

Dist. Seneca County 1996), citing *Smith v. Howard Johnson Co., Inc.*, 67 Ohio St. 3d 28, 1993-Ohio-229, 615 N.E.2d 1037 (1993). Elements number four and five would be hard to prove in a domestic case, and the social networking sites will respond to subpoenas carefully drafted, as long as the information is available within the retention period of the site.

Although people behave the same as they have always done, honorably or less than stellar, the advances of Internet connectivity between them has opened a whole new world to the domestic relations practitioner.

ENDNOTES

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RISK AND UTILITY IN THE DIVISION OF ASSETS

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Ask any practitioner in domestic relations about asset division. Their likely response is that, in general, asset division will be a 50-50. Talk about retirement funds compared to other assets. The approach might be to convert retirement funds, which are pretax assets, into equiva-

lent post tax assets, by subtracting the likely tax effect of distributing these funds, or perhaps to recognize two classes of assets, pre-tax assets and post tax assets and divide each class equally. Talk about built-in capital gains or tax loss carry forwards and the response is usually a glazed expression. Talk about the value of a closely held business and the response is usually to call the attorney's usual business valuation expert.

Put two business valuation experts together and they can often come up with a "compromised" number that represents the value of the business. The attorneys and judge will breathe a sigh of relief and the case is expected to go forward to a logical conclusion. The business owner spouse is to take the business asset and the non-business spouse is to get other assets of equal value, or a series of payments from the business owner spouse equal to one-half of the business value.

So why do some business owners seem so unhappy with the process? Many attorneys attribute the reaction to the so called "double dip," the process where the same income stream that is used to value the business is used again to set spousal support and child support. There are good arguments on both sides and I will leave that analysis for another day. Today we are going to explore the process of business valuation and division of assets by an even more horrible specter—the application of economics and statistics to the valuation of a business, and ultimately the income level associated with it. For those of you who are still with us, I promise that I will look at the problem and one will not need to remember your economics or statistics—just follow some logic.

In many instances the value of a business is broken down into two factors, the expected income from the business, and the risk associated with the business. The larger the expected income from the business, the larger the business value. The larger the risk associated with the business, the smaller the business value. In two sentences we have the crux of many valuations—and one does not even have to look at a mathematical equation.

Forget about how risk is developed. Instead, concentrate on income.

I spoke of "expected" income. If one looks at the history of any business, it will be noted that income is rarely the same from year to year. It may be growing, it may be erratic, and lately it may have fallen off a cliff. Add words like "double dip recession," mix in terms such as debt balloon payments, and observe the flow of jobs from the United States to China and India and one begins to wonder how anyone can project business income in the future. In the fourth quarter of 2007, one of the

national economic reports talked about how real estate problems were pretty much played out and predicted a "soft landing" (a flattening out of growth—but not to worry) for the coming year. The same economic report in the fourth quarter of 2008 recited how it was difficult to "ignore the elephant in the room"—and the elephant was the recession.

Yet talk is still about "expected income". The truth is that "expected income is really an average of a range of possible income results. Remember the bell shaped curve from high school? The teacher was asked if he or she "graded on a curve?" Of course, what was wanted was that the grade needed for an "A" or "C" would be less than the usual percentage if the top grade was somewhat low. What one fails to realize is that in a bell shaped curve, for every A there is an F and for every B there is a D. The importance of the bell shaped curve, with regard to expected income is as follows:

- The midpoint (middle) of the curve represents the expected income.
- One half of the curve contains levels of income that are higher than the expected income (usually the right half).
- One half of the curve contains levels of income that are lower than the expected income (usually the left half).
- Statistically the right half occurs as often as the left half.
- The middle, "expected income," which is a single point, has virtually no probability of occurring.

How much higher or lower various levels of income occur depend on a statistical term known as the standard deviation. The best way to imagine the concept is to realize that every point to the left or the right represents possible levels of income higher or lower than the expected income.

Assume the following:

- The expected level of income per year is \$100,000.
- At a certain distance to the right the expected level of income is \$200,000.
- At the same distance to the left the expected level of income is zero.

To a statistician, the meaning is that while the expected level of annual income is \$100,000, the probability that the level of income realized above \$200,000 is the same as the probability the level of income will be zero or below!

Most people are somewhat risk adverse, meaning they tend to want to avoid risk. This same example could be

IRS EXAMINATIONS

The process of the IRS selecting a return for examination usually begins in one of two ways.

First, computer programs are used to identify returns that may have incorrect amounts. These programs may be based on information returns reported from other sources, such as 1099s and W-2s. Or the computer may identify returns based on studies of past examinations, or on certain issues identified by specific IRS compliance projects.

Second, information from outside sources may indicate that a return may have incorrect amounts. These sources may include newspapers, public records, and individuals. If the IRS determines that the information is accurate and reliable, they may use it to select a return for examination.

If your return is selected for examination, you can choose to represent yourself, have someone go with you, or you can authorize a representative to appear on your behalf.

BRIEFLY NOTED

CUSTODY

IN RE: THE MATTER OF A.B. AND K.B.

Citation: 2010-Ohio-3569, 2010 WL 3011239 (Ohio Ct. App. 5th Dist. Tuscarawas County 2010)

The County Job and Family Services Agency filed a complaint alleging the parents' two children to be neglected and dependent due to Mother's attempted suicide in the presence of the children, domestic violence issues of the parents, Father's drug use, and housing concerns. A reunification plan was put into place for both parents.

The Agency filed a motion for permanent custody because some of the concerns leading to its initial involvement had not been remedied. The trial court terminated the parental rights of the parents and awarded permanent custody to the Agency. Father appealed.

The Fifth District Court of Appeals affirmed, determining that there was relevant, competent, and credible evidence supporting the trial court's decision. Although Father complied with most his case plan, there were unsatisfied portions that were not completed. Father had undergone a psychological evaluation, but did not take the psychiatrist's recommended medication. Father con-

tinued to live with Mother, despite that they argued and fought constantly and were unable to communicate. The couple's therapist testified that the dynamics between Mother and Father would be detrimental to the children.

Based upon the foregoing, the trial court's decision was not against the manifest weight of the evidence.

PARENTAL RIGHTS AND RESPONSIBILITIES

BRISTOW V. BRISTOW

Citation: 2010-Ohio-3469, 2010 WL 2892759 (Ohio Ct. App. 12th Dist. Butler County 2010)

Mother and Father were married in 1990. The marriage produced two (2) daughters, H.B., born on May 5, 1992, and G.B., born on March 1, 2000. Following the final divorce hearing, the trial court issued its decision, naming Father as the children's legal custodian and residential parent. The decision contained a visitation schedule, restricting Mother's time with H.B. to counseling sessions at H.B.'s discretion. Regarding G.B., the trial court granted Mother visitation on alternating weekends, pursuant to the Butler County Standard Parenting Time Order.

On appeal, Mother argued that the trial court abused its discretion in granting custody of G.B. to Father or, in the alternative, in failing to grant her the Guardian Ad Litem's recommended visitation time with G.B. After reviewing the record, the appellate court did not find that the trial court abused its discretion in granting custody of G.B. to Father. The appellate court found that Mother's explosive temper, G.B.'s fear of her Mother's future actions toward Father, the GAL's recommendations, and G.B.'s counselor's concerns all supported the trial court's decision concerning custody and visitation.

IN RE S.F.T.

Citation: 2010-Ohio-3706, 2010 WL 3159582 (Ohio Ct. App. 12th Dist. Butler County 2010)

The juvenile court granted permanent custody of Mother's four children to the local department of job and family services. The children had been living in a home with no utilities, with very little food, Mother had a history of domestic violence and mental health problems.

Mother's case plan for reunification required the participation in psychological counseling. Mother discontinued the counseling and the prescribed medication. Mother could not maintain a stable residence and pay