules merely stated that the winner would be determined by the highest total weight of "legal tournament fish" caught

that day.

The defendant argued that, although the rules of the tournament did not specifically reference fishing licenses, the term "legal tournament fish" meant fish caught in all legal respects. The court held the word "legal" defined the fish and not the fishermen, and because no requirement was made about licenses in the rules, and no question was raised as to the legality of the fish caught by Millender and Holmes, the plaintiffs complied with the rules of the tournament.

Second, Century Bass argued it had a right to "interpret" the rules of the tournament. The court stated that, if an instrument is so worded that it can be given a definite legal meaning or interpretation, then it is not ambiguous and the court will construe it as a matter of law. The court looked within the "four corners" of the tournament rules and found no mention of fishing licenses. Only at the end of the tournament did the defendant tell Millender he needed to produce a license. The court held that the defendant had gone beyond merely interpreting the rules by adding to them thereafter.

Finally, Century Bass argued as a matter of public policy that unlicensed fishermen should not be allowed to win a contest in which they were illegally participating on state waters. The court reiterated that the plaintiffs had complied with the state's licensing requirements. The court rejected the defendant's public policy argument since Century Bass chose not to require each participant in the contest to produce a valid license at the beginning of the tournament.

By Mike Brannon

* * *

Court Tackles Former Texas Tech Football Player's Suit for a Loss

In *Gaines v. Texas Tech University*, 965 F. Supp. 886 (N.D. Tex. 1997), Stephen Gaines, a former defensive star and team leader at Texas Tech University, brought suit against the University and football coaches William "Spike" Dykes, Ronn Reeger, and Rudy Maskew in their official and individual capacities asserting claims based on civil RICO, breach of contract, negligence, breach of fiduciary duty, and fraud. The allegations arose from conduct that occurred while Gaines was involved with the Tech football program between the fall of 1990 and the summer of 1994, where Gaines claims that the coaches and other University employees engaged in an illegal scheme to attract and exploit players while maintaining their NCAA eligibility.

Gaines alleges that he was initially promised help from the coaches in selecting classes and was assured an opportunity to play football at Tech and guaranteed that he would play in the NFL. However, he claimed that he merely received a series of academic schedules with non-core classes at Tech and other junior colleges from "football friendly" professors and correspondence classes that were arranged by the football coaches. Gaines was even enrolled in one class without his knowledge, which he discovered only when the correspondence school called to inform him of his successful completion of several exams.

The catalyst for Gaines' complaint arose from his injury during a work-out while preparing to satisfy a physical education course conditioning requirement. Dykes and Maskew had enrolled Gaines in this course over the summer of 1994. Gaines was told by Tech's team trainer that his knee injury was only a sprain, and he did not refer Gaines to a doctor. Because of this injury, Gaines was not able to complete the physical education class requirements and was academically ineligible for the fall 1994 football season.

Gaines subsequently left Texas Tech and received a contract to play for the New England Patriots, but that contract was declared void by the Patriots when his physical examination disclosed that he had a torn right anterior cruciate ligament and other possible damage to his knee.

The court dismissed Gaines' civil RICO claim against Texas Tech and each of the coaches in this official capacity on the ground that Eleventh Amendment immunity should bar his recovery under this theory. The court found that Gaines did not show that defendants had waived sovereign immunity or that Congress clearly intended to abrogate a state's sovereign immunity in a civil RICO claim.

Next, the court considered a motion to dismiss the civil RICO claim against the defendants in their individual capacity. Even though no specific injury to Gaines' business or property had been shown, the court did not dismiss this claim because it did not appear beyond a doubt that he would be unable to plead any facts to establish this injury. The court, however, observed that RICO does not allow recovery for physical injury or resulting pecuniary consequences and stated that Gaines' voided football contract is not compensable under this legal theory.

The court granted Gaines' motion for an opportunity to amend his complaint, but warned that his pendant state law claims would be dismissed if he is unable to plead an actionable RICO claim.

By James Kincade

PECULIAR MARITAL PROPERTY CHARACTERIZATION ISSUES INVOLVING ATHLETES AND ENTERTAINERS

By Katherine A. Kinser[1]

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I. Introduction

Representation of a professional athlete and entertainer is a challenging and demanding task. An attorney occupying this role not only has to deal with routine issues but will face unique problems solely because of a client's profession. This paper will address some of the specialized family law problems that arise out of representing athletes and entertainers. Because of the very nature of their work, professional athletes and entertainers are compensated differently than the average individual. Further, because of the high visibility athletes and entertainers enjoy, they are afforded many economic opportunities, such as endorsements, which are not afforded the average individual. This paper will examine the peculiar marital property issues that an attorney needs to be prepared to address in his or her representation of a professional athlete or an entertainer.

II. Contracts, Bonuses, Incentive Clauses & Divorce

Athletes who perform under contract and those who do not can be segregated into athletes who play for a team versus those who perform individually. This section does not apply to athletes who perform for themselves, such as professional golfers and tennis players, whose income is based solely on their performance at individual events and do not receive a fixed salary. This can make valuation of an individual athlete's income very speculative. However, the number of professional individual athletes is quite small compared to the number of professional athletes playing team sports. Accordingly, most of your clients will be athletes playing for a team who have signed a contract. Obviously, the terms of the contract can have a tremendous effect on what your client, the athlete, may be awarded upon divorce.

Contracts of employment for professional athletes and entertainers are very similar. While most professional athletes are paid on a game-by-game basis, many entertainers are paid on a show-by-show basis. However, very few contracts, whether for athletes or entertainers, are exactly alike. Many sports organizations such as Major League Baseball, the National Football League and the National Basketball Association provide standard player contracts, but these are often subject to significant revision. Similarly, groups such as the Screen Actors Guild only provide for a minimum level of compensation for their members; the terms and conditions for those earning more than the entry level actor will vary considerably. Another similarity between professional athletes and entertainers is that both groups routinely receive money before their services are performed or fully completed. Athletes receive signing bonuses and incentive clauses, and entertainers get many of the same types of financial rewards. Up-front money is very common for successful actors and actresses to secure their agreement to be in certain shows or films. Similarly, a television network may pay an option fee to the entertainer simply to retain the right to eventually produce a television show or movie. Likewise, a high profile author may command an advance prior to beginning work on a book. One of the main distinctions between professionals in the entertainment industry and other fields is that work done in the entertainment field can be revenue producing for a potentially long period of time. For example, television shows can be syndicated, and movies can be re-released or marketed as videotapes, with the actor receiving residuals upon subsequent sales.

A. Contracts: Guaranteed and Otherwise

Divorce cases involving athletes and entertainers who are contractually obligated to an organization present unique issues to the family law practitioner because of the interesting valuation problems presented by a professional contract. The concept that work completed during the marriage can continue producing income for a long period of time creates potential valuation problems. Essentially, the threshold question presented is whether future payments to an athlete or an entertainer according to his/her contract are subject to division at divorce. In a routine case, a party's future income would not be subject to division by the court because it would qualify as that party's separate property. *See Eggemeyer v. Eggemeyer*, 554 S.W.2d 137 (Tex. 1977).

1. Sports Law Cases

Very few courts have addressed the issue of how to allocate income from a professional athlete's contract in the context of a divorce. *In re: Marriage of Anderson*, 811 P.2d 419 (Colo. App. 1990)(professional basketball player with the Portland Trail Blazers); *In re: Marriage of Sewell*, 817 P.2d 594 (Colo. App. 1991)(professional football player with the Denver Broncos); *Chambers v. Chambers*, 840 P.2d 841 (Utah App., 1992)(professional basketball player with the Phoenix Suns). A review of these cases makes evident two general conclusions: 1) courts are more likely to construe cash in hand as divisible marital property; and 2) if an athlete must perform services post-divorce, courts are inclined to view the contract as not divisible at divorce.

a. *In re: Marriage of Anderson*

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In *Anderson*, the principal issue on appeal concerned whether Richard Anderson's contract with the Portland Trail Blazers was a marital property asset subject to division. *Anderson*, 811 P.2d at 419. The decree of divorce between the parties was entered on March 1, 1989, while Richard Anderson was still under a three-year contract with the Portland Trail Blazers. The contract provided that he was to receive three, yearly, lump sum payments for the 1988 through 1991 seasons. *Id.* The terms of the contract provided that: (1) on October 1 and December 1, 1988, he was to receive payments totaling $267,000 after taxes; (2) he would receive a payment of $475,000 in December, 1989; and (3) he would receive a payment of $575,000 in December, 1990. At the time the decree of divorce was entered, Richard Anderson had already received payments totaling $267,000. The trial court ruled that the money due under the husband's NBA contract, including the payment he had already received, was not marital property, but rather income for Anderson's future services. Id. at 420.

The NBA player contract was not admitted into evidence. However, both Richard Anderson and his attorney agent testified as to its terms. The terms of the contract provided that payment under the contract was guaranteed if: (1) he died; (2) he sustained an injury during an NBA game or an official practice session; (3) he had a mental breakdown or disability; (4) he was terminated for lack of skill; or (5) he was traded away by the team. Payment was not guaranteed, however, if: (1) he sustained an injury unrelated to NBA game or practice; or (2) he failed to pass a physical exam at the beginning of a season. As stated above, Richard Anderson had already received the first of the three lump sum payments due under the contract and had passed his physical for the 1988/89 season.

On appeal, Ms. Anderson argued that the contract was marital property and based this argument on a series of cases holding that a spouse's compensation which is deferred until after dissolution of marriage, but fully earned during the marriage, is marital property. *See In re: Matter of Vogt*, 773 P. 2d 631 (Colo. 1989)(contingent attorney's fees). On appeal, Mr. Anderson argued that the contract is not property, but merely future income. *In re: Marriage of Faulkner*, 652 P. 2d at 572 (Colo. 1982).

The appellate court ruled that the money Anderson had already received was marital property and not future income. *Anderson*, 811 P. 2d at 420. The Court noted that this money was received during the marriage and was cash on hand. The court further noted that Anderson had already passed his physical for the 1988/89 season, and if he died, became mentally or physically disabled, played poorly, was fired, or traded away, he was still entitled to retain that first lump sum payment. *Id.* The court took a different view, however, with respect to the two future lump sum payments. It merely stated that the payments to be received for the 1988/89 and 1990/91 seasons did not constitute marital property; rather, they constituted future income. Accordingly, the two future lump sum payments were not divisible upon divorce, and the appellate court remanded the case with instructions to the trial court to divide the first lump sum payment that was already received.

b. *Chambers v. Chambers*

The court of appeals in Utah reached a similar result in *Chambers v. Chambers*. When Erin Jo Chambers and Thomas Chambers were divorced on November 30, 1990, Chambers was in the midst of a five-year contract with the Phoenix Suns. He had completed two years of the contract prior to divorce. At trial, the court ruled that payments for the remaining three years of the contract were post-marital income and not subject to division. The court of appeals focused on when the right to salary would accrue and relied upon precedent, holding that "the essential criterion is whether a right to the benefit or asset has accrued in whole or in part during the marriage. To the extent that the right has so accrued it is subject to equitable distribution." *Woodard v. Woodard*, 656 P.2d 431 (Utah 1982). Applying this analysis, the appellate court upheld the trial court's ruling and held that payments to be received for the final three years of Chambers' contract were future income and not marital property to be divided. The court noted that "Mr. Chambers' future income will be derived from his playing basketball during the entire term of his contract, rather than from some past effort or product produced during the marriage. Furthermore, his right to the benefit of that salary will accrue at that time, and did not accrue during the course of the marriage." *Chambers*, 840 P.2d at 844.

The court also seemed to rely on the fact that the payments were not certain to occur because "the contract payments will only be made provided that Mr. Chambers does not suffer injury, illness, disability or death as a result of participation or involvement in any one of a number of off court activities." *Id*. at 844-45. The fact that the payments were subject to some divestiture appeared to convince the court that the remaining payments were future income.

c. *Sewell v. Sewell*

In another Colorado case, the court of appeals had to characterize future earnings to be received under an NFL player's contract. In *Sewell*, the husband was a professional player for the Denver Broncos football team. The parties were granted a divorce on December 20, 1989, four days prior to the husband's sixteenth and final regular season football game. The trial court awarded Sewell's wife a share of his earnings for the final 1989 regular season game and the ensuing 1989/1990 playoff bonus. Citing *Anderson*, the appellate court stated "the rule is that compensation that is either received or fully earned during a marriage is marital property subject to equitable distribution." *Sewell*, 817 P. 2d at 596. It overruled the trial court and held that Ms. Sewell should not have been awarded any of Sewell's earnings for the final regular season

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game and the playoff bonus because those amounts were not actually earned by Sewell until after the effective date of the decree of dissolution. *Id.*

The *Anderson*, *Chambers*, and *Sewell* courts focused on the fact that the players still had to perform services after the date of the divorce. Despite the numerous guarantees contained in Richard Anderson's contract, the court still found this was future income and not a vested right. Accordingly, at least in some jurisdictions, it appears that as long as there is some possibility of future earnings being divested and the athlete must play subsequent to the divorce, money owed under the contract will be characterized as future income rather than a marital property asset to be divided at divorce.

2. Proper Characterization of Guaranteed Contracts

The three cases referenced above are the only reported cases interpreting professional athletes' contracts. It is also important to note that two of these cases were decided by Colorado courts. In other jurisdictions the law is unsettled.

It is doubtful that a contract without substantial guarantees would ever be held to constitute marital property, subject to division, unless its proceeds had already been received. This is because the marital estate does not actually own the money yet; it is simply expected to be received in the future. Texas courts have repeatedly held that future contingent economic interests are too remote to divide at divorce. *Vibrock v. Vibrock*, 549 S.W.2d 775, 778 (Tex. App. -- Fort Worth 1977, writ ref'd n.r.e., 561 S.W.2d 776 (Tex. 1977) (future income on renewal commissions from insurance policy written during marriage cannot be awarded because its existence was too tenuous); *Echols v. Austin, Inc.*, 529 S.W.2d 840 (Tex. App. -- Austin 1975, writ ref'd n.r.e.) (bonus awarded to husband after marriage was not community property, because the bonus was contingent and based on the board of directors' discretionary judgment after divorce); *Cunningham v. Cunningham*, 183 S.W.2d 985 (Tex. App. -- Dallas 1944 no writ) (future renewal commissions on insurance premiums were held to be a mere expectancy, and not part of the community estate).

Most players who sign professional contracts have only an expectancy of receiving future income. It is not a vested or guaranteed right. The standard NFL player's contract has numerous provisions which will allow termination before all money due under the contract has been received. Accordingly, an NFL player who signs the standard NFL player's contract is in substantially the same position as any other at-will employee, whose termination ends one's salary.

Courts are more likely to find a contract that is substantially guaranteed to be marital property, rather than merely future income. Several valid arguments support this characterization.

If the contract is entered into during the marriage, it is presumptively divisible marital property in most states. The inception of title rule provides that property acquired during the marriage takes the status of separate or community property at the time of its acquisition and its status becomes fixed at that time. *Welder v. Welder*, 794 S.W.2d 42 (Tex. App. -- Corpus Christi 1990, no writ). The inception of title rule applies to both real and personal property. *Id.* It should also be noted that, in both common law and community property states, property acquired during the marriage is presumptively divisible marital or community property. *See* Tex. Fam. Code § 5.02; *Price*, 69 N.Y.2d 8, 503 N.E.2d 684 (1986).

Arguably, some professional sports contracts signed during the marriage will presumptively be marital property. In a sense this is no different from the act of signing a deed of trust during the marriage that makes a house presumptively marital property. In theory, this should primarily place the burden of proving that the contract is not marital property on the athlete.

Underlying this argument is the proposition that the contract is sufficiently guaranteed to be viewed as a vested right and not a mere expectancy. The extent to which a contract must be guaranteed before it is legally characterized as more than an expectancy is unclear. It is notable that the *Anderson* court treated his contract as only future income although it was guaranteed if: (1) he died; (2) he sustained an injury during an NBA game or an official practice session; (3) he had a mental breakdown or disability; (4) he was terminated for lack of skill; or (5) he was traded by the team. *Anderson*, 811 P.2d. at 420. This contract can be reasonably viewed as substantially guaranteed. However, it was nevertheless not judicially classified as a divisible marital property right. Under *Anderson*, this income due under a contract is a vested right only when the possibility of the contract being terminated is very slight.

Another argument that could be made is that the time, toil, talent and effort of the marital partnership secured the contract in the first place. A guaranteed contract is a relatively rare occurrence in most fields, and arguably the marital partnership enabled the athlete to attain such a contract. Guaranteed contracts are rarely given to rookies, so anyone receiving one is likely to have played several years in his chosen profession. Because the marital estate places the athlete in a position to obtain this sort of contract, it should be entitled to a share of the contract's proceeds. This would give rise to a claim for reimbursement under Texas law because the parties' community estate has benefitted the husband's separate estate to the community's detriment. Reimbursement claims are equitable in nature and are never mandatory; rather, they are available at the discretion of the trial court.

B. Bonuses

The introduction of the NFL salary cap in the 1990s opened the floodgates for teams to pay signing bonuses to NFL players. The proliferation of these signing bonuses, which are prorated over the duration of the contract, has occurred as NFL teams try to outmaneuver the salary cap. Of

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course, signing bonuses may represent only a small financial reward compared to the bonuses athletes can receive as a result of meeting incentives. Bonuses may be awarded for making the playoffs, making an all-star team, or reaching a certain performance level. The Chicago White Sox baseball team recently contracted with a pitcher for a $10,000.00 bonus each time he is selected the American League Pitcher of the Week or Pitcher of the Month. Unfortunately for this pitcher, he must be nominated by the team. This section will address how bonuses have been viewed by courts in the context of a divorce.

1. NFL Salary Cap & Divorce

In the National Football League, it is rare to hear of a marque player signing a contract without a significant signing bonus. This has become standard practice because of the realities of the NFL salary cap. A signing bonus helps an NFL team stay under the cap as follows.

The NFL salary cap is fixed at a certain amount each year. Counted against this cap are the players' base salary and signing or performance bonuses. When an NFL club gives a signing bonus to a player, the amount of that bonus is spread equally throughout the number of years of the contract, as it applies to the yearly salary cap. Assume a player signs a contract with a length of five years and a $10 million signing bonus. The net effect of this will be that the $10 million signing bonus will count $2 million per year against the cap during the length of the contract. If the player is cut during the term of the contract, the remaining portion of the bonus is accelerated and applied to the final year of his service. This is why NFL clubs occasionally have essentially non-contributing players on their roster who were signed to a large signing bonus and have several years left on their contract, but cannot be cut because of the adverse impact on the salary cap.

In essence, an NFL club may set the amount of a player's base salary artificially low if he receives a large signing bonus. Most contracts of this nature are structured with a term of three years or more, with low base salaries during the initial years that escalate during the last years of the contract. Because it is presumed that the NFL salary cap will go up each year, it is beneficial to defer charges against the cap to later years. Some NFL contracts are now structured so long that a player will never realistically continue playing through the end of his contract.

So what does this discussion of "capenomics" have to do with family law? Potentially a lot when your client has received a large signing bonus and is now going through a divorce. The realities of the NFL salary cap have made a signing bonus much more significant than it first appears. It is no longer a small financial reward for inking the contract, but a substantial portion of the player's total income under his contract. It can be argued that a signing bonus, or a large portion of it, is really a form of future income, even if it has already been paid to the player.

2. Characterization of the Signing Bonus

The argument that a signing bonus actually constitutes future income is based on equitable considerations. The court must be persuaded to recognize the realities of the NFL salary cap. Put another way, you must try to argue substance over form in determining which assets are part of the marital estate.

First, it must be recognized that the court is likely to consider a signing bonus that has already been received by the parties as a vested marital property right. A Texas court has defined the word "vested" as "a fixed right of present or future enjoyment to which there is no condition precedent." *Anderson v. Menefee*, 174 S.W.2d 904, 908 (Tex. App.-- Fort Worth 1951, writ ref'd). Therefore, although the court probably will view the signing bonus as a vested asset, it is the lawyer's job to show the court that this properly should be characterized as future income. In the case of a retirement benefit, courts often consider whether the benefit was earned during the course of the marriage to determine if it is divisible. *Cearley v. Cearley*, 544 S.W.2d 661 (Tex. 1976) (future military pension benefits which may or may not be received and which will be earned during the marriage constitute divisible property). Thus, the court must be convinced that the signing bonus was actually not earned during the marriage. Although the signing bonus may be actually received during the marriage, it may be in exchange for the athlete agreeing to take less salary in the future. The NFL's salary cap policy takes this into consideration and distributes the impact of a signing bonus on the team salary cap over the lifetime of the contract.

This kind of reasoning may appeal to a court. Consider asking the court to treat the signing bonus the same way it is calculated by the NFL. If this argument is successful, only a portion of the signing bonus would be characterized as divisible marital property. The remainder of the signing bonus would be allocated over the remaining years of the contract as future income, just as the base salary is allocated.

Acceptance of a signing bonus in return for accepting a lower base salary during the early years of the contract can be compared to a corporation offering employees a lump sum payment to retire early. Often a company will offer a highly compensated employee some type of subsidy to induce the employee to take an earlier retirement. This is not a mere altruistic gesture by the company, but an attempt to induce a highly compensated employee to retire early, so he can be replaced by a less costly employee or the position eliminated altogether.

Similarly, NFL teams do not pay players large signing bonuses because they want to reward the player for signing the contract. They pay a signing bonus to maneuver around the NFL salary cap and free up more money to sign other skilled players, thereby making the team more competitive.

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The player has to forego the right to earn more money in base salary because he accepted the signing bonus. Texas case law supports the position that a payment to induce an employee to retire early is not a benefit which is earned or accrued during the employee's tenure, but is merely an incentive to get the employee to retire early, thereby benefitting the company financially. *See Whorrall v. Whorrall*, 961 S.W.2d 32, 37-38 (Tex. App. -- Austin 1985, writ ref'd) (payment from IBM to induce an employee to retire was not to reward past services, but to induce the retirement of a highly ranked employee). The court might be persuaded to view a signing bonus the same way because the player is giving something up in the future to get the bonus. The court needs to be convinced that the signing bonus was not to reward past or current services, but actually to compensate the athlete for future services.

The main obstacle in successfully arguing that a signing bonus is not marital property is the fact that the marital estate has already received payment. Even if a signing bonus is subject to forfeiture, a court is likely to characterize the bonus as a vested property right. In this regard, a Texas court has stated "the possibility that a property right may be subject to total or partial forfeiture, does not destroy its character as a vested property right for the purposes of division on divorce." *Ables v. Ables*, 540 S.W.2d 769 (Tex. App. -- Waco 1976, no writ).

3. Forfeiture of Signing Bonuses

The division of a signing bonus on divorce can also create additional problems if that bonus is subject to subsequent forfeiture. Assume a player has just signed a new four-year contract with a $2 million signing bonus. The contract also provides that the player must complete the full length of his contract or return a pro rata share of the signing bonus, in relation to the number of seasons he missed. The day after he receives his $2 million check, his wife files for divorce. At trial, the court finds the signing bonus is marital property and gives each party $1 million of the bonus. Two years into the contract, the player is injured and is cut by the team. The team then demands $1 million of the signing bonus back from the player for the last two years of the contract he missed.

You represent the player. What do you do? If this issue was not addressed in the original decree of divorce, your client may be out of luck and stuck with the full amount of liability owed to the club. *See Harris v. Holland*, 867 S.W.2d 86, 88 (Tex. App. -- Texarkana 1993, no writ) (abuse of discretion for trial court to award husband credit in recognition of potential future tax consequences in the event of sale of property awarded to the husband). If you are not successful convincing the trial court that a signing bonus is future income, then it is incumbent on you to emphasize to the court that professional athletic careers are tenuous at best. If retention of the signing bonus is conditioned on the player's continued employment, stress that the risk of forfeiture of this bonus is extremely high, especially in professional football.

A New York court has taken judicial notice of the fact that "in professional football, there are no guarantees." *Gastineau v. Gastineau*, 573 N.Y.S.2d 819, 821 (N.Y. Supp. 1991). The *Gastineau* court considered whether Mark Gastineau had dissipated a marital asset when he quit the New York Jets while married. *Id.* At the time Gastineau quit, he was still under contract, and the court found that he had dissipated marital assets in the amount of what he would have earned had he played the entire year. His wife claimed that Gastineau further dissipated a marital asset because he also failed to play football the following year. *Id.* The court refused to recognize this dissipation claim and stated that "variables such as age, how an athlete plays, the ability of other players seeking to fill his position, as well as possible injuries sustained during the season, make it impossible to determine with certainty, whether or not Mark Gastineau would have resigned." *Id.* at 821. Use this type of reasoning to convince the court that even if the signing bonus is divided, it should take into consideration the tenuous nature and short length of a professional athlete's career, as well as the possibility the bonus must be returned.

Lastly, point out to the court that many athletes have extreme difficulty in making money outside of their chosen athletic profession. *Id.* An athlete may make substantially all of his lifetime earnings during what is often a very short playing career. This may convince the court to characterize signing bonuses as consistent with the reality of professional sports.

B. Incentive and Playoff Bonuses

Incentive and playoff bonuses also present tricky characterization issues in divorce proceedings because of the difficulty in determining "when are they actually earned?" Most athletes have contract provisions for additional payments if they reach certain goals during the season or seasons. For purposes of this paper, these will be referred to as "incentive bonuses." The principal issue with incentive bonuses is when are they no longer a mere expectancy but rather earnings subject to the court's power to divide them.

1. When Does the Incentive Bonus Vest?

This type of problem can be illustrated by the following example. Assume your client is a professional baseball player. He is a solid veteran player who has good, but not spectacular, numbers. In his contract is an incentive clause providing that if he leads the National League in batting averages, he will receive a $500,000 bonus. It appears this will be the best season of his career, and he is hitting .365 toward the end of August. Coincidentally, his divorce is also set for trial in late August. Two days before trial, a bad pitch shatters his forearm. He is out for the rest of the season. Fortunately, he

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already has the minimum at bats to quality for the National League batting championship. The player trailing him is more than 15 points behind. Although mathematically the number two player might be able to catch him, it is almost impossible. At trial, the wife's counsel argues the bonus is marital property because the husband earned it while playing baseball during the course of the marriage and he is substantially certain to receive it. What is your response? (The above example is purely hypothetical as Major League Baseball teams do not pay incentive bonuses for other than plate appearances, games pitched or game appearances to discourage placing individual goals over team goals.)

The initial response, obviously, is to argue that the bonus is not yet vested and is outside of the parties' marital estate. At this point, it is only a mere expectancy and is not subject to division by the court. The player does not have a present right to the bonus, and there is still a chance that he will not win the batting title.

The counter argument is that, even though the present right to this bonus is not fully matured, it is still divisible marital property. Texas courts have held that "retirement benefits are subject to division as vested contingent community property rights, even though the present right has not fully matured." *Naydan v. Naydan*, 800 S.W.2d 637 (Tex. App. -- Dallas 1990, no writ) *citing Taggart v. Taggart*, 522 S.W.2d 422, 423 (Tex. 1977). Under Texas law, another way to support this argument is to analogize the incentive bonus to retirement rights that have accrued by reason of work performed during the marriage. In the case of retirement benefits, courts will usually consider the benefit to be divisible if it was earned during the marriage. *Cearley*, 544 S.W.2d 661 (Tex. 1976). Because the bonus was earned, in whole, due to time, toil and effort attributable to the community estate, the court may be more inclined to view it as marital property which is divisible. Because of the lack of case law on this specific issue, the question is largely unanswered.

2. The "Gimmie" Incentive Clause

Another situation that can pose problems is when the athlete has a "gimmie" incentive clause in his contract, which he will almost certainly earn in the future. Taken to an extreme, such provision might be a clause in Troy Aikman's contract providing that he will receive a $500,000 bonus if the Cowboys win one game during the 1997/1998 season. Although this example sounds far-fetched, teams have used this type of arrangement to defer income payable under the player's contract. In general, this is often used by teams to get around the NFL salary cap. When an event is almost certain to happen, the marital estate may include a portion of this money, even though satisfaction of the contingency will occur in the future, after the parties are divorced.

This raises the issue whether the property is sufficiently certain to be received to be divided by the court or whether it is simply a non-divisible, mere expectancy. In determining whether future retirement benefits, subject to divestment, are a mere expectancy or divisible property right, the California supreme court defined the term "expectancy" as "the interest of a person who merely foresees that he might receive a future beneficence, such as the interest of an heir apparent . . . or of a beneficiary designated by a living insured who has the right to change the beneficiary . . . as these examples demonstrate the defining characteristic of an expectancy is that the holder has no enforceable right to his beneficence." *In re: the Marriage of Brown*, 15 Cal. 3d 838, 845, 126 Cal. Rptr. 633, 544 P.2d 561 (1976). The court held that pension benefits were not gratuities, but part of the consideration earned by the employee and represented a form of deferred compensation for services rendered. *Id.*

By contrast, other courts have taken a more restrictive view. *Lentz v. Lentz*, 457 N.Y.S. 2d 41 (1982) (the husband's non-vested pension was not marital property subject to equitable distribution); *In re: Marriage of Ward*, 657 P.2d 979 (Colo. App. 1982) (where husband's pension was subject to total divestment, it would not be considered marital property, despite the fact that complete divestment would only occur if both employment terminated prior to age 55 and death occurred before age 55). In general, the community property states are more liberal in allowing a spouse to claim an interest in retirement and pension benefits. Tingley & Svalina, MARITAL PROPERTY LAW, Chapter 10 at 11 (1994). (This paper is not intended to be a treatise on the law of expectancy in all 50 states but merely points out issues that you should be prepared to address when representing a professional athlete.)

3. Playoff Bonuses

Almost all athletes playing with a professional organization will receive some form of additional compensation if their team is successful in reaching post-season competition. One court has specifically addressed the issue of division of playoff money in the context of a divorce proceeding. In *Sewell*, the trial was held December 20, 1989, four days prior to the husband's sixteenth and final regular season game. At that time his team had already qualified for the playoffs. The court held that compensation that is either received or fully earned during the marriage was marital property subject to equitable distribution. However, the court concluded that the playoff money was not actually earned until after the effective date of the decree of dissolution and, accordingly, was not subject to distribution. *Sewell*, 817 P.2d at 596.

The *Sewell* court did not elaborate, but it can be inferred that it viewed this income as not actually being earned during the marriage because Sewell still had to participate in post-divorce playoff games to earn it. This is consistent with other jurisdictions which consider post-divorce income not to be subject to division. It is also important to note the *Sewell*

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court's statement that compensation must be fully earned during the marriage to be subject to division. If you apply this rationale to other situations where a divorce occurs prior to the playoffs, then the athlete's spouse is unlikely to ever receive any of the playoff bonus money, because the bonus is not fully earned during the marriage. The athlete still must perform some services post-divorce, i.e., participate in the playoff games, practices, etc.

It is possible, however, that the manner in which different sports structure their playoff bonuses will affect whether a bonus is deemed marital property or not. For example, in the National Football League, the player will receive an additional game check for the wild card round of the playoffs, the divisional round and so on. By contrast, in other sports, after a team has qualified for the playoffs, the players are entitled to additional compensation. In the later situation, applying the Colorado rule, it may be successfully argued that the compensation received was fully earned during the marriage. Most sports structure playoff bonuses differently, so it is important to understand how this will impact your particular client. For example, Major League Baseball has an entirely different structure than football. Playoff bonuses for players are based upon a percentage of the "gate" during the playoff series. During the first round of the playoffs, 60% of the gate for the first three games is allocated to the teams, with the winning team receiving a larger share. During the second round of the playoffs and the World Series, the participating teams share 60% of the gate of the first four games. The players are not actually paid their shares until after the season. Therefore, after a player participates in a playoff series, this playoff income is earned, although it will not be paid until later and likely constitutes a divisible marital asset.

D. The Entertainment Arena: Print, Television, Film and Beyond

The entertainment arena is rapidly changing. Old distinctions between mediums are beginning to blur. Widespread use of the Internet and its still evolving nature have changed the way many people think about the entertainment medium. As with most other fields, the law will likely struggle to keep up with the changes. In representing a professional entertainer or spouse, it is important to investigate all the possible mediums through which a professional's work might be displayed or sold such as print, radio, television, film, video, the Internet, and computer software media. This section considers some of the characterization and valuation problems that can arise in your representation of a professional entertainer. There are issues created by the valuation and characterization of projects completed during a marriage but will earn income after the marriage is over. There are also problems with money that is paid during the marriage for work that is to be completed post-divorce. This section also addresses some practical problems in discovering the value of what an entertainer has created and presents some ideas to ensure that the entertainer receives all residuals to which he or she is entitled.

1. Residuals, Unsold Works and Work Done During the Marriage but Paid Post-Divorce

a. A Practical Example: The Unsold Book or Screenplay

A difficult valuation issue exists with respect to what can generically be referred to as the unsold book or screenplay problem. Although the situation may apply in other contexts, this example is based on the situation where one of the parties is a successful author who has previously sold either books, manuscripts, screenplays, or some other form of printed material. Assume that during the course of the marriage, the author has completed work on a book or screenplay, but has yet to find someone willing to publish it. Even for successful authors, getting a book published can take some time.

First, although the non-author spouse always seems to think the work is worth a fortune, it may not be as valuable to him or her as it might be to author. There are several reasons why the value may be significantly lower for the non-author than the author spouse. Unless the non-author is well-connected, he or she will likely have a very hard time getting the opportunity to present the work to a major studio or publisher. If he or she cannot get a foot in the door, the work will not be sold. The non-author spouse could hire an agent, but that will cost money and, without the author's support, the situation may be tenuous.

Second, the work may need substantial revision as the book, television show and/or movie is being planned and produced. If the actual author is not available, it may have significantly less or no value to a studio or publisher. Further, most publishers and studios will want the work to be revised even before it is purchased. If the author is unavailable because ownership of the work has been transferred to the non-author spouse, this would be extremely difficult to accomplish.

If your client is going to receive the property, make sure you know who owns the copyright to the work. There is no value to your client having actual possession of the manuscript if someone else owns the copyright because they are separate pieces of property. *U. S. v. Smith*, 686 F.2d 234 (5th Cir. 1982). Accordingly, for all the above reasons, you probably do not want to have your client awarded the screenplay outright.

Instead of asking the court to award the property to your client, you should ask the court to award your client's spouse the work, with its value considered in determining the overall division of marital property. A potential valuation of the book, script and/or screenplay may be accomplished in several ways, depending on the reputation of the author.

First, if the author is a relative unknown whose work does not have any established marketability, the Screen Writer's

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Guild provides for a minimum level of compensation when certain works are sold. Even if the author is unknown, this figure would be your starting point in calculating the value of the work. If the author has sold previous books or screenplays, he or she probably will be able to command compensation above the minimum. Therefore, it is important to consider the author's previous compensation for published and/or purchased works. Valuation of entertainment works with no history is basically pure speculation. In many cases, there is a very real chance that the work in question may have no value. Accordingly, a property division based on a work's estimated value may not be the best course of action.

Probably the best solution is to award the spouse of the author a percentage of whatever income the author/spouse receives from selling the work. While this may sound simple, there are a number of issues that need to be addressed in implementing this scenario. First, as stated above, a script, screenplay or book rarely goes from start to finish of the process without substantial redrafts. How is the author/spouse to be compensated for this additional effort in the form of revisions after the division of income from the sale of the work has already been ascertained? One method would be to have an independent expert value the amount of work done between the time of divorce and the time of its final version.

The other significant problem in setting up a division based upon each party receiving a percentage of future profits is that the author's economic incentive to market the product effectively must be high enough to accomplish this goal. If the author is going to receive only 30% of the future profits from the work, he or she is not very likely to do a very enthusiastic job selling the project. Rather, the author could simply write a new screenplay or script after the divorce is finalized to prevent any portion of profit from being paid to his ex-spouse. Potentially, having your client be awarded a share of future income from the product may actually do more harm than good. Lastly, make sure your client is given more than an economic interest in the subject work, but also a share of any revenues from spinoffs it may inspire. (*See* § II(D)(c)).

b. Residuals and *Curtis v. Curtis*

In the early years of television, residuals were not common. Simply stated, residuals are additional compensation paid to an entertainer for a subsequent airing of a show in which they appeared. Most actors and actresses were paid strictly by the show under their contracts. Because television was a relatively young industry, syndication of old shows simply did not exist. Accordingly, most actors and actresses never thought to request compensation for future airings of a program in which they appeared. Depending upon an entertainer's stature in the industry, this could be an extremely valuable asset that is not fully realized until after divorce. Depending upon the residual, it could create an income stream for a number of years. Actors and actresses in hit shows are now commanding tremendous salaries for starring in the show. (It is now reported that Jerry Seinfeld is commanding $1,000,000.00 per episode for his show.) While current salary is important, it is also important to remember the value of the income that could be paid from future residuals.

In a family law context, how to, or if to, value this income stream after marriage can be a complicated undertaking. Perhaps the easiest way to deal with residuals is not to value them at all but to award each party a percentage of subsequent income that comes in. However, this method creates problems in and of itself, specifically related to enforcement.

Problems in enforcing an award of residuals was addressed in *Curtis v. Curtis*, 256 Cal. Rptr. 76 (Ct App., 2d Dist., Div. 4, 1989). Tony Curtis divorced his wife, Leslie, in January, 1982. *Id*. at 77. As part of the division of the marital estate, Ms. Curtis was awarded as her separate property "one-half (½) of the community property residuals from the writings and/or performances of Mr. Curtis from the date of the marriage, April 20, 1968, through the date of separation, March 4, 1980." *Id.* However, there was no express listing of Mr. Curtis' writings or performances. The court resolved the dispute, which centered on this ambiguous language, in Ms. Curtis' favor. This litigation could have been avoided with more specific drafting.

c. *Roddenberry v. Roddenberry*: Contract Analysis and the Continuation Theory

The case of *Roddenberry v. Roddenberry*, 51 Cal. Rptr. 2d 907, 909 (Ct. App. 2d Dist., Div. 2, 1996), is an interesting and complicated case from an entertainment and family law standpoint for a variety of reasons. The case contains detailed discussions of contractual analysis of a decree of divorce, submission of several intellectual property theories regarding further development of an original concept, and enforcement of residual interest rights awarded under the decree. The case, which overviews virtually the entire history of the *Star Trek* concept, highlights the need for very specific drafting with defined terms when dealing with awards of intellectual property and residuals. The first paragraph of the Court's opinion illustrates this need:

> The meaning of a term used in the contract is sometimes so obvious to the contracting parties that neither side sees any need for an express definition. Later, after circumstances have changed and new financial incentives have arisen, one side may wish it had a different agreement. Remanufactured memories and new advice then combine to ascribe an updated and previously uncontemplated meaning to the term. This is such a case.

Id. at 909.

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Under California law, the question of whether a series or movie is a continuation of the original idea or concept is irrelevant, until it is determined whether or not the underlying agreement or judgment contemplates continuations being included in the division of profits and/or proceeds. This case is "must" reading for an attorney facing a situation wherein one spouse's idea or original work may result in spinoffs, sequels and the like in one field or multiple fields, such as the *Star Trek* movies, televisions shows, toys, etc.

Several innovative legal arguments were tested in *Roddenberry* that could be used in a number of other scenarios. The argument that sequels and/or spinoffs are merely mutations of the original idea or concept could be analogized to separate property law regarding mutations of separate property or, if the idea or concept was "created" during marriage, then the continuation theory may be valid, depending on the particular circumstances of the case.

2. Options, book advances and money paid during the marriage for work to be completed later

Some successful entertainers, like the most successful athletes, can command their money before any work is actually done. In the entertainment arena, these cash payments can take many forms. They may be paid as an advance for agreeing to write a book or to do a film, or as an option to keep open the right to buy or produce a certain project. The characterization of the advance money paid to an entertainer during the marriage is subject to the same arguments as those relating to a signing bonus paid to a professional athlete. It is likely that a court will view this cash in hand as a vested marital property right. *Anderson v. Menefee*, 174 S.W.2d 904, 908 (Tex. App.--Fort Worth 1951, writ ref'd).

Like signing bonuses, to avoid the community characterization of advances, the court must find that the advance is actually future income. While this may be an extremely difficult task, the degree of difficulty will vary depending on why the money was paid.

At the worst end of the spectrum in terms of characterizing cash in hand as future income are options. Options are paid to hold open the right to buy or develop a certain project until a date in the future. The rationale for making a payment for an option is simply to keep your choices open with regard to whether you will later develop the project and to prevent your competitors from developing it in the meantime. In general, money received for options is the most difficult to characterize as future income because no work is done after the option is paid. Accordingly, it is extremely difficult to argue that the option actually represents payment for future services. An argument could be made that money received from an option represents a form of future income because the receiving party is foregoing the opportunity to currently sell or develop the project. This might be characterized as a type of loss of business opportunity to the parties' estate.

The party will likely have a better chance of having money characterized as future income in the other categories of advances referenced above. Advances paid to write a book or to star in a movie have a far better chance of being characterized as future income because work needs to be done subsequent to the payment of the initial advance. In the case of a successful actor or actress, an advance will usually be paid when they initially sign a contract to do a movie. Subsequent payments will be paid when the movie begins filming and further payment made when filming is complete. This, of course, is subject to any other compensation the actor or actress may receive from residuals or other rights.

The argument for characterizing the advance as future income can be based on two grounds. First, in the interval between the time the advance is paid and a movie starts filming, the actor or actress will have to perform services. They must prepare for their role, which may take many forms. An actor or actress might have to alter their physical appearance to get ready for a movie (*e.g.*, Robert DeNiro in Raging Bull). Actors or actresses might have to do extensive research on the character they are playing. They might have to assist in scouting locations or giving input on the screenplay. All these activities are services that are to be performed subsequent to the payment of the advance. Accordingly, an argument can be made that this advance would simply be the entertainer's salary during the time he is performing the above activities and constitutes future income.

The same rationale would apply to advances received by an author to write a book or other literary material. An argument can be made that an advance paid to the author actually represents his salary or compensation during the time he is researching or writing the book and the time of the next payment. A court might be more inclined to view a book advance as future income if the advance is subject to forfeiture. For example, Joan Collins was sued by her publisher, Random House, for the return of an advance after she submitted two manuscripts deemed by the publisher not to be satisfactory. At trial, the jury found that one manuscript was a finished, publishable work and the other was not. The reason the forfeiture provision might make the court more inclined to hold that an advance is future income is because, not only is future work required, but it must meet a certain standard. This would be one more factor for the court to weigh in its determination of whether the advance is future income and, therefore, separate property.

3. Practical Problems

a. What's Out There?

As shown above in the cases of *Curtis v. Curtis* and *Roddenberry v. Roddenberry*, ambiguities or vagueness in a decree of divorce, agreement incident to divorce, or other

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settlement agreement can lead to additional litigation and unintended results. The best way to prevent this is to be as specific as possible when drafting a decree or agreement incident to divorce. In order to accomplish this, the practitioner must know what property has been created during the marriage.

Whether you represent the spouse or the entertainer, it is imperative that you attempt to determine the specific marketable products that have been created. This can be accomplished in a variety of methods. One suggestion is to use a research company with the resources to conduct a search of the entertainer's data base to advise you, for example, of all the articles or books that an author has ever published. This type of search can also be used to find the movies, television shows, or commercials in which an actor has appeared, radio spots produced by the actor, and any other type of performance or production that may include the voice and/or likeness of the entertainer.

It is virtually impossible to determine whether unsold and purportedly worthless projects created during the marriage will become valuable some day, as did *Star Trek*, as set forth in the *Roddenberry* case above. At the time Ms. Roddenberry agreed to take a one-half interest in "participation profits from *Star Trek*," the interest appeared worthless. The company was over three million dollars in debt to its production company with no future projects contemplated. *Star Trek* was made over twenty years ago, yet the re-release of the movie has made more money than the original release. The importance of attempting to define with precision the property to be divided cannot be overstated.

b. How Do You Know What's Paid?

This is the problem that faced Eileen Roddenberry. Assume your client is awarded one-half of the residuals from a television show's syndication payments. She comes to you and claims she is being shorted on her payments but does not have any supporting evidence. How do you know if her claim is valid without first filing suit and conducting discovery? The likely answer is you will not unless the potential defendant is forthcoming with documents and preliminary negotiations. Even assuming you obtain the documents, your client will likely be skeptical about whether they are valid. Is there any way around this problem? Potentially yes, if the original decree or agreement incident to divorce has certain provisions. The underlying decree could provide that the receiving spouse has a right to a periodic accounting and/or to review tax returns or other financial documents upon request or periodically. It is a very challenging task to determine a mechanism that will allow your client to know for sure whether they are getting the full amount due them. However, any provision you can obtain through negotiation or litigation is better than nothing at all. Be creative and try to come up with innovative solutions that further your client's interests.

III. Endorsements

An athlete or entertainer who has risen to prominence in his or her field of endeavor may be presented with the opportunity to endorse products or make personal appearances. Depending on the size of the market your client is in, he or she may have a great many endorsement opportunities or very few. However, an athlete can often make endorsement money in a local or regional market without being a household name. The family law problem encountered most often regarding endorsements is the situation where an athlete or entertainer has signed an endorsement contract pre-divorce, but will receive compensation and have to perform some services post-divorce. Is future money due under the endorsement contract part of the community or marital estate to be divided by the court at divorce or solely future income? Several competing arguments will be examined.

A. The Marital Estate's Time, Toil and Effort Secured the Endorsement Contract

Like guaranteed contracts, large endorsement contracts are not given to the unknown professional entertainer or athlete. Usually when professionals earn this type of compensation, it is because they have reached the pinnacle of their profession. The argument that the marital or community estate's time, toil and effort procured the contract is even stronger for endorsements than guaranteed contracts. Even with the financial security provided by a guaranteed contract, the athlete must still compete in his particular sport for the length of the contract. With an endorsement contract, the company is paying for your client's status, reputation, marketability, and image as it exists now. If your client does not have the power to sell products now, it is unlikely a company will sign him to an endorsement contract in hopes that he will become a star in the future. (The obvious exception to this is Tiger Woods with Nike.) Accordingly, what the company is paying for is having your client's current status linked with its product and nothing more. This argument can be demonstrated by the example of an athlete doing a television commercial; the company is not paying for the athlete's skill as an actor, but rather for his name recognition and image. This view supports the proposition that future sums of money due under the contract are fully earned at the time the contract was signed and should be considered divisible marital property.

B. Future Services = Future Income

In response to the above argument, your client may come to you and say, "I've got to sit through a day and a half of makeup, perfectionist directors, bad food, and stupid costumes so my ex can take half my money even though we got divorced six months ago." That argument may actually be a good one if the court applies the "compensation received" or "fully earned" test. If your client is going to shoot a commercial six

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months after the divorce, how is the compensation fully earned during the marriage? If this argument is followed, then the compensation received is your client's separate property.

A factor that will likely significantly influence the court is the nature and extent of the services that need to be performed pursuant to the endorsement contract after the divorce. For example, assume that a successful NBA player signs an endorsement contract to make a one-hour public appearance for a local restaurant chain each time it opens a new franchise. Courts will be more likely to view the money to be received under this contract as a divisible marital asset at divorce because the extent of the post-divorce services required are so slight. This might even constitute a fully earned right during the marriage. On the other hand, a contract providing for a player to film several TV commercials over a multi-year period will likely not receive the same treatment by the court. The characterization and division of endorsement money raise many of the same issues that an athlete's player contract does -- does the community have a vested interest? Is the community being awarded future income of the athlete? Is the interest forfeitable, and when is the interest actually earned? Because of these uncertainties, there is no hard and fast rule to apply, and most cases will turn on the specific facts.

C. Morality Clauses and Other Forfeiture Provisions

Although this issue is discussed in the context of endorsement contracts, it could just as easily apply to a professional athlete's contract. Most standard professional athlete contracts, as well as endorsement contracts, contain "morality" clauses. Section 11 of a standard NFL player's contract provides as follows: "[I]f player has engaged in personal conduct reasonably judged by club to adversely effect or reflect on club, then club may terminate this contract." The NBA's uniform player contract also has similar provisions.

In reality, enforcement of these provisions will often vary according to the value of the player's on-field performance. Most professional teams and the league commissioner take action against "middle-of-the-road" players but will often look the other way for a star player's transgressions. A noted example of this is Steve Howe, the left-handed pitcher suspended by Major League Baseball seven times, but who is still playing today. According to the April 23, 1997 issue of the *Dallas Morning News*, he was trying to sign with a minor league team after being cut by the Yankees.

Recently, however, there has been a series of incidents that have caused even the most popular athletes to realize that they can be subjected to the same punishment as the average player. In one of the most publicized incidents, Mike Tyson was suspended indefinitely from boxing after biting off a piece of Evander Holyfield's ear during a heavyweight title bout. The incident cost Tyson millions of dollars in future income and may force him from the ring for life, although he is eligible to apply for reinstatement in July, 1998. Tyson's appeal to endorsers was already non-existent because of his prior conviction for the rape of a beauty pageant contestant in Indiana.

Following the Tyson incident, another prominent sports figure found himself in trouble as the result of his poor judgment. In December, 1997, Latrell Sprewell made himself one of the most infamous players in sports as the result of his actions. During a practice session with the Golden State Warriors, Sprewell took exception to his coach's criticism and attacked him. He allegedly grabbed coach P.J. Carlesimo by the throat and attempted to strangle him. After being pulled off of the coach, Sprewell returned to the locker room to cool off. After a fifteen minute break, Sprewell returned to the practice floor and again attacked Carlesimo and threatened to kill him.

The price for Sprewell's indiscretion has been incredibly high. Following his attack, the Golden State Warriors announced that they were voiding the balance of his contract under paragraph 16(a)(i) of the Uniform Player Contract which prohibits engaging in "acts of moral turpitude." This contract was to pay him $32 million dollars over the next four years. On top of losing his contract, Sprewell also received the longest suspension ever handed out by the NBA. The league's commissioner banned Sprewell from the sport for one year. To add to his problems, Sprewell also lost his endorsement deal with a shoe company.

The results of this suspension have yet to be determined. Currently, Sprewell has hired several lawyers to represent him in grievance actions against the Warriors and the NBA. He is attempting to get his contract reinstated or at least to have the suspension shortened to allow him to sign a new contract with another ball club. According to some sources, Sprewell will likely only lose approximately $7.7 million as the result of his actions. Because of his talent, there are a number of teams who will likely want to sign him when he is cleared to resume playing in the NBA.

Most endorsement contracts contain similar provisions allowing a company to terminate the contract if the athlete violates a "morality" clause of the contract. A recent example of an attempt to enforce such a clause was when a North Texas Toyota Dealer Association sued Michael Irvin for the return of a Toyota Land Cruiser given to him in exchange for his endorsements. Not only did the association want the Land Cruiser back, it also wanted $1.4 million in damages. The lawsuit ultimately was settled out of court.

The way in which a violation of a morality clause will impact family law issues is that it will likely set up a claim for wasteful dissipation of assets. This claim is based upon one spouse's conduct which wrongfully causes the community or marital estate to lose assets. Most jurisdictions allow a court to consider this type of conduct in apportioning the marital

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property upon dissolution of marriage. *See e.g., Baker v. Baker*, 608 N.Y.S. 2d 967, (4th Dept., 1993); *Gastineau v. Gastineau*, 573 N.Y.S.2d 819 (Supp. 1991); *Vannerson v. Vannerson*, 857 S.W.2d 659, (Tex. App. -- Houston [1st Dist.] 1993, writ denied); *Qmazique v. Mosque*, 742 S.W.2d 805 (Tex. App. -- Houston [1st Dist.] 1987, no writ). Accordingly, it is important to inform your client that a violation of a morality clause either in the player contract or in an endorsement contract may have ramifications beyond simply losing the money that was due under that contract.

V. Conclusion

The privileges that result from representing a professional athlete or an entertainer also create unique problems that must be addressed. In this area, the client's profession causes simple issues to become complex, and complex issues to become even more difficult. This article has attempted to point out some family law issues that will potentially arise in connection with your representation of sports or entertainment clients. The complexity of today's professional athletic contracts and corresponding contracts in the entertainment field presents extremely difficult valuation and characterization issues affecting the marital estate upon divorce. Complicating things further are the additions of signing bonuses and incentive clauses to contracts. In the entertainment area, issues are made more difficult because it is sometimes virtually impossible to determine the value of literary property that has been created during the marriage. These are not easy issues and there is not an overwhelming body of case law upon which to rely for guidance. In negotiating your client's contract or divorce decree, focus on the impact the structure of the contract or decree will have in the future. In the end, while the representation of the professional athlete and entertainer can be exceedingly challenging, it is rarely boring.

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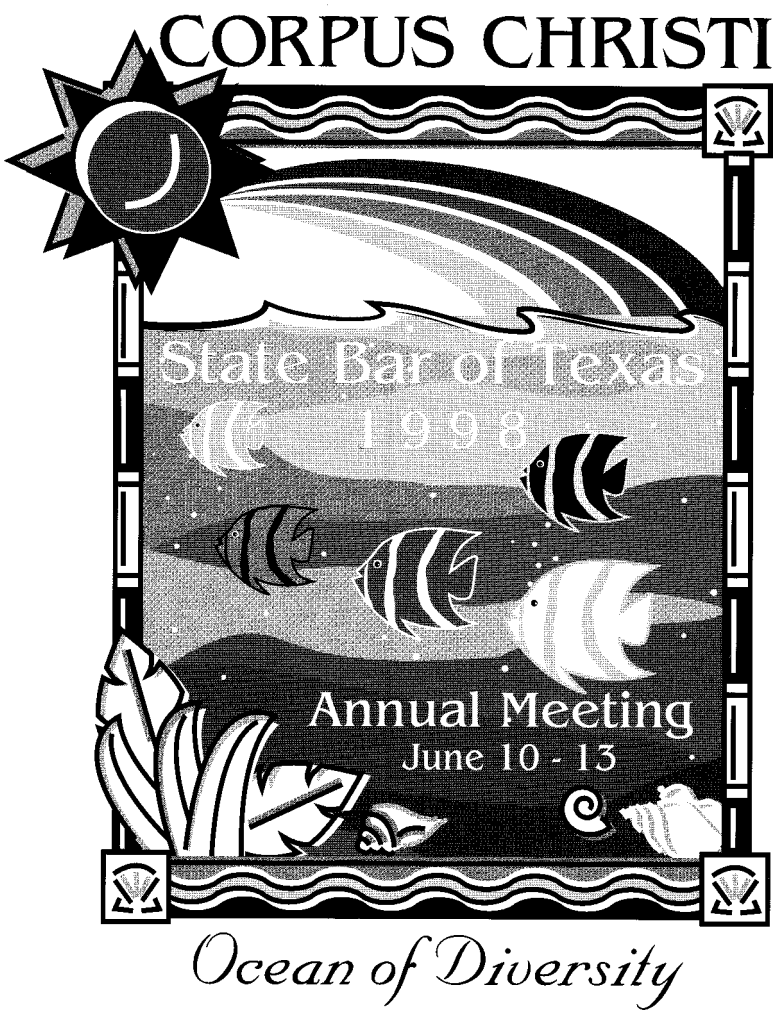

From the Editor

The Texas Entertainment and Sports Law Journal is published quarterly. If you are not on the mailing list and wish to be included, forward your name and address to the Section Treasurer along with a check for $20 payable to the Entertainment and Sports Law Section and indicate that you wish to be included on our mailing list.

We are now accepting advertisements in the Journal. Anyone wishing to advertise in the Journal, should contact the Editor for information on getting your ad in the Journal. Ad rates are: 1/8 page: $50.00; 1/4 page: $100.00; 1/2 page: $150.00; 3/4 page: $175.00 and Full page: $200.00.

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Student Writing Contest

The editors of the TEXAS ENTERTAINMENT AND SPORTS LAW JOURNAL ("Journal") are soliciting articles for our third annual writing contest for students currently enrolled in Texas law schools for the best article on a sports or entertainment law topic. This year's winner was Kevin Joyce, a law student at South Texas College of Law, with his article entitled *The Ethics and Dynamics of Negotiating a Professional Sports Contract.*

The winning student's article will be published in the Journal. In addition, the student may attend either the annual Texas entertainment law or sports law seminar without paying the registration fee.

This contest is designed to stimulate student interest in the rapidly developing field of sports and entertainment law and to enable law students to contribute to the published legal literature in these areas. All student articles will be considered for publication in the Journal. Although only one student article will be selected as the contest winner, we may choose to publish more than one student article to fulfill our mission of providing current practical and scholarly literature to Texas lawyers practicing sports or entertainment law.

All student articles should be submitted to the editor and conform to the following general guidelines. Student articles submitted for the writing contest must be received no later than June 15, 1998.

Length: no more than twenty-five typewritten, double-spaced pages, including any endnotes. Space limitations usually prevent us from publishing articles longer in length.

Endnotes: must be concise, placed at the end of the article, and in Harvard "Blue Book" or Texas Law Review "Green Book" form.

Form: typewritten, double-spaced on 8½ x 11" paper and submitted in triplicate with a diskette indicating its format.

We look forward to receiving articles from students. If you have any questions concerning the contest or any other matter concerning the Journal, please call Matthew J. Mitten Professor of Law and Articles Editor, Texas Entertainment & Sports Law Journal, at 713-646-1845.

UT Law CLE

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Friday, March 20, 1998

12:30 p.m. **Late registration** -- Ballroom Foyer, Four Seasons Hotel, Austin.
Telephone (512) 478-4500

1:30 p.m. **Concurrent Sessions — (2:00 hours) — *Choose one***

Music 101: In-depth overview of the Music Industry

A brief history of the commercial music industry followed by an overview of specific industry areas, including music publishing, recording and distribution, artist management and talent agency representation.

OR—

Film: Riding shotgun with the independent film producer

Examination of the agreements related to developing and clearing rights in the screenplay, agreements with talent, securing financing, and negotiating production and distribution agreements.

3:30 p.m. **BREAK**

3:45 p.m. **Concurrent Sessions — (1.50 Hours) — *Choose one***

Music 102: Representing the band from startup to stardom

A Close examination of the decisions, contracts, conflicts and strategies inherent in the business of being a band.
Donald S. Passman, Gang, Tyre, Ramer & Brown, Inc.
Beverly Hills, CA

OR —

Film: Licensing music for television and motion pictures

An in-depth discussion of the issues, procedures and agreements involved in licensing of existing music for television and film productions from the perspectives of the producers seeking to license material and the music publishers and record companies who control the music sought.
Philip Self, Sony/ATV Music Publishing, Nashville, TN
Steven Winogradsky, The Winogradsky Company.
North Hollywood, CA

5:15 p.m. **Adjourn**

Saturday, March 21, 1998

9:00 a.m. **Concurrent Sessions — (1.00 hour) — *Choose one***

Music Publishing Basics I

An introduction to music publishing a review of songwriter, co-publishing and administrative agreements and a discussion of royalty sources and related contracts, such as public performance, mechanical, synchronization and print licenses.
Steven Winogradsky, The Winogradsky Company.
Los Angeles, CA
Jeffrey Brabec, Chrysalis Music, Los Angeles, CA

OR —

Multimedia: Licensing rights in the era of new media

Discussion of the issues presented by licensing of prerecorded musical compositions, video, film and other protected materials for CD-ROM and Internet products.
Carol T. Contes, Attorney, Los Angeles, CA

10:00 a.m. **Concurrent Sessions — (1:00 hour) — *Choose one***

Music Publishing Basics II

A continuation of the issues and materials presented in part I.
Steven Winogradsky, The Winogradsky Company.
North Hollywood, CA
Jeffrey Brabec, Chrysalis Music, Los Angeles, CA

OR —

Entertainment Law Update: International, Legislative and Judicial

Legal developments of importance to the entertainment industry: what happened, what didn't, and what's still pending … in the international arena, in Congress, and in the courts.
Lionel Sobel, Editor, *Entertainment Law Reporter,*
UCLA School of Law, Santa Monica, CA

11:00 a.m. **BREAK**

11:15 a.m. **Agents, Managers and Lawyers — Overlapping roles and ethical considerations — (1.00 hour of ethics/PR credit)**

The functions of agents, managers and lawyers in the music business often overlap — sometimes de facto, sometimes by design. Cases, statutes, rules of professional conduct and regulations will be analyzed to give the entrepreneurial attorney ethical guidance while functioning in these roles.
Kenneth Abdo, Esq. Abdo & Abdo, P.A.,
Minneapolis, MN

12:15 p.m. **Luncheon Talk — 0.50 hour — Optional**

Tickets may be purchased in advance only for $25.00

Speaker: Brooke A. Wharton, Attorney and author,
Los Angeles, CA

Topic: Dancing with the Devil: Writing for the Entertainment Industry

Brooke A. Wharton is an entertainment lawyer and author. Her recent book, *The Writer Got Screwed (But Didn't Have to), A Guide to the Legal and Business Practices of Writing for the Entertainment Industry,* Debuted at No. 7 on the *Los Angeles Times* Bestseller List.

1:45 p.m. **Concurrent Sessions — (1.50 hours) — *Choose One***

Developing an entertainment law practice in Texas — (1.50 hours)

A panel of Texas lawyers will discuss the nature and economics of their entertainment law practice, ways to develop a practice, how to find and keep clients, and sources of information.
Moderator: Mike Tolleson, Mike Tolleson & Associates, Inc.
Edward Z. Fair, Attorney, Houston
David Garcia, Jr., Attorney, San Antonio
Ladd A. Hirsch, Haynes and Boone, LLP, Dallas
Michael Norman Saleman, Attorney, Austin

OR —

Advanced music publishing — (1.50 hours)

Two experts will discuss a variety of advanced publishing issues, including superstar deals, sub-publishing, self-publishing, buying music catalogs, building a publishing company, and film and television issues.
Richard W. Perna, Hamstein Publishing Company, Inc., Austin
Edward Pierson, Warner/Chappell Music, Los Angeles, CA

3:15 p.m. **Break**

3:30 p.m. **Recording Contracts: Indies v. Majors: Do the math — (1.50 hours)**

Comparing and contrasting major and independent label deals with an emphasis on the economic impact on the artist.
Moderator: Daniel M. Satorius, Abdo & Abdo, P.A.,
Minnesota, MN
Kenneth Abdo, Esq., Abdo & Abdo, P.A.,
Minnesota, MN
Michael J. Pollack, The Electra Group,
Warner Communications, New York, NY

5:00 p.m. **Adjourn to reception for speakers and registrants**

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