

Marital and Civil Union Property In Connecticut

A Guide to Resources in the Law Library

Compiled by Law Librarians of the Connecticut Judicial Branch

All light is valuable on a darken path

DeQuincy

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Chapter 1

Breach of Promise to Marry and Return of Engagement Ring and Courtship Gifts

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SCOPE: Bibliographic resources relating to action for breach of promise to marry and the return of engagement ring and courtship presents.

- DEFINITIONS:**
- **APPEAL PENDING:** Thorndike v. Demirs, No. CV05-5000243S (J.D. Waterbury at Waterbury, Jul. 26, 2007), 44 CONN. L.RPTR. 30, 37 (October 15, 2007), 2007 Conn. Super. LEXIS 1944 (Conn. Super. Ct. July 26, 2007). "A minority of jurisdictions has adopted a 'no-fault' approach, i.e., the modern trend, holding that once an engagement is broken, the engagement ring should be returned to the donor, regardless of fault." See Table 1-6.
 - **CURRENT LAW:** "Although actions arising from alienation of affection or from breach of promise to marry are barred by Gen. Stat. 52-572 (b), the statute does not preclude an action for return of things given in reliance of false and fraudulent representation nor affect rights and duties determinable by common law principles." Rabaglino v. King, No. 0325871 (Conn. Super. Ct., Jud. District, Hartford-New Britain at Hartford, Jan. 15, 1991), 1991 Ct. Sup. 686, 687, 1991 WL 27914, 1991 Conn. Super. LEXIS 85.
 - "A cause of action for fraudulent misrepresentation is an exception to the Heart Balm Act where one cohabitant claims she was fraudulently induced to transfer money or property to the other cohabitant." Weathers v. Maslar, No. CV 99 0088674, 2000 Ct. Sup. 1197, 1201, 2000 WL 157543 (Jan. 31, 2000).
 - "The Supreme Court decision in Piccininni v. Hajus, 180 Conn. 369, 429 A.2d 886 (1980), outlines the right of a donor to obtain reimbursement for expenditures occurred in contemplation of marriage. The case holds that the so-called Heart Balm statute, General Statutes § 52-572b, regarding breach of a promise to marry, only bars claims of humiliation, mental anguish and the like, but does not affect "rights and duties determinable by common law principles." *Id.*, 372. Thus, a donor of money or property that were given

"conditional upon a subsequent ceremonial marriage" may recover when the condition is broken by the donee. *Id.* An action for false and fraudulent representations will also be permitted. *Id.*, 373. The dissent by Chief Justice Peters points out that a donor can regain money or property obtained by the donee as a result of "trickery, cunning and duplicitous dealing" under the doctrine of "unjust enrichment;" *Id.*, 375-76; which is the remedy invoked by the plaintiff in the second count of his complaint. Thus, the plaintiff has pleaded a valid cause of action and the resolution of plaintiff's application turns to whether he has shown probable cause that he will recover under unjust enrichment." Greene v. Cox, No. CV 95 0147177 (Conn. Super. Ct., Jud. District, Stamford-Norwalk at Stamford, Dec. 19, 1995) 1995 Ct. Sup. 14120, 14122, 1995 WL 780893, 1995 WL 780893.

STATUTES:

- CONN. GEN. STAT. (2007)
§ 52-572b Alienation of affections and breach of promise actions abolished

HISTORY:

- 1967 CONN. ACTS 275 (Reg. Sess.)
"No action shall be brought upon any cause arising after October 1, 1967 from alienation of affection or from breach of a promise to marry."
- 1982, CONN. ACTS 160 §238. An act adopting a technical revision of Title 52.

COURT CASES:

- Thorndike v. Demirs, No. CV05-5000243S (J.D. Waterbury at Waterbury, Jul. 26, 2007), 44 CONN. L.RPTR. 30, 37 (October 15, 2007), (October 15, 2007), 2007 Conn. Super. LEXIS 1944 (Conn. Super. Ct. July 26, 2007). "A minority of jurisdictions has adopted a 'no-fault' approach, i.e., the modern trend, holding that once an engagement is broken, the engagement ring should be returned to the donor, regardless of fault." **[APPEAL PENDING. See Table 1].**
- Dore v. Devine, No. CV00-0176933S (Conn. Super. Ct., Jud. District of Stamford-Norwalk at Stamford, Oct. 6, 2000), 2000 WL 1682709, 2000 Conn. Super. LEXIS 2764. "The defendant administrator argues that all four counts are legally insufficient because of the Connecticut Heart Balm Act, General Statutes § 52-572b. Initially, the court notes that this case does not involve, whatsoever, the alienation of affections, and, therefore, any propositions that the defendant uses from such cases as an analogy, are unpersuasive. The narrow issue in this case is whether the plaintiffs claims fall within a 'cause arising from . . . breach of a promise to marry,' as stated and prohibited by § 52-572b. After consulting the cases which have interpreted § 52-572b, this court finds that the plaintiffs claims are not barred by the Heart Balm statute."
- Gural v. Fazzino, No. CV94-70800 (Conn. Super. Ct., Jud. District, Middlesex at Middletown, April 19, 1996), 16 CONN.

L. RPTR. 552, 553, 1996 WL 526803. "An exception to the Heart Balm Act allows common law principles to govern actions for the return of property allegedly transferred in reliance on fraudulent representations"

- Mancini v. Wyzik, No. CV93-0520862 S (Conn. Super. Ct., Jud. District, Hartford-New Britain at Hartford, Apr. 13, 1994), 1994 WL 146336, 1994 Conn. Super. LEXIS 944. "Although it would appear that certain portions of the complaint allege a breach of promise to marry, other portions of the complaint appear to allege a breach of contract wherein defendant's promises caused the plaintiff to sell her own home and to expend substantial funds to complete renovations in a home purchased by the defendant. The court has jurisdiction to hear such a breach of contract."
- Cromwell v. Danforth, 222 CONN. 150, 151, 609 A.2d 654 (1992). "This is an action seeking the return of a gift allegedly made in contemplation of marriage and seeking an accounting of jointly owned real property"
- Rabaglino v. King, No. 0325871 (Jan. 15, 1991), 1991 Ct. Sup. 686, 686-687. "The plaintiff brings this action on the expressed grounds of infliction of emotional distress. It is brought in two counts, the first in intentional infliction of emotional distress and the second by reckless conduct. The factual basis alleged that the plaintiff, while employed by a business in which the defendant had a partnership interest, was seduced both physically and emotionally by him. By reason of the seduction and the promise of the defendant to divorce his wife and marry the plaintiff, she left her husband and has suffered emotional distress. The plaintiff alleged that the conduct of the defendant, having knowledge of the past medical history of the plaintiff including hospitalization and treatment for mental or emotional disorders, had intended to cause her emotional distress or alternatively he was reckless in that he knew or should have known that mental distress would be the result of his conduct."
- Piccininni v. Hajus, 180 Conn. 369, 373, 429 A.2d 886 (1980). "The plaintiff here is not asking for damages because of a broken heart or a mortified spirit. He is asking for the return of things which he bestowed in reliance upon the defendant's fraudulent representations. The Act does not preclude an action for restitution of specific property or money transferred in reliance on various false and fraudulent representation, apart from any promise to marry, as to their intended use."
- White v. Finch, 3 Conn. Cir. 138, 141, 209 A.2d 199 (1964). "The question as to the ownership of the engagement ring is unique in this jurisdiction The Roman Law provided for the return of betrothal gifts when the parties mutually

dissolve the contract and for forfeiture by the party at fault when the repudiation was unjustified The prevailing view in the United States and England follows the Roman Law in placing weight upon the fault of the parties. Hence, it has been held that where an engagement is broken owing to the fault of the donor, he may not recover the ring."

WEST KEY NUMBERS:

- *BREACH OF MARRIAGE PROMISE ACTIONS*
#13 Defenses
#24-30 Damages
- *GIFTS* #34

DIGESTS:

- ALR DIGEST: *Breach of promise*
- DOWLING'S DIGEST: *Breach of Promise*
- CONNECTICUT FAMILY LAW CITATIONS: *Premarital relationships*

ENCYCLOPEDIAS:

- 11 C.J.S. *Breach of Marriage Promise* (1995).
- 38A C.J.S. *Gifts* (1996).
- 12 AM. JUR. 2D *Breach of Promise* (1997).
§§ 1-9. Agreement to marry
§§ 10-16. The breach; right of action and remedies
§§ 17-21. Defenses
§§ 22-24. Damages
§§ 25-30. Practice and procedure
- 38 AM. JUR. 2D *Gifts* (1999).
§ 73. Gifts in contemplation of marriage
§ 74. —Presumption arising from engagement
§ 75. —Engagement rings and jewelry
§ 76. —Effect of infancy of donee
§ 77. Recovery based on fraud or unjust enrichment
- Elaine Marie Tomko, Annotation, *Rights In Respect Of Engagement And Courtship Presents When Marriage Does Not Ensure*, 44 ALR5th 1 (1996).
- Annotation, *Measure And Elements Of Damages For Breach Of Contract To Marry*, 73 ALR2d 553 (1960).

LAW REVIEWS:

- S.G. Kopelman, *Breach of Promise to Marry: Connecticut Heart Balm Statute—Piccininni v. Hajus*, 13 CONNECTICUT LAW REVIEW 595.
 - I. Facts and Procedural History of Piccininni
 - II. Supreme Court Decision
 - III. History of Heartbalm Acts
 - IV. New York Policy—Conditional Gift Actions
 - V. Criticism: Tort Action for Fraud

COMPILER:

- Lawrence Cheeseman, Supervising Law Librarian, Connecticut Judicial Department, Law Library at Middletown, One Court Street, Middletown, CT 06457. (860) 343-6560. [EMAIL](#)

Table 1 No Fault Approach

No Fault, Modern Approach	
No-fault approach	"A minority of jurisdictions has adopted a 'no-fault' approach, i.e., the modern trend, holding that once an engagement is broken, the engagement ring should be returned to the donor, regardless of fault." <u>Thorndike v. Demirs</u> , No. CV05-5000243S (J.D. Waterbury at Waterbury, Jul. 26, 2007), 44 CONN. L.RPTR. 30, 37 (October 15, 2007).
Modern view	"So this court is left to decide whether it will follow the single 43-year-old precedent of <i>Finch</i> or join the modern view cases that fault should not be a factor in determining who keeps an engagement ring. The modern view is that the gift of the engagement ring is a conditional gift, the condition being the subsequent marriage of the parties. If the marriage does not take place, the condition has not been met and the ring should be returned to the donor. After a review of numerous cases and A.L.R. treatises, this court is convinced that the modern no-fault rule is clearly the better rule and comports with the modern trends on handling family matters on a no fault basis."

Chapter 2

Antenuptial (Premarital) Agreements in Connecticut

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- Antenuptial or prenuptial agreement “means an agreement between prospective spouses made in contemplation of marriage.” CONN. GEN. STAT. § 46b-36b (2007).
- “An antenuptial agreement is a type of contract and must, therefore, comply with ordinary principles of contract law.” *McHugh v. McHugh*, 181 Conn. 482, 486, 436 A.2d 8 (1980).
- **Civil Unions:** “Wherever in the general statutes the terms ‘spouse’ . . . shall be included in such use or definition, and wherever in the general statutes . . . a civil union shall be included in such use or definition.” Conn. Gen. Stats. § 46b-38oo(2007)
- “The validity of prenuptial contracts in Connecticut is governed, since October 1, 1995, by the Connecticut Premarital Agreement Act (the act). General Statutes § 46b-36a et seq. Prior to the act, our Supreme Court had set forth the standards for determining the validity of a prenuptial agreement in *McHugh v. McHugh*, 181 Conn. 482, 436 A.2d 8 (1980)” *Dornemann v. Dornemann*, 48 Conn. Sup. 502, 510, 850 A.2d 273 (2004).
- Antenuptial agreements are also known as premarital agreements.

Section 2.1

Current Law

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SCOPE

Bibliographic resources relating to the validity of antenuptial agreements in Connecticut following passage of the Connecticut Premarital Agreement Act

DEFINITIONS:

- **CONNECTICUT PREMARITAL AGREEMENT ACT:** "This act shall take effect October 1, 1995 and shall apply to any premarital agreement executed on or after that date." 1995 CONN. ACTS 170 § 11 Reg. Sess.).
- **PREMARITAL AGREEMENT:** "means an agreement between prospective spouses made in contemplation of marriage [or civil union]." CONN. GEN. STAT. § 46b-36b(1) (2007).
- **PROPERTY:** "means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, tangible or intangible, including income and debt." CONN. GEN. STAT. § 46b-36b (2) (2007).
- **PURPOSE:** "The legislative history confirms that the purpose of the act is to recognize the legitimacy of premarital contracts in Connecticut, not to constrain such contracts to a rigid format so as to limit their applicability." Dornemann v. Dornemann, 48 Conn. Sup. 502, 519-520, 850 A.2d 273 (2004).
- **STATUTORY DEFENSES:** "Prenuptial agreements signed after October 1, 1995 can be defeated in Connecticut by statutory defenses: 'Such party did not execute the agreement voluntarily.' 'The agreement was unconscionable when it was executed.' 'The agreement was unconscionable . . . when enforcement is sought.' 'Such party was not provided a fair and reasonable disclosure of the amount, character and value of property, financial obligations and income of the other party.' Gen. Stat. § 46b-36g(a)(1), (2) and (3). These statutory defenses outlined above raise the essential defenses of 'coverture, duress, fraud, illegality not apparent on the face of the pleadings.' Attacks on the validity of a prenuptial agreement must be raised by Special Defenses according to Practice Book rule." McKenna v. Delente, No. FST FA 04-0200412 S (Super. Ct. J.D.

Stamford-Norwalk at Stamford, Dec. 20, 2007).

- **FAIR AND REASONABLE DISCLOSURE OF HIS FINANCIAL CIRCUMSTANCES:** “refers to the nature, extent and accuracy of the information to be disclosed, and not to extraneous factors such as the timing of the disclosure.” Friezo v. Friezo, 281 Conn. 166, 183, 914 A.2d 533 (2007).
- **REASONABLE OPPORTUNITY:** “With respect to whether the plaintiff had a ‘reasonable opportunity’ to consult with legal counsel, there is no requirement that a party actually seek or obtain the advice of counsel, only that he or she be afforded a reasonable opportunity to do so.” Friezo v. Friezo, 281 Conn. 166, 204, 914 A.2d 533 (2007).
- **INDEPENDENT COUNSEL:** “a ‘reasonable opportunity to consult with independent counsel’ means simply that the party against whom enforcement is sought must have had sufficient time before the marriage to consult with an attorney other than the attorney representing the party’s future spouse.” Friezo v. Friezo, 281 Conn. 166, 204, 914 A.2d 533 (2007).

STATUTES:

- CONN. GEN. STAT. (2007)
 - Connecticut Premarital Agreement Act
 - § 46b-36a. Short title: Connecticut Premarital Agreement Act
 - § 46b-36b. Definitions
 - § 46b-36c. Form of premarital agreement
 - § 46b-36d. Content of premarital agreement
 - § 46b-36e. Effect of marriage on premarital agreement
 - § 46b-36f. Amendment or revocation of premarital agreement after marriage
 - § 46b-36g. Enforcement of premarital agreement
 - § 46b-36h. Enforcement of premarital agreement when marriage void
 - § 46b-36i. Statute of limitation re claims under premarital agreement
 - § 46b-36j. Premarital agreements made prior to October 1, 1995, not affected
- 9C UNIFORM LAWS ANNOTATED 35 (2007).
 - Uniform Premarital Agreement Act

CASES:

- Friezo v. Friezo, 281 Conn. 166, 204, 914 A.2d 533 (2007). “General Statutes § 46b-36g (a) (4) specifically provides that the party against whom enforcement of the prenuptial agreement is sought must prove that ‘[s]uch party was not afforded a reasonable opportunity to consult with independent counsel.’ The operative terms for the purpose of this analysis are ‘reasonable opportunity’ and ‘independent

counsel.’ Although this court has not yet had occasion to construe § 46b-36g (a) (4), appellate courts that have interpreted identical statutory language invariably have held, consistent with the plain statutory wording, that a ‘reasonable opportunity to consult with independent counsel’ means simply that the party against whom enforcement is sought must have had sufficient time before the marriage to consult with an attorney other than the attorney representing the party’s future spouse. ”

- Dornemann v. Dornemann, 48 Conn. Sup. 502, 521,850 A.2d 273 (2004). “The plaintiff’s claim that enforcement of the premarital agreement would be unconscionable has been reserved and will be addressed at the trial of the present case. The plaintiff executed a prenuptial agreement, after adequate financial disclosures, willingly and voluntarily. There was no coercion or undue influence. The defendant’s failure to sign the contract prior to the marriage did not invalidate the contract. He assented to the bargain by marrying the plaintiff on April 13, 1997.”
- Linger v. Sadowski, No. FA 01-0728258, Judicial District of Hartford at Hartford, 2002 WL 1492257 (May 31, 2002). “The defendant’s arguments are persuasive. Section 46b-36g(3) does not require total accuracy in the disclosure of assets. It merely requires ‘fair and reasonable disclosure.’ This will vary from case to case depending upon various factors including the size of the total estate in comparison to the extent of the failure to disclose. In this case, the failure to disclose the real estate interest is neither unfair nor is it unreasonable in light of the size and character of the decedent’s estate. The total value of the estate is actually greater than the value disclosed by the decedent although the character of the assets is slightly different. This is not unfair to the plaintiff.”
- Pierce v. Pierce, No. FA 00-0725342, 2001 Ct. Sup. 9189, 9191, 2001 WL 950208 (Jul. 16, 2001). “The plaintiff claims that the agreement of the parties should control whereas the defendant argues against its enforcement. It should be noted that the defendant had entered into a pre-nuptial agreement in her previous marriage whereas the plaintiff had not. It is clear from the defendant’s own testimony that all of the statutory criteria set forth in Connecticut General Statute Sec 46b-36g(c). The defendant, however, claimed the plaintiff failed to mention he had a timeshare and had been married more times than he had told the defendant and she would not have married him otherwise. The timeshare omitted by the plaintiff in his premarital disclosure was worthless and was sold at a loss. Further, the court finds that the defendant would have married the defendant notwithstanding the number of his previous marriages. The defendant saw her marriage to the plaintiff as a way out of

financial difficulty for her and her daughter."

- Wilkes v. Wilkes, 55 Conn. App. 313, 319-320, 738 A.2d 758 (1999). "The plaintiff claims that this 'mid-nuptial' agreement should be considered the same as premarital agreements that are protected by General Statutes § 46b-36g with respect to disclosure. Section 46b-36g (a) (3), which is applicable to premarital agreements executed on or after October 1, 1995, the effective date of Public Acts 1995, No. 95-170, precludes enforcement of a premarital agreement where, prior to execution, a party is 'not provided a fair and reasonable disclosure of the amount, character and value of property, financial obligations and income of the other party. . . .' The plaintiff asserts that, even if § 46b-36g does not apply, the agreement was not fair and equitable as required by General Statutes § 46b-66. There is no merit to this claim because § 46b-36g (a) (3) requires 'fair and reasonable disclosure,' as opposed to more formal financial affidavits, and the trial court had the benefit of formal financial affidavits at the time it decided that the agreement was fair and equitable."

DIGESTS:

- ALR Digest: *Husband and Wife* (I. Antenuptial Contract)
- L.Ed. Digest: *Husband and Wife* § 33

WEST KEY NUMBERS:

- *Husband and Wife* # 29

ENCYCLOPEDIAS:

- 41 C.J.S. *Husband and Wife* (2006).
 - § 118. Prenuptial agreements, in general
 - § 119. Proper subject-matter of agreement
 - § 120. Validity, in general
 - § 121. Existence and effect of confidential or fiduciary relationship between parties
 - § 122. Necessity of independent legal counsel
 - § 123. Financial disclosure and independent knowledge
 - § 124. Consideration, in general
 - § 125. Marriage
 - § 126. —For or against whom consideration operative
 - § 127. Form, formal requisites
 - § 128. Execution and acknowledgement
 - § 129. Delivery
 - § 130. Registration
 - § 131. Construction, in general
 - § 132. Determination of rights
 - § 133. Termination, in general
 - § 134. Effect of separation or divorce
 - § 135. Timing of commencement of action
 - § 136. Enforcement, generally
 - § 137. Evidence

- 41 AM. JUR. 2d *Husband and Wife* (2005).
 - § 81. Prenuptial settlements and agreements
 - § 82. Public policy
 - § 83. —Contemplation of dissolution or divorce
 - § 84. Enforceability of certain provisions
 - § 85. —Support, maintenance, or alimony upon divorce
 - § 86. Enactment of statutes, in general
 - § 87. Agreements under the Uniform Premarital Agreement Act
 - § 88. Retroactive application of statute
 - § 89. Status as contract, generally
 - § 90. Formal requirements
 - § 91. Consideration
 - § 92. Fairness standards, generally
 - § 93. Fairness and unconscionability
 - § 94. Under the Uniform Premarital Agreement Act
 - § 95. Change in circumstances; infidelity; abandonment
 - § 96. Confidential relationship
 - § 97. Duty to disclose
 - § 98. —Extent of duty
 - § 99. Fraud; misrepresentation
 - § 100. Voluntariness
 - § 101. —Conditioning marriage upon execution of agreement
 - § 102. Independent legal advise
 - § 103. General rules; liberal construction
 - § 104. Intent of parties
 - § 105. Introductory recitals; other rules
 - § 106. Discharge; release; alteration by parties

**TEXTS &
TREATISES:**

- 8A ARNOLD H. RUTKIN ET AL., CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS (2d ed. 2000).
 - Chapter 48. Premarital Agreements
 - § 48.1. In general
 - § 48.2. Written or oral agreements
 - § 48.3. Effect of noncompliance with Statute of Fraud
 - § 48.4. Requisites for preparation and execution
 - § 48.5. Disclosure requirements
 - § 48.6. Legal representation in connection with agreement
 - § 48.7. Allowable purposes—Generally
 - § 48.8. Particular clauses—Generally
 - § 48.9. ___ Separate property
 - § 48.10. ___ Joint purchases and contracts
 - § 48.11. Enforcement of agreements—Generally
 - § 48.12. ___ Specific considerations
 - § 48.13. Amendment or revocation of agreements
- FAMILY LAW PRACTICE IN CONNECTICUT (1996).
 - Chapter 6. The [New] Connecticut Premarital Agreement Act—The Changes And Impact by Deborah J. Lindstrom

- § 6.1. Introduction
- § 6.2. Brief history
- § 6.3. Ante v. Postnuptial Agreement
- § 6.5. McHugh v. McHugh, the prior law
- § 6.6. Contract freedom
- § 6.7. Alimony and child support
- § 6.8. Safeguards
- § 6.9. Conclusion

- 2 ALEXANDER LINDEY AND LOUIS I. PARLEY, LINDEY ON SEPARATION AGREEMENTS AND ANTENUPTIAL CONTRACTS (2d ed. 2007).
Chapter 110. Antenuptial (Premarital) Agreements
 - § 110.60. Definitions
 - § 110.61. Recognition
 - § 110.64. Formal requirements
 - § 110.65. Fraud, duress, and misrepresentation
 - § 110.66. Reasonableness; Unconscionability
 - § 110.67. Disclosure; Knowledge
- 5 ARNOLD H. RUTKIN, GEN. ED., FAMILY LAW AND PRACTICE (2007).
Chapter 59. Antenuptial agreement
 - § 59.01. History and public policy
 - § 59.02. Purpose

LAW REVIEWS:

- Louis Parley, *Premarital agreements in Connecticut. Where We Are And Where We Are Going*, 69 CONNECTICUT BAR JOURNAL 495 (1995).

COMPILER:

Lawrence Cheeseman , Supervising Law Librarian, Connecticut Judicial Department, Law Library at Middletown, One Court Street, Middletown, CT 06457. (860) 343-6560. [EMAIL](#)

Table 1 Connecticut Premarital Agreement Act: House Debate

38 H.R. Proc., Pt. 9, 1995 Sess. (Appendix A)	
"This bill establishes standards and guidelines for premarital agreements. It includes what agreements may have in them, what they can include, and also under what conditions the agreements will be unenforceable."	p. 3210
"The bill specifically provides that a premarital agreement may not have any provisions which adversely affect a child of the marriage and has other details with respect to premarital agreements."	p. 3210
" . . . with the enactment of this legislation, if someone had signed some other agreement or it didn't comply with this statute, would it have the legal effect of a contract anyway?" [Response: p. 3212]	p. 3212
" . . . how about a separate agreement made after the effective date that did not entirely comply with the legislation before us?" [Response: pp. 3212-3213]	p. 3212
" . . . what I'm attempting to get into the record here is whether this is a mandate that the only way you can have a premarital agreement in the state of Connecticut is by following this statute or whether or not two consenting adults following a standard contract type format could, in fact, enter into any type of agreement they care to and still be valid." [Response: p. 3214]	p. 3213
" . . . If a particular clause did not fall within any of the categories in Number 3, would the parties be precluded from contracting freely and openly with regard to that subject matter?" {Response: p. 3217]	p. 3217.
"In Section 5 it provides that an agreement can be modified without consideration in writing after the marriage. So, in essence, its like a will. It's an executory contract, I guess, that can be modified at any time by the parties without consideration. . . . Is a premarital agreement during the course of the marriage similar to a will in that it can be mutually modified in this way?" [Response: pp. 3218-3219]	p. 3217
"Are there any standards contained in this bill which are not contained in the standards that we currently use for unconscionability? I mean would a court have to look to this bill or would the court look to existing law on unconscionability?" [Response: p. 3220]	p. 3219
"The only issue that would be removed from the consideration of a jury in terms of this contract would be the issue of unconscionability. All of these other issues, including whether there was fair and reasonable disclosure, whether there was a voluntary waiver, whether certain things had been complied with in section 6 would all be questions of fact to be determined by the trier of facts and not exclusively by the court. Is that correct? [Response: pp. 3221]	p. 3221
"An agreement that is in effect now, if an individual has an agreement that is in effect currently and modifies that agreement, which law would apply, the law at the time that the agreement was entered into or the law at the time that the agreement was modified? [Response: pp. 3222-3223]	p. 3222.

Section 2.2

Prior Law

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to the validity of antenuptial agreements in Connecticut executed prior to October 1, 1995—the effective date of the Connecticut Premarital Agreement Act

DEFINITIONS:

- “The court’s first inquiry, then, is to ascertain whether the agreement complies with the ordinary principles of contract law and whether its terms and the circumstances surrounding its execution are such as to demonstrate that the parties were aware of their legal rights and their respective assets and liabilities, and proceeded by the agreement to alter those rights in a fair and voluntary manner.” McHugh v. McHugh, 181 Conn. 482, 488, 436 A.2d 8 (1980).
- “It is clear that antenuptial agreements will not be enforced where to do so would violate the state statutes or public policy.” *Ibid.*
- **VALIDITY:** “The validity of prenuptial contracts in Connecticut is governed, since October 1, 1995, by the Connecticut Premarital Agreement Act (the act). General Statutes § 46b-36a et seq. **Prior to the act**, our Supreme Court had set forth the standards for determining the validity of a prenuptial agreement in *McHugh v. McHugh*, 181 Conn. 482, 436 A.2d 8 (1980), as follows: ‘The validity of an antenuptial contract depends upon the circumstances of the particular case. . . . Antenuptial agreements relating to the property of the parties, and more specifically, to the rights of the parties to that property upon the dissolution of the marriage, are generally enforceable where three conditions are satisfied: (1) the contract was validly entered into; (2) its terms do not violate statute or public policy; and (3) the circumstances of the parties at the time the marriage is dissolved are not so beyond the contemplation of the parties at the time the contract was entered into as to cause its enforcement to work injustice.’ (Citation omitted.) *Id.*, 485-86. The act endorses, clarifies and codifies the *McHugh* standards.” Dornemann v. Dornemann, 48 Conn. Sup. 502, 510-511, 850 A.2d 273 (2004). (Emphasis added).

STATUTES:

- CONN. GEN. STAT. (2005)
§ 45a-436. Succession upon death of spouse. Statutory

share.
§ 52-550. Statute of Frauds

CASES:

- Pite v. Pite, No. FA99-0429262S, 2001 Ct. Sup. 2819, 2824-25, 2001 WL 238144 (Feb. 20, 2001). "The existing statute in Connecticut which controls the enforceability of premarital agreements, the Connecticut Premarital Agreement Act, General Statutes § 46b-36a et seq., does not apply to any premarital agreement made prior to October 1, 1995. General Statutes § 46b-36j. Accordingly, the determination of the validity of the parties' prenuptial agreement in this case is governed by the common law."
- McHugh v. McHugh, 181 Conn. 482, 436 A.2d 8 (1980). [Three prong test of validity of antenuptial agreements](#) .
- Parniawski v. Parniawski, 33 Conn. Supp. 44, 46, 359 A.2d 719 (1976). "This state has placed its stamp of approval on a contract entered into in contemplation of marriage in which each prospective spouse released any claim to the property owned by the other at the time of the marriage or thereafter, agreeing that on the death of either, the survivor should have no claim to his or her property."

DIGESTS:

- Dowling's Digest: *Husband and Wife* § 12
- West Key Number: *Husband and Wife* #29

ENCYCLOPEDIAS:

- 41 C.J.S. *Husband and Wife* §79 (1991).
- 41 AM. JUR. 2d *Husband and Wife* §§113-134 (1995).

TEXTS & TREATISES:

- 8A ARNOLD H. RUTKIN ET AL., CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS (2d ed. 2000).
Chapter 48. Premarital Agreements
 - § 48.1. In general
 - § 48.2. Written or oral agreements
 - § 48.3. Effect of noncompliance with Statute of Frauds
 - § 48.4. Requisites for preparation and execution
 - § 48.5. Disclosure Requirements
 - § 48.6. Legal representation in connection with agreement
 - § 48.11. Enforcement of agreements—generally
- FAMILY LAW PRACTICE IN CONNECTICUT (1996).
Chapter 6. The [New] Connecticut Premarital Agreement Act—The Changes And Impact by Deborah J. Lindstrom
 - § 6.5. McHugh v. McHugh, the prior law
- 5 ARNOLD H. RUTKIN, GEN. ED., FAMILY LAW AND PRACTICE (2004).
Chapter 59. Antenuptial agreement
 - § 59.01. History and public policy
 - § 59.02. Purpose
- 2 ALEXANDER LINDEY AND LOUIS I. PARLEY, LINDEY ON SEPARATION

AGREEMENTS AND ANTENUPTIAL CONTRACTS (2d ed. 2004).
Chapter 110. Antenuptial (Premarital) Agreements
§ 110.90. Common law and statutory recognition
of premarital agreements

LAW REVIEWS:

- Louis Parley, *Premarital agreements in Connecticut. Where We Are And Where We Are Going*, 69 CONNECTICUT BAR JOURNAL 495 (1995).
- Emy Sigler, *Elgar v. Probate Appeal: The Probate Court's Implied Powers to Construe and to Enforce Prenuptial Agreements*, 13 CONNECTICUT FAMILY LAW JOURNAL, 61 (1995).
- Lawrence P. Weisman, *Value of Recognizing Antenuptial & Postnuptial Agreements in Pendente Lite Hearings*, 2 CONNECTICUT FAMILY LAW JOURNAL 34 (March 1984).
- Michael A. Meyers, *Requirements and Uses of Prenuptial and Postnuptial Agreements*, 4 CONNECTICUT FAMILY LAW JOURNAL 3 (November 1985).
- Louis Parley, *Antenuptial Agreements In Connecticut: An Analysis Of Mchugh V. Mchugh*, 57 CONNECTICUT BAR JOURNAL 487 (December 1983).
- Arthur E. Balbirer and C. Ian McLachlan, *Survey of 1980 Developments in Connecticut Family Law*, 55 CONNECTICUT BAR JOURNAL_ 39 (February 1981)

COMPILER:

- Lawrence Cheeseman , Supervising Law Librarian,
Connecticut Judicial Department, Law Library at Middletown,
One Court Street, Middletown, CT 06457. (860) 343-6560.
[EMAIL](#)

Table 3: Three Prong Test

McHugh v. McHugh, 181 Conn. 482, 485-486 (1980)

"Antenuptial agreements relating to the property of the parties, and more specifically, to the rights of the parties to that property upon the dissolution of marriage, are generally enforceable where three conditions are satisfied:

- (1) the contract was validly entered into;
- (2) its terms do not violate statute or public policy; and
- (3) the circumstances of the parties at the time the marriage is dissolved are not so beyond the contemplation of the parties at the time the contract was entered into as to cause its enforcement to work injustice."

Form and Content

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to the form and content of antenuptial agreements or prenuptial contracts in Connecticut executed after October 1, 1995—the effective date of the Connecticut Premarital Agreement Act

STATUTES:

- CONN. GEN. STAT. (2007)
 - § 46b-36c. Form of premarital agreement
 - § 46b-36d. Content of premarital agreement
 - § 52-550(a). Statute of frauds; written agreement or memorandum
- 9C UNIFORM LAWS ANNOTATED 35 (10-1-95).
 - Uniform Premarital Agreement Act
 - § 2. Formalities
 - § 3. Content

FORMS:

- 9B AM. JUR LEGAL FORMS 2D *Husband and Wife* (2002 revision)
 - § 139:3. Form drafting guide
 - § 139:4. Form drafting guide—Checklist—Matters to be considered in drafting antenuptial agreement
 - § 139:5. Formal requirements—Execution
 - § 139:6. Formal requirements—Acknowledgment
 - §§ 139:7 to 139:27. Basic agreements
 - §§ 139:28 to 139:95. Optional provisions
 - §§ 139:96 to 139:125. Transactions between husband and wife
 - §§ 139:126 to 139:134. Transaction with third parties by husband and wife
- 5 NICOLS CYCLOPEDIA OF LEGAL FORMS ANNOTATED §§5.561 to 5.670 (1983).
 1. Complete forms
 2. Particular general provisions
 3. Fixing rights of wife
 4. Fixing rights of husband in property of wife
 5. Settlement of property of both husband and wife
 6. Miscellaneous agreements and provisions relating to antenuptial agreements
 - 7.
- 4 JACOB RABKIN AND MARK H. JOHNSON, CURRENT LEGAL FORMS (2001).
 - Chapter 10. Domestic Relations
 - A. Antenuptial agreements Forms 10.01 to 10.12

- 2 ALEXANDER LINDEY AND LOUIS I. PARLEY, *LINDEY ON SEPARATION AGREEMENTS AND ANTENUPTIAL CONTRACTS* (2d ed. 2007).
 - Chapter 110. Antenuptial (premarital) agreements
 - §§ 110.10-110.43. Forms
 - § 110.60. Definitions
 - § 110.61. Recognition
 - § 110.64. Formal requirements
 - § 110.65. Fraud, duress, and misrepresentation
 - § 110.66. Reasonableness; Unconscionability
 - § 110.67. Disclosure; Knowledge
- GARY N. SKOLOFF ET AL., *DRAFTING PRENUPTIAL AGREEMENTS* (2003) [includes CD-ROM].
 - Part VII. Standard clauses for inclusion
 - Part VIII. Sample prenuptial agreement

DIGESTS:

- West Key Number: *Husband and Wife* # 29
- Dowling's Connecticut Digest: *Husband and Wife* § 12

ENCYCLOPEDIAS:

- 41 AM. JUR. 2D *Husband and Wife* (2005).
 - § 90. Formal requirements
 - § 103. General rules; liberal construction
 - § 104. Intent of parties
 - § 105. Introductory recitals; other rules
- 41 C.J.S. *Husband and Wife* (2006).
 - § 127. Form
 - § 128. Execution and acknowledgment
 - § 129. Delivery
 - § 130. Registration
 - § 132. Determination of rights
 - § 133. Termination, generally
 - § 136. Enforcement, generally
- Enforceability of premarital agreement based on fairness of terms and circumstances of execution, 7 POF3d 581 (1990).
 - Includes: "Proof of lack of informed voluntariness in execution of premarital agreement"
- *Transfer Of Assets In Fraud Of Spouse's Antenuptial Contractual Rights*, 14 POF2d 755 (1977).
 - Includes: "Proof that transfer of assets constituted a constructive fraud on antenuptial contractual rights of transferor's spouse"
- *Waiver of spousal rights in estate of deceased spouse*, 7 POF2d 605 (1975).
 - Includes: "Proof that spouse knowingly waived rights in estate of deceased spouse"
- *Compensation on Dissolution of Marriage for Spousal Contributions to Education*, 31 Am Jur Trials 1 (1984).
- James T. Tucker, Annotation, *Family Court Jurisdiction To Hear Contract Claims*, 46 ALR5th 735 (1997).

- James O. Pearson, Annotation, *Failure To Disclose Extent Or Value Of Property Owned As Ground For Avoiding Premarital Contract*, 3 ALR5th 394 (1992).
- Jay M. Zitter, Annotation, *Antenuptial Contracts: Parties' Behavior During Marriage As Abandonment, Estoppel, Or Waiver Regarding Contractual Rights*, 56 ALR4th 998 (1987).
- Robert Roy, Annotation, *Modern Status Of Views As To Validity Of Premarital Agreements Contemplating Divorce Or Separation*, 53 A.L.R.4th 22 (1987).
- Robert Roy, Annotation, *Enforceability Of Premarital Agreements Governing Support Or Property Rights Upon Divorce Or Separation As Affected By Circumstances Surrounding Execution—Modern Status*, 53 ALR4th 85 (1987).
- Robert Roy, Annotation, *Enforceability Of Premarital Agreements Governing Support Or Property Rights Upon Divorce Or Separation As Affected By Fairness Or Adequacy Of Those Terms—Modern Status*, 53 ALR4th 161 (1987).
- Andrea G. Nadel, Annotation, *Enforceability Of Agreement Requiring Spouse's Co-Operation In Obtaining Religious Bill Of Divorce*, 29 ALR4th 746 (1984).
- Annotation, *Spouse's Secret Intention Not To Abide By Written Antenuptial Agreement Relating To Financial Matters As Grounds For Annulment*, 66 ALR3d 1282 (1975).
- Annotation, *Waiver Of Right To Widow's Allowance By Antenuptial Agreement*, 30 ALR3d 858 (1970).
- Annotation, *Noncompliance With Statutory Requirements Concerning Form Of Execution Or Acknowledgment As Affecting Validity Or Enforceability Of Written Antenuptial Agreement*, 16 ALR3d 370 (1967).
- Annotation, *Setting Aside Antenuptial Contract Or Marriage Settlement On Ground Of Failure Of Spouse To Make Proper Disclosure Of Property Owned*, 27 ALR2d 883 (1953).

TEXTS & TREATISES:

- 8A ARNOLD H. RUTKIN ET AL., CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS (2d ed. 2000).
 - Chapter 48. Premarital Agreements
 - § 48.1. In general
 - § 48.2. Written or oral agreements
 - § 48.3. Effect of noncompliance with Statute of Fraud
 - § 48.4. Requisites for preparation and execution
 - § 48.5. Disclosure requirements
 - § 48.7. Allowable purposes—Generally
 - § 48.8. Particular clauses—Generally
 - § 48.9. ___ Separate property
 - § 48.10. ___ Joint purchases and contracts
- FAMILY LAW PRACTICE IN CONNECTICUT (1996).
 - Chapter 6. The [New] Connecticut Premarital Agreement Act—The Changes And Impact by Deborah J. Lindstrom
 - § 6.6 Contract freedom
 - § 6.7. Alimony and child support

§ 6.8. Safeguards

- 2 ALEXANDER LINDEY AND LOUIS I. PARLEY, LINDEY ON SEPARATION AGREEMENTS AND ANTENUPTIAL CONTRACTS (2d ed. 2007).
 - Chapter 110. Antenuptial (Premarital) Agreements
 - § 110.64. Formal requirements
 - [1] Introduction
 - [2] Statute of fraud
 - [3] Particular statutes
 - [4] Execution
 - [5] Recording
 - § 110.73. Construction
 - § 110.76. Uniform Premarital Agreement Act
 - [3]. Formalities
 - [4]. Content

- 5 ARNOLD H. RUTKIN, GEN. ED., FAMILY LAW AND PRACTICE (2007).
 - Chapter 59. Antenuptial agreement
 - § 59.04. Execution and validity of agreements
 - § 59.05. Topics included in agreements
 - [1] The parties; Third-party beneficiaries
 - [2] Recitals
 - [3] Personal property
 - [4] Real property
 - [5] Expectancies
 - [6] Contingencies
 - [7] Intellectual property
 - [8] Liabilities
 - [9] Schedule of financial information and relevant documents
 - [10] Notification to third parties
 - [11] Valuation
 - [12] Identification of separate property
 - [13] Increases in value after signing
 - [14] Conveyances
 - [15] Waivers and limitations
 - [16] Parental rights and responsibilities
 - [17] Lifestyle
 - [18] Life, health, and disability insurance; Personal injury proceeds
 - [19] Employee benefits
 - [20] Bankruptcy considerations
 - [21] Applicable laws
 - [22] Representation by counsel
 - [23] Modification
 - [24] Waiver and enforcement of terms
 - [25] Other terms

- GARY N. SKOLOFF ET AL., DRAFTING PRENUPTIAL AGREEMENTS (2003) [includes CD-ROM].
 - Part I. Separate property
 - Part II. Joint property
 - Part III. Marital residence

Part IV. Regulating the marriage
Part V. Right upon divorce
Part VI. Rights upon death
Part VII. Standard clauses for inclusion
Part VIII. Sample prenuptial agreement
Part IX. Litigation case law review
Part X. Negotiating prenuptial agreements
Part XI. The Uniform Premarital Agreement Act

- 12 JACOB RABKIN AND MARK H. JOHNSON, CURRENT LEGAL FORMS WITH TAX ANALYSIS (2001)
 - § 10.09. Antenuptial agreements
 - [1] Establishing spouse's rights
 - [2] Gifts under antenuptial agreements
 - [3] Estate taxation
- LYNN D. WARDLE ET AL., CONTEMPORARY FAMILY LAW: PRINCIPLES, POLICY AND PRACTICE (1988).
 - Chapter 5. Antenuptial Contracts
- SAMUEL GREEN AND JOHN V. LONG, MARRIAGE AND FAMILY LAW AGREEMENTS (1984).
 - § 2.24. Requirements of writing and proper representation

LAW REVIEWS:

- Louis Parley, *Premarital agreements in Connecticut. Where We Are And Where We Are Going*, 69 CONNECTICUT BAR JOURNAL 495 (1995).

COMPILER:

Lawrence Cheeseman , Supervising Law Librarian, Connecticut Judicial Department, Law Library at Middletown, One Court Street, Middletown, CT 06457. (860) 343-6560. [EMAIL](#)

Table 2 Contents of Antenuptial Agreement

Conn. Gen. Stats. § 46b-36d(a) (2007)
(1) The rights and obligations of each of the parties in any of the property of either or both of them whenever and wherever acquired or located;
(2) The right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, or otherwise manage and control property;
(3) The disposition of property upon separation, marital dissolution, death, or the occurrence or nonoccurrence of any other event;
(4) The modification or elimination of spousal support;
(5) The making of a will, trust or other arrangement to carry out the provisions of the agreement;
(6) The ownership rights in and disposition of the death benefits from a life insurance policy;
(7) The right of either party as a participant or participant's spouse under a retirement plan;
(8) The choice of law governing the construction of the agreement; and
(9) Any other matter, including their personal rights and obligations.

Enforcement and Defenses

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to the enforcement of antenuptial agreements or prenuptial contracts in Connecticut including the Premarital Agreement Act
- DEFINITION:**
- “An issue of unconscionability of a premarital agreement shall be decided by the court as a matter of law.” CONN. GEN. STAT. § 46b-36g(c) (2007) [Effective October 1, 1995, and applicable to premarital agreements executed on or after that date]
- STATUTES:**
- CONN. GEN. STAT. (2007)
Chapter 815e. Marriage
 - § 46b-36g. Enforcement of premarital agreement. [“. . . shall take effect October 1, 1995, and shall apply to any premarital agreement executed on or after that date.”]
 - § 46b-36h. Enforcement of premarital agreement when marriage void
 - § 46b-36i. Statute of limitations re claims under premarital agreement
 - § 46b-36j. Premarital agreements made prior to October 1, 1995, not affected
- CASES:**
- Friezo v. Friezo, No. FA02-0190070 (CT Super. Stamford-Norwalk, Sep. 15, 2004). “The plaintiff did not have any financial disclosure prior to the meeting in the offices of the defendant's attorneys when she executed the premarital agreement. The timing of the disclosure rendered it inadequate to provide any possibility of actual knowledge by the plaintiff.”
 - Dornemann v. Dornemann, No. FA03-0194829 (Apr. 14, 2004), 37 CONN. L. RPTR 74, 75 (June 28, 2004). “The plaintiff asserts that the Premarital Agreement is unenforceable because it: (1) failed to attach written financial disclosures; (2) was executed by the plaintiff as the result of undue influence and lack of free will; (3) was not signed by the defendant and therefore was not in proper form; and (4) was not delivered to the plaintiff after signature by the defendant.”
- p. 80
- The plaintiff's claim that enforcement of the Premarital Agreement would be unconscionable has been reserved and will be addressed at the trial of this case. The plaintiff

executed a prenuptial agreement after adequate financial disclosures, willingly and voluntarily. There was no coercion or undue influence. The defendant's failure to sign the contract prior to the marriage did not invalidate the contract. He assented to the bargain by marrying the plaintiff on April 13, 1997.

The plaintiff's motion in limine to preclude evidence of the Premarital Agreement is denied.

- DeFusco v. DeFusco, 3 Conn. L. Rptr. 145, 150 (1991). "2. The plaintiff was not fully informed by Defendant of the amount, character, and value of the estate On all of the evidence it is found that the ante-nuptial agreement is invalid and unenforceable."
- McHugh v. McHugh, 181 Conn. 482, 436 A.2d 82, 436 A.2d 82 (1980). [Three prong test of validity of prenuptial agreements.](#)

DIGESTS:

- West Key Number: Husband and Wife # 28, 29(1)
- Dowling's Connecticut Digest: Husband and Wife § 12

ENCYCLOPEDIAS:

- 41 AM. JUR. 2D *Husband and Wife* (2005).
 - § 93. Fairness and unconscionability; generally
 - § 95. Change in circumstances; infidelity; abandonment
 - § 96. Confidential relationship
 - § 97. Duty of disclosure
 - § 99. Fraud; misrepresentation
 - § 100. Voluntariness
 - § 102. Independent legal advise
 - § 127. Burden of proof; Fraud; undue influence; overreaching
 - § 128. Fraud; misrepresentation; undue influence; duress
- 41 C.J.S. *Husband and Wife* (2006).
 - § 118. Prenuptial; generally
 - § 120. Validity; generally
 - § 121. Existence and effect of confidential or fiduciary relationship between the parties
 - § 122. Necessity of legal counsel
 - § 127. Form
- *Enforceability of premarital agreement based on fairness of terms and circumstances of execution*, 7 POF3d 581 (1990).
 - Includes: "Proof of lack of informed voluntariness in execution of premarital agreement"
- *Transfer Of Assets In Fraud Of Spouse's Antenuptial Contractual Rights*, 14 POF2d 755 (1977).
 - Includes: "Proof that transfer of assets constituted a constructive fraud on antenuptial contractual rights of transferor's spouse"
- *Waiver of spousal rights in estate of deceased spouse*, 7

POF2d 605 (1975).

Includes: "Proof that spouse knowingly waived rights in estate of deceased spouse"

- Amy Bank, Annotation, *Division Of Lottery Proceeds In Divorce Proceedings*, 125 ALR5th 537 (2004).
- James T. Tucker, Annotation, *Family Court Jurisdiction To Hear Contract Claims*, 46 ALR5th 735 (1997).
- James O. Pearson, Annotation, *Failure To Disclose Extent Or Value Of Property Owned As Ground For Avoiding Premarital Contract*, 3 ALR5th 394 (1992).
- Jay M. Zitter, Annotation, *Antenuptial Contracts: Parties' Behavior During Marriage As Abandonment, Estoppel, Or Waiver Regarding Contractual Rights*, 56 ALR4th 998 (1987).
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- Robert Roy, Annotation, *Enforceability Of Premarital Agreements Governing Support Or Property Rights Upon Divorce Or Separation As Affected By Fairness Or Adequacy Of Those Terms—Modern Status*, 53 ALR4th 161 (1987).
- Andrea G. Nadel, *Enforceability Of Agreement Requiring Spouse's Co-Operation In Obtaining Religious Bill Of Divorce*, 29 A.L.R.4th 746 (1984).
- Annotation, *Spouse's Secret Intention Not To Abide By Written Antenuptial Agreement Relating To Financial Matters As Grounds For Annulment*, 66 ALR3d 1282 (1975).
- Annotation, *Waiver Of Right To Widow's Allowance By Antenuptial Agreement*, 30 ALR3d 858 (1970).
- Annotation, *Noncompliance With Statutory Requirements Concerning Form Of Execution Or Acknowledgment As Affecting Validity Or Enforceability Of Written Antenuptial Agreement*, 16 A.L.R.3rd 370 (1967).
- Annotation, *Setting Aside Antenuptial Contract Or Marriage Settlement On Ground Of Failure Of Spouse To Make Proper Disclosure Of Property Owned*, 27 ALR2d 883 (1953).

**TEXTS &
TREATISES:**

- 8A ARNOLD H. RUTKIN ET AL., CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS (2d ed. 2000).
 - Chapter 48. Premarital Agreements
 - § 48.5. Disclosure requirements
 - § 48.6. Legal representation in connection with agreement
 - § 48.7. Allowable purposes
 - § 48.11. Enforcement of agreement—Generally
 - § 48.12. ____ Specific considerations
- 5 ARNOLD H. RUTKIN, GEN. ED., FAMILY LAW AND PRACTICE (2007).
 - Chapter 59. Antenuptial agreement

- § 59.04. Execution and validity of agreements
 - § 59.06. Rules of enforcement, modification or avoidance
 - § 59.07. Effect of divorce or separation decree
 - § 59.08. Declaratory judgment; Arbitration and mediation
- 2 ALEXANDER LINDEY AND LOUIS I. PARLEY, LINDEY ON SEPARATION AGREEMENTS AND ANTENUPTIAL CONTRACTS (2d ed. 2007).
 - Chapter 110. Antenuptial (Premarital) Agreements
 - § 110.65. Fraud, deceit, and misrepresentation
 - § 110.66. Reasonableness; Unconscionability
 - § 110.67. Disclosure; Knowledge
 - § 110.68. Counsel
 - § 110.69. Public policy
 - § 110.71. Burden of proof
 - § 110.75. Breach; remedies; defenses
 - § 110.76. Uniform Premarital Agreement Act [7]. Enforcement
- FAMILY LAW PRACTICE IN CONNECTICUT (1996).
 - Chapter 6. The [New] Connecticut Premarital Agreement Act—The Changes And Impact by Deborah J. Lindstrom
 - § 6.8. Safeguards
- SAMUEL GREEN AND JOHN V. LONG, MARRIAGE AND FAMILY LAW AGREEMENTS (1984).
 - Chapter 2. Antenuptial Agreements
 - § 2.07. Validity and enforcement
 - § 2.08. Fairness and the confidential relationship
 - § 2.09. Full disclosure
 - § 2.10. Fair disclosure
 - § 2.11. Antenuptial agreements and divorce

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Table 3 Dornemann

<p style="text-align: center;">Dornemann v. Dornemann 48 Conn. Supp. 502, 850 A.2d 273 (2004) [Emphasis added]</p>	
<p>“The plaintiff argues that the premarital agreement is unenforceable because written financial disclosures are not attached.” [p. 511]</p>	<p>“The act does not require the attachment to the agreement of written financial disclosures. Where a contract refers to another instrument in such a manner as to establish that the terms and conditions of that other instrument are part of their understanding, the two may be interpreted together as the agreement of the parties. <i>Batter Building Materials Co. v. Kirschner</i>, 142 Conn. 1, 7, 110 A.2d 464 (1954). Attachment of the second instrument to the contract is not a necessity. <i>Id.</i>”</p>
<p>“The plaintiff claims that she was unduly influenced to sign the premarital agreement and that she lacked free will at the time of signature.” [p. 513]</p>	<p>“The evidence showed that the plaintiff was a college graduate with experience as a businesswoman. She had sufficient time to reflect upon her decision to proceed. She chose independent legal representation. She had lived with the defendant for more than one year at the time of her signing of the prenuptial agreement. Before the parties decided to marry, the plaintiff knew that the defendant would not consider remarriage without a prenuptial agreement in place. The plaintiff was well aware of the legal rights she was relinquishing. Her execution of the premarital agreement was knowing and voluntary.”</p>

<p>"The plaintiff asserts that the defendant's failure to sign the premarital agreement prior to the marriage renders the contract invalid." [p. 514]</p>	<p>"The legislative history confirms that the purpose of the act is to recognize the legitimacy of premarital contracts in Connecticut, not to constrain such contracts to a rigid format so as to limit their applicability. The legislature's use of the word "shall" in § 46b-36c is directory rather than mandatory as to the signature of the party seeking to enforce the premarital agreement. A signature by the party seeking to enforce the contract is a matter of convenience rather than a matter of substance. It is the signature of the party seeking to invalidate the force of the contract that is of the essence in order to assure enforceability." [pp. 519-520]</p> <p>"The plaintiff has shown that the defendant failed to deliver to her before the marriage a version or counterpart signed by the defendant. The plaintiff signed the premarital agreement before a notary on March 17, 1997. The defendant did not sign the premarital agreement prior to the marriage of the parties. The defendant demonstrated his acceptance of the premarital agreement by marrying the plaintiff on April 13, 1997. Since the court finds that the defendant acted in reliance upon the premarital agreement by marrying the plaintiff, the question of delivery of the contract to the plaintiff after signature by the defendant is moot. Delivery of an original or counterpart of a prenuptial agreement to each signing party is not a requirement for validity under common law or under § 46b-36a et seq." [p. 520-521]</p>
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Table 4 Enforcement of Antenuptial Agreements

Conn. Gen. Stats §46b-36g (2007) [Effective October 1, 1995, and applicable to premarital agreements executed on or after that date]
(a) A premarital agreement or amendment shall not be enforceable if the party against whom enforcement is sought proves that: <ul style="list-style-type: none">(1) Such party did not execute the agreement voluntarily; or(2) The agreement was unconscionable when it was executed or when enforcement is sought; or(3) Before the execution of the agreement, such party was not provided a fair and reasonable disclosure of the amount, character and value of property, financial obligations and income of the other party; or(4) Such party was not afforded a reasonable opportunity to consult with independent counsel
(b) If a provision of a premarital agreement modifies or eliminates spousal support and such modification or elimination causes one party to the agreement to be eligible for support under a program of public assistance at the time of separation or marital dissolution, a court, notwithstanding the terms of the agreement, may require the other party to provide support to the extent necessary to avoid such eligibility.
(c) An issue of unconscionability of a premarital agreement shall be decided by the court as a matter of law.

Modification or Revocation

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to the modification and revocation of antenuptial agreements or prenuptial contracts in Connecticut including those executed under the Premarital Agreement Act

DEFINITIONS:

- **Amending or revoking:** "After marriage, a premarital agreement may be amended or revoked only by a written agreement signed by the parties. The amended agreement or the revocation shall be enforceable without consideration." CONN. GEN. STAT. § 46b-36f (2005) [effective October 1, 1995 and applicable to premarital agreements executed on or after that date].
- **Appellate Standard of Review:** "'An appellate court will not disturb a trial court's orders in domestic relations cases unless the court has abused its discretion or it is found that it could not reasonably conclude as it did, based on the facts presented. . . . In determining whether a trial court has abused its broad discretion in domestic relations matters, we allow every reasonable presumption in favor of the correctness of its action.'" (Internal quotation marks omitted.) *Aley v. Aley*, 101 Conn. App. 220, 223, 922 A.2d 184 (2007). *Rosier v. Rosier*, 103 Conn. App. 338, 928 A.2d 1228 (2007).

STATUTES:

- CONN. GEN. STAT. (2007)
Chapter 815e. Marriage
§ 46b-36f. After marriage, a premarital agreement may be amended or revoked only by a written agreement signed by the parties.
- 9C UNIFORM LAWS ANNOTATED 35
Uniform Premarital Agreement Act
§ 5. Amendment, revocation.

FORMS:

- 2 ALEXANDER LINDEY AND LOUIS I. PARLEY, LINDEY ON SEPARATION AGREEMENTS AND ANTENUPTIAL CONTRACTS (2d ed. 2007).
Chapter 110. Antenuptial (Premarital) Agreements
§ 110.32. Amendment—Form
§ 110.39. Cancellation of Antenuptial Agreement—Form

§ 110.40. "Sunset" provision—Form

CASES:

- Sabrowski v. Sabrowski, 105 Conn. App. 49, 55, 935 A.2d 1037 (2007). "The party seeking a modification of alimony pursuant to § 46b-86 (a) has the burden of demonstrating that a substantial change in the circumstances of either party has occurred."
- Hughes v. Hughes, 95 Conn. App. 200, 204, 895 A.2d 274 (2006). "The parties acknowledge that the principle of law governing this issue is clear. It is well settled that a court must base its child support and alimony orders on the available net income of the parties, not gross income."

WEST KEY NUMBERS:

- West Key Number: *Husband and Wife*
32.5. Modification
33. Revocation or extinguishment

ENCYCLOPEDIAS:

- 41 AM. JUR. 2D *Husband and Wife* (2005).
§ 106. Discharge; release; alteration by parties; generally

TEXTS & TREATISES:

- 8A ARNOLD H. RUTKIN ET AL., CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS (2d ed. 2000).
Chapter 48. Premarital Agreements
§ 48.13. Amendment or revocation of agreement
- 2 ALEXANDER LINDEY AND LOUIS I. PARLEY, LINDEY ON SEPARATION AGREEMENTS AND ANTENUPTIAL CONTRACTS (2d ed. 2007).
Chapter 110. Antenuptial (Premarital) Agreements
§ 110.72. Modification; revocation
- 5 ARNOLD H. RUTKIN, GEN. ED., FAMILY LAW AND PRACTICE (2001).
Chapter 59. Antenuptial Agreements
§ 59.06. Rules of enforcement, modification or avoidance

COMPILER:

Lawrence Cheeseman , Supervising Law Librarian, Connecticut Judicial Department, Law Library at Middletown, One Court Street, Middletown, CT 06457. (860) 343-6560.

Federal Tax Aspect

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to the federal tax aspects of antenuptial (premarital) in Connecticut
- DEFINITIONS:**
- **Full and adequate consideration.** "In an antenuptial agreement the parties agree, through private contract, on an arrangement for the disposition of their property in the event of death or separation. Frequently, in exchange for the promises of property, one party agrees to relinquish his or her marital rights in other property. Occasionally, however, the relinquishment of marital rights is not involved. These contracts are generally enforceable under state contract law *Nonetheless, transfers pursuant to an antenuptial agreement are generally treated as gifts between parties, because under the gift tax law the exchange promises are not supported by full and adequate consideration, in money or money's worth.*" (emphasis added). Green v. Commissioner of Internal Revenue, T.C. Memo 1987-503.
- STATUTES:**
- 26 U.S.C. (2007). Internal Revenue Code
 - § 2043(b). Transfers for insufficient consideration.
 - § 2053(c)(1)(A). Expenses, indebtedness, and taxes.
 - § 2056. Bequests, etc., to surviving spouse
 - § 2511. Transfers in general
- REGULATIONS:**
- 26 CFR 25.2512-8 (2007). Transfers for insufficient consideration
- CASES:**
- Estate of Herrmann v. Commissioner of Internal Revenue, 85 F.3d 1032, 1036 (2d Cir. 1996). ". . . the right that Harriet traded away in return for a life interest in her husband's apartment was not 'adequate and full consideration in money or money's worth' under [IRC] § 2053(c)(1)(A)."
 - Commissioner of Internal Revenue v. Wemyss, 324 U.S. 303, 65 S. Ct. 652, 89 L.Ed. 958(1945).
 - Merrill v. Fahs, 324 U.S. 308, 65 S.Ct. 655, 89 L.Ed. 963 (1945).
- DIGESTS:**
- West Key Number: Internal Revenue # 4159(7)
- ENCYCLOPEDIAS:**
- Robert Roy, Annotation, *Enforceability Of Premarital Agreements Governing Support Or Property Rights Upon Divorce Or Separation As Affected By Fairness Or Adequacy*

Of Those Terms—Modern Status, 53 ALR4th 161 (1987).

§§ 12[c], 20, 31[b]. Inheritance taxes

- Maurice T. Brunner, Annotation, *Construction And Application Of Statutes Apportioning Or Prorating Estate Taxes*, 71 ALR3d 247 (1976).

§ 10[b]. Where spouse's right rests on contract

- Maurice T. Brunner, Annotation, *Devise Or Bequest Pursuant To Testator's Contractual Obligation As Subject To Estate, Succession, Or Inheritance Tax*, 59 ALR3d 969 (1974).

§ 6. Antenuptial or postnuptial contracts

**TEXTS &
TREATISES:**

- 2 ALEXANDER LINDEY AND LOUIS I. PARLEY, *LINDEY ON SEPARATION AGREEMENTS AND ANTENUPTIAL CONTRACTS* (2d ed. 2007).

§ 110.77. Taxes

[1] Federal gift taxes

[2] Federal estate taxes

- 12 JACOB RABKIN AND MARK H. JOHNSON, *CURRENT LEGAL FORMS* (2003)

Chapter 10. Domestic Relations

§ 10.09. Antenuptial agreements

[1] Establishing spouse's rights

[2] Gift under antenuptial agreements

[3] Estate taxation

- 2 WILLIAM J. BROWN, *DIVORCE TAX PLANNING STRATEGIES* (1990).

Chapter 15. Antenuptial Agreements

15.1 Introduction

15.2 Tax implications of antenuptial agreements generally

15.3 Nondeductibility of legal fees in connection with antenuptial agreements

15.4 Practitioner Points

Estate planning points. Divorce planning points

COMPILER:

Lawrence Cheeseman , Supervising Law Librarian, Connecticut Judicial Department, Law Library at Middletown, One Court Street, Middletown, CT 06457. (860) 343-6560.

Table 5 Surveys of State Antenuptial Agreement Laws

Subject	Source
Adoption of Uniform Premarital Agreement Act	* Lindey § 110.97. Footnote 1
Affirmative duty to disclose	*Lindey § 110.93. Footnote 1 lists states where there is an affirmative duty to disclose information between contracting parties.
Allocation of burden of proof if agreement facially unfair	* Lindey § 110.96. Footnote 1
Public policy violations relating to child custody, child support, alimony, property and estate interests	*Lindey § 110.69. Various footnotes
Reasonableness	*Lindey § 110.66. Footnote 1 lists states which evaluate the reasonableness for wife. Footnote 3, states requiring to both husband and wife.
Recognition of alimony provisions	* Lindey § 110.95. Footnote 1
Recognition of premarital agreements	*Lindey § 110.90 [1]. Footnote 1 lists states which recognize the validity of premarital agreements using common law . § 110.90 [2]. Footnote 2 by statute .
Recognition of property division provisions	* Lindey § 110.94. Footnote 1
Requirement of written agreement	* Lindey § 110.91. Footnote 1 lists states where statutes of fraud requires agreement to be in writing. Footnote 2 lists states with particular statute.

* 2 ALEXANDER LINDEY AND LOUIS I. PARLEY, LINDEY ON SEPARATION AGREEMENTS AND ANTENUPTIAL CONTRACTS (2D ED. 2002). Chapter 110. Antenuptial (Premarital) Agreements.

Section 2.7

State Tax Aspect

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to the state tax aspects of antenuptial (premarital) agreements in Connecticut

STATUTES:

- CONN. GEN. STAT. (2007)
 - § 12-341(e). Taxable transfer for persons dying on and after July 1, 1959 and prior to July 1, 1963
 - § 12-341b. Taxable transfer for persons dying on and after July 1, 1963
 - (e) in payment of a claim against the estate of a deceased person arising from a contract made by him and payable by its terms at or after his death, but a claim created by an antenuptial agreement made payable by will shall be considered as creating a debt against the estate and shall not constitute a taxable transfer. If any transfer specified in subdivisions (c), (d) and (e) of this section is made for a valuable consideration, so much thereof as is the equivalent in money value of the money value of the consideration received by the transferor shall not be taxable, but the remaining portion shall be taxable. If it becomes necessary or appropriate in ascertaining such value to use mortality tables, the American Men's Ultimate Mortality tables at four per cent compound interest shall be used, so far as applicable.

ENCYCLOPEDIAS:

- Maurice T. Brunner, Annotation, *Devise Or Bequest Pursuant To Testator's Contractual Obligation As Subject To Estate, Succession, Or Inheritance Tax*, 59 ALR3d 969 (1974).
 - § 6. Antenuptial or postnuptial contracts

TEXTS & TREATISES:

- GAYLE B. WILHELM, *CONNECTICUT ESTATE PRACTICE: DEATH TAXES* (3rd ed. 2007).
 - Chapter 2. The Succession Tax—Transfers, Exemptions, and Deductions
 - § 2:5. Transfers by antenuptial agreement or other contract

COMPILER:

Lawrence Cheeseman , Supervising Law Librarian, Connecticut
Judicial Department, Law Library at Middletown, One Court
Street, Middletown, CT 06457. (860) 343-6560. [Email](#)

Property of Spouse or Party to a Civil Union in Connecticut

A Guide to Resources in the Law Library

- “Neither husband nor wife shall acquire by the marriage any right to or interest in any property held by the other before or acquired after such marriage, except as to the share of the survivor in the property as provided by sections 45a-436 and 45a-437.” CONN. GEN. STAT. § 46b-36 (2003). [Civil unions incorporated by [2005 CONN. ACTS 10 § 15 \(Reg. Sess.\)](#)].
- **Joint duty of support:** “The evolutionary changes in married women's rights that enabled them to acquire and dispose of property also generated changes in the obligations of each spouse to the marriage. In the evolutionary process the primary obligation of the husband to provide support for his wife and children under the common law evolved into a joint duty of each spouse to support the family. [Conn. Gen. Stats.] Section 46b-37(b) provides the basic statutory predicate for this change. Article fifth of the Connecticut constitution, amending 20 of article first of the Connecticut constitution, however, provides the constitutional underpinnings for contemporary departure from the primary duty of one spouse to the joint duty of each spouse to support his or her family. It must also be recognized that even when the husband had the primary duty to support his wife, his duty was not absolute and unyielding.” [Yale University School Of Medicine v. Esther Collier](#), 206 Conn. 31, 35-36, 536 A.2d 588 (1988).
- **Civil Union:** “Wherever in the general statutes the terms ‘spouse’, ‘family’, ‘immediate family’, ‘dependent’, ‘next of kin’ or any other term that denotes the spousal relationship are used or defined, a party to a civil union shall be included in such use or definition, and wherever in the general statutes, except sections 7-45 and 17b-137a of the general statutes, as amended by this act, subdivision (4) of section 45a-727a, sections 46b-20 to 46b-34, inclusive, section 46b-150d of the general statutes, as amended by this act, and section 14 of this act, the term ‘marriage’ is used or defined, a civil union shall be included in such use or definition. 2005 CONN. ACTS 10 § 15 (EFFECTIVE OCTOBER 1, 2005).
- **“Parties to a civil union** shall have all the same benefits, protections and responsibilities under law, whether derived from the general statutes, administrative regulations or court rules, policy, common law or any other source of civil law, as are granted to spouses in a marriage, which is defined as the union of one man and one woman.” 2005 CONN. ACTS 10 § 14 (EFFECTIVE OCTOBER 1, 2005).

**Statutory provisions relating to Civil Unions
are effective October 1, 2005**

Section 3.1

Married Women's Act in Connecticut

A Guide to Resources in the Law Library

SCOPE:

Bibliographic sources relating to the history and effect of the passage of the Married Women's Act of 1877 in Connecticut.

DEFINITION:

- "We think that in enacting this law the State adopted a fundamental change of public policy . . . that in every marriage contracted since April 20th, 1877, husband and wife alike retain the capacity of owning, acquiring and disposing of property, which belongs to unmarried persons; that the power of contracting, incident to such capacity, necessarily follows, and that the legal status of husband and wife involves the capacity to contract with each other and with others. Under the law of status which the Act of 1877 abolished, the wife could not contract with her husband or any one else, because her legal identity and capacity of owning property attached to the husband, and for the same reason the husband could not contract with his wife. Mathewson v. Mathewson, 79 Conn. 23, 35, 63 A. 285 (1906)
- "Her identity is no longer merged in that of her husband. She is recognized as having a complete legal entity of her own, with rights of her own, and enforceable as her own." Marri v. Stamford Street Railroad Co., 84 Conn. 9, 22, 78 A. 582 (1911).
- "**Parties to a civil union** shall have all the same benefits, protections and responsibilities under law, whether derived from the general statutes, administrative regulations or court rules, policy, common law or any other source of civil law, as are granted to spouses in a marriage, which is defined as the union of one man and one woman." 2005 CONN. ACTS 10 § 14 (Effective October 1, 2005) (emphasis added).

STATUTES:

- CONN. GEN. STAT. (2005).
§ 46b-36 ". . . The separate earnings of the wife shall be her sole property. She shall have power to make

contracts with her husband or with third persons, to convey to her husband or to third persons her real and personal estate and to receive conveyances of real and personal estate from her husband or from third persons as if unmarried. She may bring suit in her own name upon contracts or for torts and she may be sued for a breach of contract or for a tort; and her property, except such as is exempt by law, may be taken on attachment and execution, but shall not be taken for the debts of her husband, except as provided in section 46b-37. . . ."

§ 46b-37.

(a). "Any purchase made by either a husband or wife in his or her own name shall be presumed, in the absence of notice to the contrary, to be made by him or her as an individual and he or she shall be liable for the purchase."

(b). "Notwithstanding the provisions of subsection (a) of this section, it shall be the joint duty of each spouse to support his or her family, and both shall be liable for: (1) The reasonable and necessary services of a physician or dentist; (2) hospital expenses rendered the husband or wife or minor child while residing in the family of his or her parents; (3) the rental of any dwelling unit actually occupied by the husband and wife as a residence and reasonably necessary to them for that purpose; and (4) any article purchased by either which has in fact gone to the support of the family, or for the joint benefit of both."

- 2005 CONN. ACTS 10 § 15 (Reg. Sess.). "Wherever in the general statutes the terms 'spouse' . . . or any other term that denotes the spousal relationship are used or defined, a party to a civil union shall be included in such use or definition" (EFFECTIVE OCTOBER 1, 2005). [Full text](#).

HISTORY:

- Public Act 1877, Chapter 114. "An Act in Alteration of the Act Concerning Domestic Relations."
- [Mathewson v. Mathewson](#), 79 Conn. 23, 35 (1906). History of married women's act in Connecticut.

CASES:

- [Jewish Home for the Aged v. Nuterangelo](#), No. CV 04-0489608 S (Conn. Super. Ct. J.D. of New Haven, Dec. 10, 2004), 38 CONN. L. RPTR. 408 (February 21, 2005), 2004 WL 3130225. "The problem with this count is that the common-law right of action known as the doctrine of necessities could only be asserted against husbands. *Yale University School of Medicine v. Scianna*, 45 Conn.Sup. 84, 19 Conn. L. Rptr. 77 (1997). This was because, at common-law, a married woman had no property and therefore could make no contracts. *Id.*, 1W. Blackstone, Commentaries on the Laws of England (1807) p. 442. Indeed, it was this

gender bias in the common law that led to the promulgation of the Married Women's Act of 1877. Public Acts 1877, c. 114. This statute created a new cause of action making spouses liable for the cost of any article purchased by either that went to the support of the family. *Id.*, § 2. This statutory remedy was, however, independent of the common-law doctrine of necessities. *Buckingham v. Hurd*, 52 Conn. 404, 406 (1884). The point is that the common-law duty of support applied only to husbands."

- *Wendt v. Wendt*, 59 Conn. App. 656, 687-688, 757 A.2d 1225 (2000). "As the court in this case rightly stated: 'The plaintiff would have the decision in this case take its place along with the great events making changes in women's rights: the 1848 Seneca Falls [New York] Convention; the Married Women's Act of 1877 in Connecticut [Public Acts 1877, c. 114, now General Statutes § 46b-36]; the nineteenth amendment to the United States Constitution, ratified in Connecticut on September 14 and 20, 1920; and the ERA to the Connecticut constitution, adopted November 27, 1974. This historical progression, while compelling, does not warrant the results the plaintiff seeks. The plaintiff seeks, by judicial fiat, to declare unconstitutional, statutes in order to correct an economic disorder.' We agree with the court and conclude that the plaintiff has not successfully proven a violation of the ERA."
- *Yale University School of Medicine v. Collier*, 206 Conn. 31, 34, 536 A.2d 588 (1988). "An enhancement of the wife's legal status had been brought about by the enactment of the Married Women's Act in 1877. See Public Acts 1877, c. 114 (now General Statutes 46b-36). This legislation enabled a married woman to control her own property and to sue and be sued in the same manner as her husband."
- *Dzenutis v. Dzenutis*, 200 Conn. 290, 294, 512 A.2d 130 (1986). "[W]e had held in the analogous husband-wife context that the enactment of the Married Women's Act of 1877 gave a wife separate and independent legal status and thus abrogated the common law rule of spousal immunity both for intentional torts; *Brown v. Brown*, 88 Conn. 42, 47, 89 A. 889 (1914); and for negligent ones. *Bushnell v. Bushnell*, 103 Conn. 583, 587, 131 A. 432 (1925)."
- *Mesite v. Kirchenstein*, 109 Conn. 77, 86, 145 A. 753 (1929). "The suggested analogy between the action by a wife against her husband for personal injuries suffered through his negligence, which we permit, and a like action by a child against his parent is not a close one. We based our decision in *Brown v. Brown*, 88 Conn. 42, 89 A. 889, upon the Married Women's Act, which took effect April 20th, 1877, under which, as we construed that Act, the wife in marriages thereafter contracted, retained her own legal identity, formerly merged in that of her husband, and the logical result of that changed status gave to her the right to maintain an action against her husband for a tort committed upon her person as she might against a third

person who had committed a like tort. Bushnell v. Bushnell, 103 Conn. 583, 131 A. 432. The Act gave the wife a separate and independent legal identity and conferred upon her the same rights arising out of contracts or torts that her husband possessed.

- Brown v. Brown, 88 Conn. 42, 45 (1914). “. . . the right of husband and wife to sue each other for breach of contract is one of the consequences of the new status established by the Act.”
- Marri v. Stamford Street Railroad Company., 84 Conn. 9 (1911). “Women married on or after April 20th, may sue for and recover in her own name compensation for all personal, physical injuries sustained by her and negligently caused by another.”

WEST KEY NUMBERS:

- *Husband and Wife*
 - 111. Married Women’s Property Act
 - 112. _____. Constitutionality
 - 113. _____. Construction and operation in general
 - 114. _____. Retroactive operation

TEXTS & TREATISES:

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE, FAMILY LAW AND PRACTICE WITH FORMS (1999).
 - § 7.1 Married Women's Property Act
 - § 7.2 Property Rights of Married Persons
 - § 7.3 Authority of Spouses to Act for Each Other
 - § 7.4 Property Acquired During the Marriage
 - § 7.5 Partition

ENCYCLOPEDIAS:

- 41 C.J.S. *Husband and Wife* (1991).
 - § 14. Married Women’s Act
- 41 AM. JUR. 2d . *Husband & Wife* (1995).
 - § 17. Interspousal debts and liabilities
 - §§ 18-27. Property rights and interests

LAW REVIEWS:

- *Law of the domicile, capacity of a married woman to make a personal contract*, 27 YALE LAW JOURNAL 669 (1912).

COMPILER:

Lawrence Cheeseman, Supervising Law Librarian, Connecticut Judicial Branch Law Library, One Court Street, Middletown, CT 06457. (860) 343-6560.

Section 3.2

Property Rights of Spouses and Parties To a Civil Union

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic sources relating to the property rights of each spouse in an ongoing marriage and each party to an ongoing civil union. Statutory provisions relating to civil unions are effective October 1, 2005.
- SEE ALSO:**
- Alimony
§ 2.1. Duty to support spouse
 - Child Support
§ 8.1. Duty to support spouse
- DEFINITIONS:**
- **Joint duty of support:** "It is clear that the statute [Conn. Gen. Stats. § 46b-10, now § 46b-37] imposes a joint liability upon the husband and the wife regardless of which one of them made the contract for the services." Maislin v. Lawton, 30 Conn. Sup. 593, 594, 314 A.2d 783 (1973).
 - **Necessities:** "The parent's and spouse's duty to support his family extends to the provision of necessities, that is, suitable clothing, lodging, food and medical attendance." United States v. Edwards, 572 F. Supp. 1527, 1537 (1983).
 - **"Parties to a civil union** shall have all the same benefits, protections and responsibilities under law, whether derived from the general statutes, administrative regulations or court rules, policy, common law or any other source of civil law, as are granted to spouses in a marriage, which is defined as the union of one man and one woman." 2005 CONN. ACTS 10 § 14 (Effective October 1, 2005) (emphasis added).
- STATUTES:**
- CONN. GEN. STAT. (2005).
§ 46b-36. Wife and husband property rights not affected by marriage
§ 46b-37. Joint duty of spouses to support family. Liability

for purchases and certain expenses. Abandonment.

§ 45a-631. Minor's property to be received or used only by guardian of estate. Release.

- 2005 CONN. ACTS 10 § 15 (EFFECTIVE OCTOBER 1, 2005). "Wherever in the general statutes the terms 'spouse' . . . or any other term that denotes the spousal relationship are used or defined, a party to a civil union shall be included in such use or definition" [Full text](#)

CASES:

- Yale University School Of Medicine v. Scianna, 45 Conn. Sup. 84, 87, 701 A.2d 65 (1997). "The problem lies in the statute's requirement that the availability of what might be called the separation defense depends on the provision of reasonable support. This provision makes sense when the person being sued is the spouse obligated to provide support. If that spouse chooses not to comply with his support obligation he is undeserving of the law's solicitude and can justly be sued for services rendered to the unsupported spouse. But what if the person being sued is the recipient of support? How can the law justly hinge the availability of the separation defense on the provision of reasonable support under these circumstances? That is the problem in this case."
- Cherniack v. Home National Bank & Trust Co., 151 Conn. 367, 368, 198 A.2d 58 (1964). "It is important to bear in mind in this connection that under Connecticut law neither husband nor wife acquires, by virtue of the marriage, any interest in the real or personal property of the other during that other's lifetime."
- North v. North, 183 Conn. 35, 39-40, 438 A.2d 807 (1981). "Although a party may have received property through inheritance, assigning such property to the other spouse does not violate § 46b-36."
- Wagner v. Mutual Life Insurance Co., 88 Conn. 536, 542, 91 A. 1012 (1914). "From the finding it appears that Mrs. Wagner always retained the possession and control of, and collected the income from, her personal property free from the domination and supervision of her husband; and that as to the proceeds of the securities sold and loaned him, and all other loans made, he agreed to repay the same with interest. It is also found that Mr. Wagner always treated the moneys loaned him by Mrs. Wagner, and all of her securities, as her sole and separate estate."

ACT FOR EACH OTHER

- Botticello v. Stefanovicz, 177 Conn. 22, 27, 411 A.2d 16 (1979). "Moreover, the fact that one spouse tends more to business matters than the other does not, absent other evidence of agreement or authorization, constitute the delegation of power as to an agent."
- Schneidau v. Manley, 131 Conn. 285, 288, 39 A.2d 885 (1944). "The burden rested on the plaintiff to prove that

Manley [husband] in agreeing upon the sale of the property, in so far as his wife's undivided interest therein was concerned, was acting as her agent with the scope of his authority."

- Cyclone Fence Co. v. McAviney, 121 Conn. 656, 659, 186 A. 635 (1936). "The marital relation per se bestowed no authority upon the husband to act as agent for the wife or to enter into a binding contract for her without her consent."

PRESUMPTIONS

- Franke v. Franke, 140 Conn. 133, 139, 98 A.2d 804 (1953). "If the purchase price is paid by one spouse and the conveyance is taken in the name of the other, there is a presumption that a gift was intended This presumption, however is one of fact and not of law and may be rebutted."
- Newman v. Newman, 134 Conn. 176, 179, 55 A.2d 916 (1947). "Where one spouse puts up a building on land owned in common by husband and wife, without any understanding or agreement that the other shall share the expense, the presumption that it was for the joint benefit of both must prevail."

CONVEYANCES

- New Haven Trolley & Bus Employees Credit Union v. Hill, 145 Conn. 332, 334, 142 A.2d 730 (1958). "Under our law the legal effect of such a conveyances [to husband and wife] is as though the grantees were unrelated."
- Hughes v. Fairfield Lumber and Supply Co., 19 Conn. Supp. 138, 139, 110 A.2d 730 (1955). "In this stat, husband and wife takes as joint tenants and a conveyance of his interest by one of them is valid and effectual."

WEST KEY NUMBERS:

Husband and Wife

#68-76 Property & Conveyances
#110 et seq. Wife's separate estate

DIGESTS:

- U.S. SUPREME COURT DIGEST: *Husband and Wife* §§ 16-31
§§ 16-23. Wife's separate estate or business
§ 25. Contracts with or conveyances to each other
§§ 26-31. Conveyances or mortgages to third person
- ALR DIGEST: *Husband and Wife*

ENCYCLOPEDIAS:

- 41 C.J.S. *Husband & Wife* §§ 10-17 (1991).
§13 Wife's separate estate in general
§15 Power to contract and convey
§16 Liabilities
§17 Rights and liabilities of husband
- 41 AM. JUR. 2d . *Husband & Wife* (1995).
Property rights and interests §§18-61
- Annotation, *Rights of married woman as creditor of*

husband, 16 L.Ed. 416

**TEXTS &
TREATISES:**

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN,
CONNECTICUT PRACTICE, FAMILY LAW AND PRACTICE WITH
FORMS (1999).
 - § 7.2 Property Rights of Married Persons
 - § 7.3 Authority of Spouses to Act for Each Other
 - § 7.4 Property Acquired During the Marriage
 - § 7.5 Partition

COMPILER:

Lawrence Cheeseman, Supervising Law Librarian, Connecticut
Judicial Branch Law Library, One Court Street, Middletown, CT
06457. (860) 343-6560.

Table 6 Joint Duty of Support

**Joint Duty of Spouses and Parties to a
Civil Union
To Support Family**

Conn. Gen. Stats. § 46b-37 (2005)

CIVIL UNION: "Wherever in the general statutes the terms '**spouse**', '**family**', 'immediate family', '**dependent**', 'next of kin' or any other term that denotes the **spousal relationship** are used or defined, a party to a civil union shall be included in such use or definition, and wherever in the general statutes, except sections 7-45 and 17b-137a of the general statutes, as amended by this act, subdivision (4) of section 45a-727a, sections 46b-20 to 46b-34, inclusive, section 46b-150d of the general statutes, as amended by this act, and section 14 of this act, the term '**marriage**' is used or defined, a civil union shall be included in such use or definition." 2005 CONN. ACTS 10 § 15 (Effective October 1, 2005) (emphasis added).

Purchases by spouse or party to a civil union	(a) Any purchase made by either a husband or wife in his or her own name shall be presumed, in the absence of notice to the contrary, to be made by him or her as an individual and he or she shall be liable for the purchase.
Necessities	(b) Notwithstanding the provisions of subsection (a) of this section, it shall be the joint duty of each spouse to support his or her family, and both shall be liable for: <ol style="list-style-type: none"> (1) The reasonable and necessary services of a physician or dentist; (2) hospital expenses rendered the husband or wife or minor child while residing in the family of his or her parents; (3) the rental of any dwelling unit actually occupied by the husband and wife as a residence and reasonably necessary to them for that purpose; and (4) any article purchased by either which has in fact gone to the support of the family, or for the joint benefit of both.
Abandoned spouse or party to a civil union	(c). Notwithstanding the provisions of subsection (a) of this section, a spouse who abandons his or her spouse without cause shall be liable for the reasonable support of such other spouse while abandoned.
Separation	(d). No action may be maintained against either spouse under the provisions of this section, either during or after any period of

	separation from the other spouse, for any liability incurred by the other spouse during the separation, if, during the separation the spouse who is liable for support of the other spouse has provided the other spouse with reasonable support.
Abandonment without cause	Abandonment without cause by a spouse shall be a defense to any liability pursuant to the provisions of subdivisions (1) to (4), inclusive, of subsection (b) of this section for expenses incurred by and for the benefit of such spouse. Nothing in this subsection shall affect the duty of a parent to support his or her minor child.

Surviving Spouse or Party to a Civil Union

A Guide to Resources in the Law Library

- “Connecticut law does not permit a deceased person to continue to own property. The statutes of this state set forth a procedure for the orderly transfer of a deceased person's assets either according to his will or the laws of intestacy. See e.g., Connecticut General Statutes §§ 45a-273, et seq. Under the laws of this state competent testators are free to leave their property as they wish, subject only to the limitations of a spousal elective share and a family allowance. Connecticut General Statutes §§ 45a-320, 45a-321, 45a-436.” Skindzier v. Commissioner of Social Services, No. 0501376 (Conn. Super. Ct., New Britain, Jan. 4, 2001), 28 CONN. L. RPTR. 589 (March 5, 2001), 2001 WL 51663.
- **Right of Election:** “On the death of a spouse, the surviving spouse may elect, as provided in subsection (c) of this section, to take a statutory share of the real and personal property passing under the will of the deceased spouse.” CONN. GEN. STAT. § 45a-436(a) (2005). [Civil unions incorporated by [2005 CONN. ACTS 10 § 15 \(Reg. Sess.\)](#)].
- **Statutory share:** “means a life estate of one-third in value of all the property passing under the will, real and personal, legally or equitably owned by the deceased spouse at the time of his or her death, after the payment of all debts and charges against the estate. The right to such third shall not be defeated by any disposition of the property by will to other parties.” CONN. GEN. STAT. § 45a-436(a) (2005). [Civil unions incorporated by [2005 CONN. ACTS 10 § 15 \(Reg. Sess.\)](#)].
- **Intestate share:** “If there is no will, or if any part of the property, real or personal, legally or equitably owned by the decedent at the time of his or her death, is not effectively disposed of by the will or codicil of the decedent, the portion of the intestate estate of the decedent, determined after payment of any support allowance from principal pursuant to section 45a-320, which the surviving spouse shall take” CONN. GEN. STAT. § 45a-437(a) (2005). [Civil unions incorporated by [2005 CONN. ACTS 10 § 15 \(Reg. Sess.\)](#)].
- **Civil Union:** “Wherever in the general statutes the terms ‘spouse’, ‘family’, ‘immediate family’, ‘dependent’, ‘next of kin’ or any other term that denotes the spousal relationship are used or defined, a party to a civil union shall be included in such use or definition, and wherever in the general statutes, except sections 7-45 and 17b-137a of the general statutes, as amended by this act, subdivision (4) of section 45a-727a, sections 46b-20 to 46b-34, inclusive, section 46b-150d of the general statutes, as amended by this act, and section 14 of this act, the term

'marriage' is used or defined, a civil union shall be included in such use or definition. 2005 CONN. ACTS 10 § 15 (EFFECTIVE OCTOBER 1, 2005).

- **"Parties to a civil union** shall have all the same benefits, protections and responsibilities under law, whether derived from the general statutes, administrative regulations or court rules, policy, common law or any other source of civil law, as are granted to spouses in a marriage, which is defined as the union of one man and one woman." 2005 CONN. ACTS 10 § 14 (EFFECTIVE OCTOBER 1, 2005).

Statutory Share in Connecticut

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to the surviving spouse's statutory share of real and personal property despite provisions in a will. Also, legal arrangements by which statutory share may legally be avoided.
- TREATED ELSEWHERE:**
- If there is no will—see § 4.2 Intestate share
 - If estate is insolvent—see § 4.3 Insolvent estate
- DEFINITIONS:**
- “Under a will, a spouse need only claim the spousal share if disinherited” Bezzini v. Department of Social Services, 49 Conn. App. 432, 443, 715 A.2d 791 (1998).
 - **Dower and curtesy:** “By and large, dower and curtesy have been supplanted by laws that entitle a surviving spouse to choose between accepting whatever is provided for the spouse in the decedent’s will or taking a statutorily fixed percentage of the estate.” Estate of Herrmann v. C.I.R., 85 F.3d 1032, 1034-35 (2d Cir. 1996).
- STATUTES:**
- CONN. GEN. STAT. (2005).
§ 45a-436. Succession upon death of spouse. Statutory share
 - 2005 CONN. ACTS 10 § 15 (Reg. Sess.). “Wherever in the general statutes the terms ‘spouse’ . . . or any other term that denotes the spousal relationship are used or defined, a party to a civil union shall be included in such use or definition” (EFFECTIVE OCTOBER 1, 2005). [Full text](#).
- CASES:**
- Skindzier v. Commissioner Of Social Services, No. 0501376 (Conn. Super. Ct., J.D. New Britain, January 4, 2001), 2001 WL 51663 (Conn. Super. 2001). “A will is a unique kind of transfer, with special rules associated with the proper execution and administration thereof. *Barnes v. Viering*, 152 Conn. 243, 246, 206 A.2d 112 (1964); *Crane v. Manchester*, 143 Conn. 498, 500-501, 123 A.2d 752 (1956). The creation of a revocable trust is not a testamentary act and need not conform to the requirements of the common-law statute of wills. *Cramer v. Hartford-Connecticut Trust Co.*, 110 Conn. 22, 33-34, 147 A. 139 (1929). Under a will, a spouse need only claim the spousal share if disinherited; see General Statutes § 45a-436; *Del Vecchio v. Del Vecchio*, 146 Conn.

188, 192-93, 148 A.2d 554 (1959). Alternatively, a spouse is unable to claim a spousal share against a trust. *Cherniack v. Home National Bank & Trust Co.*, 151 Conn. 367, 370-71, 198 A.2d 58 (1964). . . . We conclude, therefore, that the rules applicable to wills should not be applied to the plaintiff's situation where a revocable trust was the chosen instrument of the plaintiff's spouse."

- *Elgar v. Elgar*, 238 Conn. 839, 840, 679 A.2d 937 (1996). "Prior to their marriage, they had executed an antenuptial agreement wherein each party had waived his or her rights to the other's property in the event of death or divorce."
- *Dalia v. Lawrence*, 226 Conn. 51, 69-70 (1993). "It is evident, therefore, that surviving spouse's elective share in lieu of what he or she would take under a will does not include the proceeds of a § 36-110(a) account, because those proceeds cannot be regarded as 'passing under a will' within the meaning of § 45a-436(a)."
- *Parniawski v. Parniawski*, 33 Conn. Supp. 44, 46, 359 A.2d 719 (1976). "This state has placed its stamp of approval on a contract entered into in contemplation of marriage in which each prospective spouse released any claim to the property owned by the other at the time of the marriage or thereafter, agreeing that on the death of either, the survivor should have no claim to his or her property."
- *Cherniack v. Home National Bank & Trust Co.*, 151 Conn. 367, 371, 198 A.2d 58 (1964). "It is true that under § 46-12 a surviving spouse is given a stated interest in all of the 'property, real and personal, legally or equitably owned by the other at the time of his or her death.' But this provision gives no interest in the property of the other before death. Since the plaintiff had no right or interest in the property of the decedent during his lifetime, a valid trust agreement could not be fraudulent as to her. One cannot be defrauded of that to which he has no right."
- *Sacksell v. Barrett*, 132 Conn. 139, 145, 43 A.2d 79 (1945). "Furthermore, since the adoption of the 1877 act, in deciding whether a widow could by agreement bar her claim to the share which the statute provides, we said: 'On principle there appears to be no good reason why such an agreement, if fairly made and entered into, by a woman of full age, for adequate consideration received, should not be binding upon her.' *Staub's Appeal*, 66 Conn. 127, 134, 33 Atl. 615. The same holds true of the plaintiff's agreement releasing his statutory interest."
- *In re Williamson's Estate*, 123 Conn. 424, 428, 196 A. 770 (1938). "Whether there has been abandonment within this provision of the statute presented a question of fact to be determined by the trial court upon evidence offered before it."
- *Lewis v. Shannon*, 121 C. 594, 599, 186 A. 540 (1936). "In the following cases it was held that a surviving spouse, having elected to take a statutory share instead of a provision under the will, could not, in addition, take under

- statutes of descent which apply only to intestate estates.”
- Farmers’ Loan & Trust Company v. McCarty, 100 Conn. 367, 371, 124 A.40 (1924). “The widow’s election annuls all testamentary provisions in her favor, but it does not annul any testamentary provisions in favor of others The result is that the provision of section (b) for setting aside one quarter to the residue is temporarily suspended, the provision for the payment of the income of such quarter to the widow is annulled; and since her statutory life is not defeated by remarriage, the provision that upon her remarriage the corpus of the fund disposed of in section (b) shall go to the testator’s son Richard, becomes incapable of execution.”
- Brown’s Appeal. 72 Conn. 141, 154, 44 A. 29 (1899). “Both these colonies [New Haven and Massachusetts] adopted the English law of dower, giving to the wife a right of dower in any land of which the husband might be seized during coverture [marriage]. Connecticut extended and modified the right of a wife to share in all the estate her husband might leave at his death.”
- Harris v. Spencer, 71 Conn. 233, 237, 41 A. 773 (1893). “That statute gives a surviving husband a share of the property owned by his wife at her decease; it does not prevent the wife during her life from disposing of her property in any lawful way she pleases, or incumbering it by any lawful agreement.”
- Stewart v. Stewart, 5 Conn. 317 (1824).

WEST KEY NUMBERS

- Descent and Distribution #52. *Surviving husband and wife*
- Executors and Administrators #173 et seq. *Allowance to surviving wife, husband and children*
- Wills #778 et seq. *Election*
- Dower and Curtesy

DIGESTS:

- 7 WEST’S ALR DIGEST (2004): *Descent and distribution*
Surviving husband or wife
§ 52. Nature of the right in general
 (1). In general
 (2). Rights of surviving wife in general
 (3). Rights of surviving husband in general
§ 53. Constitutional and statutory provisions
§ 62. Estoppel, waiver, or release of right
§ 63. Forfeiture of right
§ 64. Election
 —In general
 —Right to and necessity for election
 —Sufficiency
 —Operation and effect

ENCYCLOPEDIAS:

- 25 AM. JUR. 2D Dower and Curtesy (1996).
§§ 26-38. Surviving spouse’s rights and liabilities
- 23 AM. JUR. 2D *Descent and Distribution* (2002).
§§ 109-133. Succession by surviving spouse

- 28 C.J.S. *Dower and Curtesy* (1996).
- David Carl Minneman, Annotation, *Surviving Spouse's Right To Marital Share As Affected By Valid Contract To Convey By Will*, 85 ALR4th 418 (1991).
- Carroll J. Miller, Annotation, *Prior Institution Of Annulment Proceedings Or Other Attack On Validity Of One's Marriage As Barring Or Estopping One From Entitlement To Property Rights As Surviving Spouse*, 31 ALR4th 1190 (1984).
- John P. Ludington, Annotation, *Liability For Administrative Expenses Of Spouse's Elective Share*, 89 ALR3d 315 (1979).
- V. Woerner, Annotation, *Waiver Of Right To Widow's Allowance By Antenuptial Agreement*, 30 ALR3rd 858 (1970).
- Annotation, *Waiver Of Right To Widow's Allowance By Post Nuptial Agreement*, 9 ALR3d 955 (1966).
- Annotation, *Abandonment, Desertion, Or Refusal To Support On Part Of Surviving Spouse As Affecting Marital Rights In Deceased Spouse's Estate*, 13 ALR3d 446 (1967).
- Annotation, *Adultery On Part Of Surviving Spouse As Affecting Marital Rights In Deceased Spouse's Estate*, 13 ALR3d 486 (1967).
- Annotation, *Separation Agreement As Barring Rights Of Surviving Spouse In Other's Estate*, 34 ALR2d 1020 (1954).
- Annotation, *Dower Or Curtesy Rights Of Stockholder's Spouse In Real Property Of Corporation*, 32 ALR2d 705 (1953).
- Annotation, *Right Of Widow Of An Heir To Dower, Where Heir Dies Before Decedent's Estate Is Closed*, 23 ALR2d 961(1952).

TEXTS & TREATISES:

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, *CONNECTICUT PRACTICE, FAMILY LAW AND PRACTICE WITH FORMS* (1999).
 - Chapter 8, "Dower and curtesy—property rights of a surviving spouse."
 - § 8.1 In general
 - § 8.2 Statutory share of the surviving spouse
 - § 8.3 Relationship between statutory share and testamentary provisions
 - § 8.4 Waiver of statutory share
 - § 8.5 Forfeiture of statutory rights
 - § 8.6 Effect on lifetime disposition of property

LAW REVIEWS:

- Barbara J. Stamm, Case Comment, *Dalia v. Lawrence: A Battle Of Statutory Interpretation Versus Public Policy*, 9 CONNECTICUT PROBATE LAW JOURNAL 357 (1995).
- Mary Moers Wenig, *The Marital Property Law Of Connecticut: Past, Present And Future*, 1990 WISCONSIN LAW REVIEW 807 (1990). [Available at the Middletown Law Library].
- Michael A. Neufeld, *Until Death Or Divorce Do Us Part: Estate Planning For Clients Who Wish To Insulate Their Assets From Their Spouses*, 58 CONNECTICUT BAR JOURNAL 267

- (1984).
- Elias Clark, *The Recapture Of Testamentary Substitutes To Preserve The Spouse's Elective Share: An Appraisal Of Recent Statutory Reforms*, 2 CONNECTICUT LAW REVIEW 513 (1970).

COMPILER:

Lawrence Cheeseman, Supervising Law Librarian, Connecticut Judicial Department Law Library, One Court Street, Middletown, CT 06457. (860) 343-6560.

Table 7 Statutory Share

Conn. Gen. Stat. § 45a-436 (2008)	
<p>CIVIL UNION: "Wherever in the general statutes the terms 'spouse', 'family', 'immediate family', 'dependent', 'next of kin' or any other term that denotes the spousal relationship are used or defined, a party to a civil union shall be included in such use or definition, and wherever in the general statutes, except sections 7-45 and 17b-137a of the general statutes, as amended by this act, subdivision (4) of section 45a-727a, sections 46b-20 to 46b-34, inclusive, section 46b-150d of the general statutes, as amended by this act, and section 14 of this act, the term 'marriage' is used or defined, a civil union shall be included in such use or definition." 2005 CONN. ACTS 10 § 15 (EFFECTIVE OCTOBER 1, 2005) (emphasis added).</p>	
<p>Statutory share</p>	<p>(a) On the death of a spouse, the surviving spouse may elect, as provided in subsection (c) of this section, to take a statutory share of the real and personal property passing under the will of the deceased spouse. The "statutory share" means a life estate of one-third in value of all the property passing under the will, real and personal, legally or equitably owned by the deceased spouse at the time of his or her death, after the payment of all debts and charges against the estate. The right to such third shall not be defeated by any disposition of the property by will to other parties.</p>
<p>Effect of will; right of election</p>	<p>(b) If the deceased spouse has by will devised or bequeathed a portion of his or her property to his or her surviving spouse, such provision shall be taken to be in lieu of the statutory share unless the contrary is expressly stated in the will or clearly appears therein; but, in any such case, the surviving spouse may elect to take the statutory share in lieu of the provision of the will. [Cont'd]</p>

Conn. Gen. Stat. § 45a-436 (2008) [cont'd]

Support allowance	(c) If the court of probate has allowed a support allowance under section 45a-320 from the deceased spouse's estate for support of the surviving spouse and for the support of his or her family, the surviving spouse shall not take his or her statutory share until the expiration of the time for which the support allowance is made.
Personal or real property	(e) The statutory share shall be set out by the fiduciary charged with the administration of the estate or, in the discretion of the probate court on its own motion or on application by any interested person, by distributors appointed by the court of probate. The statutory share may consist of personal property or real property, or both, according to the judgment of the fiduciary or distributors.

Table 8 Rights of Surviving Spouse: ALR Annotations

Rights of Surviving Spouse	
Abandonment, Desertion	Annotation, <i>Abandonment, Desertion, Or Refusal To Support On Part Of Surviving Spouse As Affecting Marital Rights In Deceased Spouse's Estate</i> , 13 ALR3d 446 (1967).
Adultery	Annotation, <i>Adultery On Part Of Surviving Spouse As Affecting Marital Rights In Deceased Spouse's Estate</i> , 13 ALR3d 486 (1967).
Alimony	Gavin L. Phillips, Annotation, <i>Death Of Obligor As Affecting Alimony</i> , 79 ALR4th 10 (1990).
Annulment	Caroll J. Miller, Annotation, <i>Prior Institution Of Annulment Proceedings Or Other Attack On Validity Of One's Marriage As Barring Or Estopping One From Entitlement To Property Rights As Surviving Spouse</i> , 31 ALR4th 1190 (1984).
Antenuptial Agreement	V. Woerner, Annotation, <i>Waiver Of Right To Widow's Allowance By Antenuptial Agreement</i> , 30 ALR3rd 858 (1970).
Contract to convey by Will	David Carl Minneman, Annotation, <i>Surviving Spouse's Right To Marital Share As Affected By Valid Contract To Convey By Will</i> , 85 ALR4th 418 (1991).
Conversion	Sharon Haines, Annotation, <i>Rights Of Surviving Spouse Taking Under Or Against Will As Affected By Provision In Will Directing Conversion</i> , 33 ALR3d 1280 (1970).
Earlier deceased spouse	Annotation, <i>Construction, Application, And Effect Of Statutes Providing For Descent Of Property Of Surviving Spouse Which Has Been Derived From Earlier Deceased Spouse</i> , 49 ALR2d 391 (1956).
Homicide	Michael G. Walsh, Annotation, <i>Homicide As Precluding Taking Under Will Or By Intestacy</i> , 25 ALR4th 787 (1983).
Post Nuptial Agreement	Annotation, <i>Waiver Of Right To Widow's Allowance By Post Nuptial Agreement</i> , 9 ALR3d 955 (1966).

Putative spouse	Gregory G. Sarno, Annotation, <i>Estoppel Or Laches Precluding Lawful Spouse From Asserting Rights In Decedent's Estate As Against Putative Spouse</i> , 81 ALR3d 110 (1977).
Separation Agreement	Annotation, <i>Separation Agreement As Barring Rights Of Surviving Spouse In Other's Estate</i> , 34 ALR2d 1020 (1954).
Tax refunds	J.R. Kemper, Annotation, <i>Right Of Surviving Spouse To Tax Refund Resulting From Joint Income Tax Return</i> , 67 ALR3d 1038 (1975).
Trusts	J.R. Kemper, Annotation, <i>Inclusion Of Funds In Savings Bank Trust (Totten Trust) In Determining Surviving Spouse's Interest In Decedent's Estate</i> . 64 ALR3d 187 (1975).
Wrongful death	Wade R. Habeeb, Annotation, <i>Right Of Spouse To Maintain Action For Wrongful Death As Affected By Fact That Injury Resulting In Death Occurred Before Marriage</i> (1976).

Intestate Share in Connecticut

A Guide to Resources in the Law Library

SCOPE: Bibliographic resources relating to the surviving spouse's or party to a civil union's intestate share of real and personal property. Also, legal arrangements by which intestate share may legally be avoided.

TREATED ELSEWHERE:

- If there is a will—see [§ 1 Statutory share](#)
- If estate is insolvent—see [§ 3 Insolvent estate](#)

STATUTES:

- CONN. GEN. STAT. (2005)
 - § 45a-436. Succession upon death of spouse. Statutory share
 - (g). [abandonment]. A surviving husband or wife shall not be entitled to a statutory share, as provided in subsection (a) of this section, or an intestate share, as provided in section 45a-437, in the property of the other if such surviving spouse, without sufficient cause, abandoned the other and continued such abandonment to the time of the other's death.
 - § 45a-437. Intestate succession. Distribution to spouse
- 2005 CONN. ACTS 10 § 15 (Reg. Sess.). "Wherever in the general statutes the terms 'spouse' . . . or any other term that denotes the spousal relationship are used or defined, a party to a civil union shall be included in such use or definition" (EFFECTIVE OCTOBER 1, 2005). [Full text](#).

CASES:

- [Elgar v. Elgar](#), 238 Conn. 839, 840, 679 A.2d 937 (1996). "Prior to their marriage, they had executed an antenuptial agreement wherein each party had waived his or her rights to the other's property in the event of death or divorce. In 1990 the decedent died intestate."
- [Kucej v. Kucej](#), 34 Conn. App. 579, 582, 642 A.2d 81 (1994). "As the decedent's issue, the plaintiff is an heir for the purpose of intestacy . . . Pursuant to § 45a-303(c), an heir of the decedent can object to the appointment of an administrator or administratrix of the decedent's intestate estate. Therefore, the plaintiff in this case, as an heir, has a statutory right to object to the appointment of the named defendant as administratrix."
- [Dalia v. Lawrence](#), 226 Conn. 51, 627 A.2d 392 (1993). "The principal issue in this appeal is whether a valid trust

savings account , established by a decedent pursuant to General Statutes § 36-110(a), must be included in the statutory intestate share of the surviving spouse of the decedent pursuant to General Statutes (Rev. to 1989) § 45-273a (b).

- Phoebe Lewis, et als, Appeal from Probate v. Estate of Anna J. Eno, 3 Conn. Supp. 444 (1936). *Cousins of the testatrix and the next of kin, claimed the right of distribution of the intestate estate when testatrix dies childless and without surviving parent.*
- Kingsbury v. Scovill's Administrator, 26 Conn. 349 (1857). *Widow dies before distribution of estate of decedent husband is made.*

WEST KEY NUMBERS

- Executors and Administrators #173-201. *Allowance to surviving wife, husband and children*
- Descent and Distribution #52-67. *Surviving husband and wife*
- Wills #778-803. *Election*

DIGESTS:

- 7 WEST'S ALR DIGEST (2004): *Descent and distribution*
 - Surviving husband or wife
 - § 52. Nature of the right in general
 - (1). In general
 - (2). Rights of surviving wife in general
 - (3). Rights of surviving husband in general
 - § 53. Constitutional and statutory provisions
 - § 54. Issue of intestate also surviving
 - § 55. —In general
 - § 56. —Issue of former marriage
 - § 57. Failure of issue of intestate
 - § 58. Failure of issue and of other kindred of intestate
 - § 59. Property acquired by intestate by gift, devise, or descent
 - § 60. —In general
 - § 61. —From former husband or wife
 - § 62. Estoppel, waiver, or release of right
 - § 63. Forfeiture of right

ENCYCLOPEDIAS:

- 26A C.J.S. *Descent and distribution* (1956).
- 23 AMERICAN JURISPRUDENCE 2D *Descent and distribution* (2002), §§ 109-133
 - Effect of misconduct §§ 119-124
- David Carl Minneman, Annotation, *Surviving Spouse's Right To Marital Share As Affected By Valid Contract To Convey By Will*, 85 ALR4th 418 (1991).
- Caroll J. Miller, Annotation, *Prior Institution Of Annulment Proceedings Or Other Attack On Validity Of One's Marriage As Barring Or Estopping One From Entitlement To Property Rights As Surviving Spouse*, 31 ALR4th 1190 (1984).
- John P. Ludington, Annotation, *Liability For Administrative Expenses Of Spouse's Elective Share*, 89 ALR3d 315 (1979).
- V. Woerner, Annotation, *Waiver Of Right To Widow's*

Allowance By Antenuptial Agreement, 30 ALR3d 858 (1970).

- Annotation, *Waiver Of Right To Widow's Allowance By Post Nuptial Agreement*, 9 ALR3d 955 (1966).
- Annotation, *Abandonment, Desertion, Or Refusal To Support On Part Of Surviving Spouse As Affecting Marital Rights In Deceased Spouse's Estate*, 13 ALR3d 446 (1967).
- Annotation, *Adultery On Part Of Surviving Spouse As Affecting Marital Rights In Deceased Spouse's Estate*, 13 ALR3d 486 (1967).
- Annotation, *Separation Agreement As Barring Rights Of Surviving Spouse In Other's Estate*, 34 ALR2d 1020 (1954).
- Annotation, *Dower Or Curtesy Rights Of Stockholder's Spouse In Real Property Of Corporation*, 32 ALR2d 705 (1953).
- Annotation, *Right Of Widow Of An Heir To Dower, Where Heir Dies Before Decedent's Estate Is Closed*, 23 ALR2d 961(1952).

**TEXTS &
TREATISES:**

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, *CONNECTICUT PRACTICE, FAMILY LAW AND PRACTICE WITH FORMS* (1999).

Chapter 8, Dower and curtesy—property rights of a surviving spouse

§ 8.1 In general

§ 8.2 Statutory share of the surviving spouse

§ 8.3 Relationship between statutory share and testamentary provisions

§ 8.4 Waiver of statutory share

§ 8.5 Forfeiture of statutory rights

§ 8.6 Effect on lifetime disposition of property

LAW REVIEWS:

- Barbara J. Stamm, Case Comment, *Dalia v. Lawrence: A Battle Of Statutory Interpretation Versus Public Policy*, 9 CONNECTICUT PROBATE LAW JOURNAL 357 (1995).
- Mary Moers Wenig, *The Marital Property Law Of Connecticut: Past, Present And Future*, 1990 WISCONSIN LAW REVIEW 807 (1990). [Available at the Middletown Law Library].
- Michael A. Neufeld, *Until Death Or Divorce Do Us Part: Estate Planning For Clients Who Wish To Insulate Their Assets From Their Spouses*, 58 CONNECTICUT BAR JOURNAL 267 (1984).
- Elias Clark, *The Recapture Of Testamentary Substitutes To Preserve The Spouse's Elective Share: An Appraisal Of Recent Statutory Reforms*, 2 CONNECTICUT LAW REVIEW 513 (1970).

COMPILER:

Lawrence Cheeseman, Supervising Law Librarian, Connecticut Judicial Department Law Library, One Court Street, Middletown, CT 06457. (860) 343-6560.

Table 9 Spouse's Intestate Share

<h2 style="margin: 0;">Spouse's Intestate Share</h2>	
<p>2005 CONN. ACTS 10 § 15 (Reg. Sess.). "Wherever in the general statutes the terms 'spouse' . . . or any other term that denotes the spousal relationship are used or defined, a party to a civil union shall be included in such use or definition" (EFFECTIVE OCTOBER 1, 2005). Full text.</p>	
<p>CONN. GEN. STAT. § 45a-437 (2005). Intestate succession. Distribution to spouse</p>	<p>(a) If there is no will, or if any part of the property, real or personal, legally or equitably owned by the decedent at the time of his or her death, is not effectively disposed of by the will or codicil of the decedent, the portion of the intestate estate of the decedent, determined after payment of any support allowance from principal pursuant to section 45a-320, which the surviving spouse shall take is:</p> <ol style="list-style-type: none"> (1) If there is no surviving issue or parent of the decedent, the entire intestate estate absolutely; (2) If there is no surviving issue of the decedent but the decedent is survived by a parent or parents, the first one hundred thousand dollars plus three-quarters of the balance of the intestate estate absolutely; (3) If there are surviving issue of the decedent all of whom are also issue of the surviving spouse, the first one hundred thousand dollars plus one-half of the balance of the intestate estate absolutely; (4) If there are surviving issue of the decedent one or more of whom are not issue of the surviving spouse, one-half of the intestate estate absolutely. <p>(b) For the purposes of this section issue shall include children born out of wedlock and the issue of such children who qualify for inheritance under the provisions of section 45a-438.</p>

Table 10 Dalia v. Lawrence

Dalia v. Lawrence
226 Conn. 51, 68, 627 A.2d 392 (1993)

Commentators have acknowledged other legal arrangements by which a Connecticut decedent may validly avoid his or her surviving spouse's intestate share.¹⁰

¹⁰ See M. Wenig, "The Marital Property Law of Connecticut: Past, Present and Future," 1990 Wis. L. Rev. 807, 855 (suggesting such arrangements as an "inter vivos trust with reserved life estate and power of appointment; revocable inter vivos trust; life insurance; refund annuity; revocable or irrevocable joint and survivorship holdings; IRAs and nonqualified retirement plans; pay-on-death U.S. bonds and other P.O.D. contractual benefits; and even a deed deliverable to grantee on death of grantor"); E. Clark, "The Recapture of Testamentary Substitutes to Preserve the Spouse's Elective Share: An Appraisal of Recent Statutory Reforms," 2 Conn. L. Rev. 513, 531 (1970) (suggesting insurance, annuities, pensions, United States bonds payable to children on parent's death, or various trust arrangements).

Insolvent Estate

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to an insolvent estate and the surviving spouse .
- DEFINITIONS:**
- “But even the fact of insolvency is not, in and of itself, a ground for denying an allowance if one is found to be necessary.” Baldwin v. Trademens National Bank, 147 Conn. 656, 662, 165 A.2d 331 (1960).
- STATUTES:**
- CONN. GEN. STAT. (2005).
§ 45a-435 Personal property that may be set out to spouse from insolvent estate
 - 2005 CONN. ACTS 10 § 15 (Reg. Sess.). “Wherever in the general statutes the terms ‘spouse’ . . . or any other term that denotes the spousal relationship are used or defined, a party to a civil union shall be included in such use or definition” (EFFECTIVE OCTOBER 1, 2005). Full text.
- CASES:**
- Baldwin v. Trademens National Bank, 147 Conn. 656, 662, 165 A.2d 331 (1960). “Rather the statute contemplates the award of such amount as may be necessary, in addition to the other assets of the spouse, to maintain a household and manner of living appropriate to the decedent’s station in life, in view of the financial condition of his estate upon his death Of course, an allowance cannot be granted for the purpose of enriching the widow at the expense of others entitled to the estate or the rights of creditors in case of insolvency. But even the fact of insolvency is not, in and of itself, a ground for denying an allowance if one is found to be necessary.”
 - Barnum v. Boughton, 55 Conn. 117, 118, 10 A. 514 (1887). “If there are wife and children surviving, presumably they are without means for providing themselves with instant food and fuel, except as they may claim these necessities from the hand of public charity; and must so continue until the law has completed the work of division; a work of statutory necessity, spreading over a considerable space of time. In the interest of humanity and for the prevention of what in almost every case would be an unseemly and unnecessary demand upon public charity, the law provides that the probate court may make such temporary allowance to the widow or children as shall supply their daily recurring

needs. **Of course, if it shall finally result that the estate is not equal to the debts, these last are to bear the burden of the temporary necessities of the family. This is no hardship because every man knows when he gives credit to another that death may overtake the debtor when he is unable to pay and that a portion of such assets as he may have will be expended for the temporary support of his wife and children. It is a risk intentionally assumed, and the result therefore not to be complained of.**" (emphasis added).

WEST KEY # • Executors and Administrators # 408-419

ENCYCLOPEDIAS: • 34 C.J.S. *Executors and Administrators* (1998).
§§ 693-705. Insolvent estates
• 31 AM. JUR. 2D *Executors and Administrators* (2002).
§§ 832-835. Insolvent estates

COMPILER: Lawrence Cheeseman, Supervising Law Librarian, Connecticut Judicial Department Law Library, One Court Street, Middletown, CT 06457. (860) 343-6560.

Support During Settlement Of The Estate

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to the surviving spouse's allowance during the settlement of the estate.
- STATUTES:**
- CONN. GEN. STAT. (2005).
§ 45a-320. Allowance for support of surviving spouse and family.
Family car
§ 45a-321. Custody of real property. Products and income of real property. Family may occupy homestead.
 - 2005 CONN. ACTS 10 § 15 (Reg. Sess.). “Wherever in the general statutes the terms ‘spouse’ . . . or any other term that denotes the spousal relationship are used or defined, a party to a civil union shall be included in such use or definition” (EFFECTIVE OCTOBER 1, 2005). [Full text.](#)
- CASES:**
- Baldwin v. Trademens National Bank, 147 Conn. 656, 662, 165 A.2d 331 (1960). “Rather the statute contemplates the award of such amount as may be necessary, in addition to the other assets of the spouse, to maintain a household and manner of living appropriate to the decedent’s station in life, in view of the financial condition of his estate upon his death Of course, an allowance cannot be granted for the purpose of enriching the widow at the expense of others entitled to the estate or the rights of creditors in case of insolvency.”
 - Barnum v. Boughton, 55 Conn. 117, 118, 10 A. 514 (1887). “If there are wife and children surviving, presumably they are without means for providing themselves with instant food and fuel, except as they may claim these necessities from the hand of public charity; and must so continue until the law has completed the work of division; a work of statutory necessity, spreading over a considerable space of time. In the interest of humanity and for the prevention of what in almost every case would be an unseemly and unnecessary demand upon public charity, the law provides that the probate court may make such temporary allowance to the widow or children as shall supply their daily recurring needs.
 - Staub’s Appeal from Probate, 66 Conn. 127, 133, 33 A. 615 (1895). “The principal question in the case relates to the effect of the ante-nuptial contract upon the right of the widow to claim or receive an allowance.”

**WEST KEY
NUMBERS:
DIGESTS:**

- Executors and Administrators # 173-201
- ALR DIGEST: *Executors and Administrators* §§ 99-99.8

ENCYCLOPEDIAS:

- 34 C.J.S. *Executors and Administrators* (1998).
§§ 344-393. Allowance to surviving spouse or children
- 31 AM. JUR. 2D *Executors and Administrators* (2002).
§§ 677 – 723. Family allowance
- John D. Perovich, Annotation, *What Is “Necessary” Furniture Entitled To Exemption From Seizure For Debt*, 41 ALR3d 607 (1972).
- Annotation, *Family Allowance From Decedent’s Estate As Exempt From All Attachment , Garnishment, Execution, And Foreclosure*, 27 ALR3d 863 (1969).

COMPILER:

Lawrence Cheeseman, Supervising Law Librarian, Connecticut Judicial Department Law Library, One Court Street, Middletown, CT 06457. (860) 343-6560.

Inchoate Rights

A Guide to Resources in the Law Library

- SCOPE:**
- Bibliographic resources relating to inchoate rights
- DEFINITIONS:**
- **Inchoate right.** “The universal rule is that the right of either husband or wife in the real property of the other, of which said other died seized, is conditioned solely upon survivorship. If the one claiming such interest die before the one seized the fee, such death wholly extinguishes such interest. During the life of such consort such interest in realty is usually spoken of as ‘inchoate right.’” Long v. Long, 124 N.E. 161, 162 (1919).
- CASES:**
- Cherniack v. Home National Bank & Trust Co., 151 Conn. 367, 370, 198 A.2d 58 (1964). “It is important to bear in mind in this connection that under Connecticut law neither husband nor wife acquires, by virtue of the marriage, any interest in the real or personal property of the other during that other’s lifetime. General Statutes § 46-9. In other words either spouse may, in his lifetime, without the consent or knowledge of the other, make a valid gift, or otherwise dispose of his property, to a third party.”
- TEXTS & TREATISES:**
- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE, FAMILY LAW AND PRACTICE WITH FORMS (1999).
Chapter 8, “Dower and curtesy—property rights of a surviving spouse.”
§ 8.6 Effect on lifetime disposition of property
- COMPILER:**
- Lawrence Cheeseman, Supervising Law Librarian, Connecticut Judicial Department Law Library, One Court Street, Middletown, CT 06457. (860) 343-6560.

Equitable Distribution of Property in Connecticut Marriages or Civil Unions

A Guide to Resources in the Law Library

- “The purpose of alimony is to meet one's continuing duty to support . . . while the purpose of property division is to unscramble the ownership of property, giving to each spouse what is equitably his.” Weiman v. Weiman, 188 Conn. 232, 234, 449 A.2d 151 (1982).
- “At the time of entering a decree annulling or dissolving a marriage or for legal separation pursuant to a complaint under section 46b-45, the Superior Court may assign to either the husband or wife all or any part of the estate of the other. The court may pass title to real property to either party or to a third person or may order the sale of such real property, without any act by either the husband or the wife, when in the judgment of the court it is the proper mode to carry the decree into effect.” CONN. GEN. STAT. § 46b-81(a) (2008). *Note*: Effective October 1, 2005 “. . . civil union shall be included in such use or definition.” Conn. Gen. Stats. § 46b-3800 (2008).
- “There are three stages of analysis regarding the equitable distribution of each resource: first, whether the resource is property within § 46b-81 to be equitably distributed (classification); second, what is appropriate method for determining the value of the property (valuation); and third, what is the most equitable distribution of the property between the parties (distribution). Krafick v. Krafick, 234 Conn. 783, 792-793, 663 A.2d 365 (1995).
- **Connecticut’s all property equitable distribution scheme**: “It does not limit, either by timing or method of acquisition or by source of funds, the property subject to a trial court’s broad allocative power.” *Ibid.*, 792.
- **Civil Union**: “Applicability of statutes to civil unions, civil union status and parties to a civil union. Wherever in the general statutes the terms ‘spouse’, ‘family’, ‘immediate family’, ‘dependent’, ‘next of kin’ or any other term that denotes the spousal relationship are used or defined, a party to a civil union shall be included in such use or definition, and wherever in the general statutes, except sections 7-45 and 17b-137a, subdivision (4) of section 45a-727a, and sections 46b-20 to 46b-34, inclusive, 46b-38nn and 46b-150d, the term ‘marriage’ is used or defined, a civil union shall be included in such use or definition. Wherever in the general statutes, except sections 46a-60, 46a-64, 46a-64c and 46a-66, the term ‘marital status’ is used or defined, civil union status shall be included in such use or definition.” CONN. GEN. STATS. § 46b-3800 (Effective October 1, 2005).

Section 5.1

Connecticut's All Property Equitable Distribution Scheme

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to Connecticut's all property equitable distribution scheme in distributing property as part of an action for dissolution, legal separation or annulment of marriage or civil union, effective October 1, 2005.
- CURRENCY:**
- 2008 Edition
- DEFINITIONS:**
- "It is black letter law that Connecticut is an **equitable distribution property state**" *Wendt v. Wendt*, 59 Conn. App. 656, 662, 757 A.2d 1225 (2000) (emphasis added).
 - "At the time of entering a decree annulling or dissolving a marriage or for legal separation pursuant to a complaint under section 46b-45, the Superior Court may assign to either the husband or wife **all or any part of the estate of the other.**" CONN. GEN. STAT § 46b-81(a) (2008) (Emphasis added).
 - "This approach to property division is commonly referred to as an '**all-property equitable distribution scheme.**'" *Krafick v. Krafick*, 234 Conn. 783, 792, 663 A.2d 365 (1995) (emphasis added).
- CASES:**
- *Ricciuti v. Ricciuti*, 74 Conn. App. 120, 124 (2002). "Here, the defendant began receiving a pension from the Department of Defense after his retirement in 1996. The pension accrued over twenty-two years, during nineteen of which the parties were married. The court, therefore, correctly determined that the defendant's pension was subject to distribution under § 46b-81."
 - *Mongillo v. Mongillo*, 69 Conn. App. 472, 481-482, 794 A.2d 1054 (2002). "In fashioning its orders for the disposition of property, the court is obligated to consider the statutory factors relating to the disposition of property in marital dissolution. See General Statutes § 46b-81. The statutory scheme setting forth the criteria for the court's exercise of discretion in making property awards provides no support for the plaintiff's argument that it was error for the court not to award the plaintiff a portion of the

defendant's retirement benefits."

- Wendt v. Wendt, 59 Conn. App. 656, 673, 757 A.2d 1225, cert. den. 255 Conn. 918. (2000). "The court made extraordinary efforts to ensure that the valuation and the division of the marital property was within the bounds of our statutes, case law and constitution. We will not disturb the court's thoughtful analysis and conclusion, which falls well within the bounds of its broad discretion."
- Lopiano v. Lopiano, 247 Conn. 356, 365, 752 A.2d 1000 (1998). "Recent decisions from this court have indeed empowered trial courts to deal broadly with property and its equitable division incident to dissolution proceedings."
- Watson v. Watson, 221 Conn. 698, 607 A.2d. 383 (1992). "Trial court must be accorded discretion in fashioning equitable assignment of property. The power to act equitably is the keystone to the court's ability to fashion relief in the infinite variety of circumstances which arise out of the dissolution of a marriage."
- Weiman v. Weiman, 188 Conn. 232, 235, 449 A.2d 151 (1982). "The division of property was structured in such a manner as to return to the defendant her contribution and that of her family. Payments for the defendant's counsel fees, medical bills, her out standing debts and any capital gains tax on the property were to be made from the proceeds resulting from the sale of the real estate. The defendant, in addition, is to receive significant sums of money and one-half the remainder of the net proceeds from the sale of the real estate."

The alimony awarded the defendant was not substantial in amount nor was it for a long period of time. When considered, in the context of other orders which required the plaintiff to pay for the full support, college education, and medical expenses of the five children of the marriage and to maintain insurance on his life for the benefit of the defendant, we cannot say the award is clearly erroneous."
- Lane v. Lane, 187 Conn. 144, 444 A.2d 1377 (1982). "Differences inherent in particular family situations require that the court's discretion be broad enough to make suitable orders upon dissolution of marriage to fit the circumstances."
- Carpenter v. Carpenter, 188 Conn. 736, 740-741, 453 A.2d 1151 (1982). "While the trial court must consider the delineated statutory criteria, no single criterion is preferred over the others, and the court is accorded wide latitude in varying the weight placed upon each item under the peculiar circumstances of each case."

- Tsopanides v. Tsopanides, 181 Conn. 248, 435 A.2d 34 (1980). "The principal issue raised by this appeal is whether in a dissolution action the court may properly render a judgment ordering the conveyance of property to a party who has not filed a claim for such relief."

**WEST KEY
NUMBERS:**

- *Divorce*
248. Disposition of Property
252.3. —Particular property or interests and mode of allocation

ENCYCLOPEDIAS:

- 27B C.J.S. *Divorce* (1986).
§ 508 Disposition of Property
- 24 AM JUR 2d *Divorce & Separation* (1998)
Equitable Distribution [§§ 484-586]
In general (§§ 484-496)
§ 484. Generally
§ 485. Limitations on court's discretion
§ 487. Community property distinguished
§ 490. Alimony or maintenance distinguished
§ 491. Constitutionality of equitable distribution statutes
- Lee R. Russ, Annotation, *Divorce: Equitable Distribution Doctrine*, 41 ALR4th 481 (1985).
II. General aspects of equitable distribution
§ 3. Marriage viewed as partnership or shared enterprise
§ 4. Goal is final separation of parties
§ 5. Extent of application of equitable distribution doctrine
[a] View that doctrine is generally available
III. Meaning of "Equitable," "Just," or "Fair"
V. Relationship between property division and support award
§ 16. Equitableness of award requires consideration of all economic awards

**TEXTS &
TREATISES:**

- 2 ELIZABETH WILLIAMS, MARITAL PROPERTY LAW (rev. 2d ed. 2004)
Chapter 40. Equitable distribution doctrine
§ 40:01. General aspects of equitable distribution
§ 40:02. Meaning of "Equitable," "Just," or "Fair"
- JOHN DEWITT GREGORY ET AL. PROPERTY DIVISION IN DIVORCE PROCEEDINGS: A FIFTY STATE GUIDE (2003).
§ 2.08. All property distribution
- 3 ARNOLD H. RUTKIN, FAMILY LAW AND PRACTICE (2008).
Chapter 37. Principles of property division
§ 37.01 Theories and Principles

- [b] Equitable distribution: an overview
 - [i] Equitable distribution defined
 - [ii] Goals of equitable distribution
 - [iii] Validity of equitable distribution statutes
 - [v] "All property" regimes

- BRETT R. TURNER, *EQUITABLE DISTRIBUTION OF PROPERTY* (2d ed. 1994).
 - Chapters 1. Introduction to equitable distribution
 - § 1.01 The Equitable Distribution Concept
 - § 1.02 Equitable Distribution: History and Background
 - § 1.03. Constitutionality
 - Chapter 2. Property Division Systems
 - § 2.01. Introduction
 - § 2.02. Goals of Property Division
 - § 2.05. Community Property
 - § 2.07. Equitable distribution: all property model
 - § 2.09. All property versus dual classification: a comparison
- VALUATION AND DISTRIBUTION OF MARITAL PROPERTY (2001).
 - § 303[1]

LAW REVIEWS:

- Judith I. Avner, *Using The Connecticut Equal Rights Amendment At Divorce To Protect Homemaker's Contributions To The Acquisition Of Marital Property*, 4 UNIV. OF BRIDGEPORT LAW REVIEW 265 (1983).

COMPILER:

Lawrence Cheeseman, Supervising Law Librarian, Connecticut Judicial Branch Law Library, One Court Street, Middletown, CT 06457. (860) 343-6560. [EMAIL](#)

Section 5.2

Classification of Property

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to what types of property are classified as property in Connecticut as part of an action for dissolution, legal separation or annulment of marriage or civil union, effective October 1, 2005.
- CURRENCY:**
- 2008 Edition
- DEFINITION:**
- **Classification of marital property:** “whether the resource is property within § 46b-81 to be equitably distributed” Krafick v. Krafick, 234 Conn. 783, 792-793, 663 A.2d 365 (1995).
 - **Marital property:** “At the time of entering a decree annulling or dissolving a marriage or for legal separation pursuant to a complaint under section 46b-45, the Superior Court may assign to either the husband or wife all or any part of the estate of the other. The court may pass title to real property to either party or to a third person or may order the sale of such real property, without any act by either the husband or the wife, when in the judgment of the court it is the proper mode to carry the decree into effect.”
 - Interpreting the term property broadly is also consistent with the purpose of equitable distribution statutes generally.” Krafick v. Krafick, 234 Conn. 783, 795, 663 A.2d 365 (1995).
 - **Types of property interests:** “Neither § 46b-81 nor any other closely related statute defines property or identifies the types of property interests that are subject to equitable distribution in dissolution proceedings. Our prior cases interpreting § 46b-81 indicate, however, that in enacting § 46b-81, the legislature acted to expand the range of resources subject to the trial court’s power of division, and did not intend that property should be given a narrow construction.” Bornemann v. Bornemann, 245 Conn. 508, 515-516, 752 A.2d 978 (1998).
 - **Property interest vs. expectancy:** “ . . . § 46b-81 applies

only to presently existing property interests, not 'mere expectancies.'" Krafick v. Krafick, 234 Conn. 783, 797, 663 A.2d 365 (1995).

- "Thus, Sunbury requires that in dissolution proceedings, the court must determine whether an asset was earned prior to or subsequent to the date of dissolution in order to determine whether the asset is marital property." Bornemann v. Bornemann, 245 Conn. 508, 521, 752 A.2d 978 (1998).

STATUTES:

- CONN. GEN. STAT. (2008)
§ 46b-81(a). "At the time of entering a decree annulling or dissolving a marriage or for legal separation pursuant to a complaint under section 46b-45, the **Superior Court may assign to either the husband or wife all or any part of the estate of the other**. The court may pass title to real property to either party or to a third person or may order the sale of such real property, without any act by either the husband or the wife, when in the judgment of the court it is the proper mode to carry the decree into effect." [emphasis added].
- § 46b-81(a) (eff. October 1, 2005). ". . . a civil union shall be included in such use or definition."

CASES:

- Kiniry v. Kiniry, 71 Conn. App. 614, 624 (2002). "On the one hand, stock options that are awarded prior to the date of dissolution and awarded solely for past services are considered to be earned during the marriage and are, therefore, considered marital property subject to equitable distribution under § 46b-81 On the other hand, stock options that are earned prior to the date of dissolution, but that constitute compensation for future services, are not considered to be earned during the marriage and, therefore, are not subject to distribution as marital property under § 46b-81."
- Bender v. Bender, 258 Conn. 733, 748, 785 A.2d 197 (2001). "[I]n determining whether a certain interest is property subject to equitable distribution under § 46b-81, we look to whether a party's expectation of a benefit attached to that interest was too speculative to constitute divisible marital property In cases in which an interest was so speculative as to constitute a mere expectancy, we concluded that it was not property subject to equitable distribution whereas, in cases in which an interest was not so speculative as to constitute a mere expectancy, but rather a presently existing interest in property, we treated it as property subject to equitable distribution."
- Borneman v. Borneman, 245 Conn. 508, 517-518, 752 A.2d 978 (1998). "Despite the fact that the stock options at issue

in this case had not yet "matured" or "vested" at the time of dissolution, the options created an enforceable right in the defendant."

- Simmons v. Simmons, 244 Conn. 158, 168, 708 A.2d 949 (1998). "Consequently, we conclude that an advanced degree is properly classified as an expectancy rather than a presently existing property interest. It is not, therefore, subject to equitable distribution upon dissolution pursuant to § 46b-81."
- Krafick v. Krafick, 234 Conn. 783,793, 663 A.2d 365, (1995). "We first consider whether pension benefits should be classified as property pursuant to § 46b-81. We conclude that they should."
- Cooley v. Cooley, 32 Conn. App. 152, 162-163, 628 A.2d 608, cert. denied 228 Conn. 901, 634 A.2d .295 (1993). "The plaintiff had no vested right at any time to the trust corpus that would permit its inclusion in the marital estate."
- Rubin v. Rubin, 204 Conn. 224, 232, 527 A.2d 1184 (1987). "We have concluded that the award to the defendant of a share of the plaintiff's expectancy cannot be sustained as a permissible transfer of property under 46b-81."
- Trubowitz v. Trubowitz, 5 Conn. App. 681, 687, 502 A.2d 940 (1985). "No statute requires a trial court to make an equal percentage division of all assets. There is often good reason to treat assets differently. Some assets, such as a business dependent upon the personal services of one party, or objects of art or personal furnishings, cannot be divided equally per item or in toto. One party or the other may have a particular interest in, or claim to, a particular asset, and a trial court is not hampered in making whatever distribution of them it chooses, as long as it does so in accordance with statutory guidelines."
- Krause v. Krause, 174 Conn. 361, 365, 387 A.2d 548 (1978). "'Expectancy' is the bare hope of succession to the property of another, such as may be entertained by an heir apparent. Such a hope is inchoate. It has no attribute of property, and the interest to which it relates is at the time nonexistent and may never exist."

**WEST KEY
NUMBERS:**

- Divorce
 - # 248. Disposition of property
 - # 252. 3. — Particular property or interests and mode of allocation

ENCYCLOPEDIAS:

- 24 AM. JUR. 2D *Divorce and Separation* (1998).
 - §§ 477-606. Division of property by court
 - §§ 497-517. Property Subject to Distribution
 - §§ 518-547. Specific Types of Property
 - §§ 518-522. In general

- §§ 523-526. Marital residence
 - §§ 527-531. Professional degrees, license, and practice
 - §§ 532-536. Pension rights; other benefit payments and awards
 - §§ 537-540. Government pensions
 - §§ 541-547. Other benefit payments and awards
- 27C C.J.S. *Divorce* (1986).
 - §§ 508-610. Disposition of property
 - §§ 514-526. Property or interests subject to disposition
 - §§ 549-571. Specific kinds of property or interests
 - §§ 549-552. Homestead or marital residence
 - §§ 553-559. Retirement, pension, other employment-related benefits
 - §§ 560-571. Other kinds of property or interests
- See [Table 1](#) for ALR annotations

TEXTS & TREATISES:

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, *CONNECTICUT PRACTICE, FAMILY LAW AND PRACTICE WITH FORMS* (1999).
 - Chapter 26. Assets subject to distribution
 - § 26.1. In general
 - § 26.2. Definition of property
 - § 26.3. Identification of particular assets for distribution
 - § 26.4. Realty
 - § 26.5. Marital home
 - § 26.7. Personal property and rights
 - § 26.8. Financial interests
 - § 26.9. Insurance annuities and other policy benefits
 - § 26.10. Receivables
 - § 26.11. Pension and retirement benefits and interests
 - § 26.12. Other employment related benefits and assets
 - § 26.13. Professional licenses and degrees
 - § 26.14. Business interests and professional practices
 - § 26.15. Gifts
 - § 26.16. Inheritances, trusts and other estate interests
 - § 26.17. Property acquired before the marriage
 - § 26.18. Property acquired after dissolution action commenced
 - § 26.19. Fraudulent transfers and property transferred while action is pending
 - § 26.20. Debts and liabilities
 - § 26.21. Tort and worker's compensation claims and other pending actions
- JOHN DEWITT GREGORY ET AL. *PROPERTY DIVISION IN DIVORCE PROCEEDINGS: A FIFTY STATE GUIDE* (2003).
 - Chapter 3. Recurrent classification issues
- BRETT R. TURNER, *EQUITABLE DISTRIBUTION OF PROPERTY* (2nd ed. 1994).

Chapter 5. Classification

§ 5.01. Importance of classification

§ 5.02. Classification process

§ 5.03. Burden of proof

§ 5.06. Property

Chapter 6. Specific Property

§ 6.01. Introduction

§ 6.02. Future benefits plans: background and terminology

§ 6.04. Military retirement pay: federal law

§ 6.05. Other military service benefits: federal law

§ 6.06. Other federal government benefits: federal law

§ 6.07. Private future benefits plans: federal law

§ 6.11. Method for distributing retirement benefits

§ 6.15. Stock options and other restricted employment benefits

§ 6.19. Workers' compensation awards

§ 6.20. Degrees and licenses

§ 6.22. Professional practices and other businesses

§ 6.23. Intellectual property

§ 6.24. Prizes and awards

§ 6.25. Marital home

§ 6.26. Insurance proceeds and policies

§ 6.27. Future inheritance and gifts

§ 6.29. Debts

- 3 ARNOLD H. RUTKIN, GEN. ED., FAMILY LAW AND PRACTICE (2005).

Chapter 36. Valuation of marital property

§ 36.03. Defining property

[1]. Professional degrees and licenses

[2]. Professional goodwill

[3]. Retirement benefits

Chapter 37. Principles of property distribution

§ 37.04. Classification of property

§ 37.07. The marital home

§ 37.08. Business interests

§ 37.09. Professional goodwill

§ 37.10. Increased earning capacity resulting from a professional license, graduate degree, or education

§ 37.11. Retirement benefits

§ 37.12. Federal government benefits

[1] Social security

[2] Military retirement

§ 37.13. Personal injury, workers' compensation, and other awards and claims

§ 37.14. Debts

Chapter 38. Guide to equitable distribution

§ 38.02. Step Number One: Property Subject to Distribution

- 2 & 3 JOHN TINGLEY AND NICHOLAS B. SVALINA, MARITAL PROPERTY LAW (rev. 2d ed. 2001).

Chapter 44. Spouses professional degree or license as

marital property

Chapter 45. Pension or retirement benefits as subject to award or division

Chapter 46. Accrued vacation, holiday time, and sick leave as marital or separate property

Chapter 49. Appreciation in value of separate property during marriage without contribution by either spouse as separate or marital property

Chapter 50. Treatment of stock options for purposes of dividing marital property

- 2 RICHARD E. CROUCH, FAMILY LAW CHECKLISTS (2001).

Chapter 8. Property division

Checklist 8-1. Sketch of law nationwide

Checklist 8-2. Divisible property types

Checklist 8-3. Identification of property as separate or marital

LAW REVIEWS:

- Judith I. Avner, *Using The Connecticut Equal Rights Amendment At Divorce To Protect Homemaker's Contributions To The Acquisition Of Marital Property*, 4 UNIV. OF BRIDGEPORT LAW REVIEW 265 (1983).

COMPILER:

Lawrence Cheeseman, Supervising Law Librarian, Connecticut Judicial Branch Law Library, One Court Street, Middletown, CT 06457. (860) 343-6560. [EMAIL](#)

Table 11 ALR Annotations on Classification of Marital Property

Accounting practice	Michael J. McMahon, Annotation, <i>Divorce And Separation: Goodwill In Accounting Practice As Property Subject To Distribution On Dissolution Of Marriage</i> , 77 ALR4th 645 (1990).
Attorney's unliquidated contingent fee contracts	Charles W. Davis, Annotation, <i>Divorce And Separation: Attorney's Contingent Fee Contracts As Marital Property Subject To Distribution</i> , 44 ALR5th 671 (1996).
Degree or License	William M. Howard, Annotation, <i>Spouse's Professional Degree Or License As Marital Property For Purposes Of Alimony, Support, Or Property Settlement</i> , 3 ALR6th 447 (2005).
Dental Practice	Martin J. McMahon, Annotation, <i>Divorce And Separation: Medical Or Dental Practice As Property Subject To Distribution On Dissolution Of Marriage</i> , 76 ALR4th 1025 (1990).

Intellectual Property	Frank J. Wozniak, Annotation, <i>Copyright, Patent, Of Other Intellectual Property As Marital Property For Purposes Of Alimony, Support, Or Divorce Settlement</i> , 80 ALR5th 487 (2000).
Law Practice	Martin J. McMahon, Annotation, <i>Divorce And Separation: Goodwill In Law Practice As Property Subject To Distribution On Dissolution Of Marriage</i> , 79 ALR4th 171 (1990).
Lottery Winnings	Amy P. Bunk, Annotation, <i>Division of Lottery Proceeds in Divorce Proceedings</i> , 124 ALR5th 537 (2004).
Medical Practice	Martin J. McMahon, Annotation, <i>Divorce And Separation: Medical Or Dental Practice As Property Subject To Distribution On Dissolution Of Marriage</i> , 76 ALR4th 1025 (1990).
Pension	Charles C. Marvel, Annotation, <i>Pension Or Retirement Benefits As Subject To Award Or Division By Court In Settlement Of Property Rights Between Spouses</i> , 94 ALR3d 176 (1979).
Personal Injury Settlement or Recovery	Kurtis A. Kemper, Annotation, <i>Divorce and Separation: Determination of Whether Proceeds from Personal Injury Settlement or Recovery Constitute Marital Property</i> , 109 ALR5th 1 (2003). [Continued]

(cont'd)

Personal Injury Action	Dale Joseph Gilsinger, Annotation, <i>Spouse's Cause Of Action For Negligent Personal Injury, Or Proceeds Therefrom, As Separate Or Community Property</i> , 80 ALR5th 533 (2000).
Retirement benefits	Charles C. Marvel, Annotation, <i>Pension Or Retirement Benefits As Subject To Award Or Division By Court In Settlement Of Property Rights Between Spouses</i> , 94 ALR3d 176 (1979).
Separate Property, Appreciation in value	Michael A. Rosenhouse, Annotation, <i>Divorce And Separation: Appreciation In Value Of Separate Property During Marriage Without Contribution By Either Spouse As Separate Or Community Property</i> , 24 ALR4th 453 (1983).
Sick leave	Gavin L. Phillips, Annotation, <i>Accrued Vacation, Holiday Time, And Sick Leave As Marital Or Separate Property</i> , 78 ALR4th 1107 (1990).
Stock options	Eric Hollowell, Annotation, <i>Divorce And Separation: Treatment Of Stock Options For Purposes Of Dividing Marital Property</i> ," 46 ALR4th 640 (1986).
Vacation (accrued)	Gavin L. Phillips, Annotation, <i>Accrued Vacation, Holiday Time, And Sick Leave As Marital Or Separate Property</i> , 78 ALR4th 1107 (1990).
Workmen's compensation	Annotation, <i>Divorce And Separation: Workmen's Compensation Benefits As Marital Property Subject To Distribution</i> ," 30 ALR5th 139 (1995).

Valuation of Assets

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to valuation of property determined to be property assets relating to marriage or civil union in Connecticut, effective October 1, 2005.
- SEE ALSO:** [§ 4. Specific issues in property valuation](#)
- CURRENCY:**
- 2008 Edition
- DEFINITIONS:**
- **Fair market value:** “the price that would probably result from fair negotiations between a willing seller and a willing buyer” Turgeon v. Turgeon, 190 Conn. 269, 275 (1983).
 - “In assessing the value of the property taken, the trier arrives at his own conclusions by weighing the opinions of the appraisers, the claims of the parties, and his own general knowledge of the elements going to establish value, and then employs the most appropriate method of determining valuation. Esposito v. Commissioner of Transportation, 167 Conn. 439, 441, 356 A.2d 175; Textron, Inc. v. Wood, 167 Conn. 334, 345, 355 A.2d 307. The trial court has the right to accept so much of the testimony of the experts and the recognized appraisal methods which they employed as he finds applicable; his determination is reviewable only if he misapplies, overlooks, or gives a wrong or improper effect to any test or consideration which it was his duty to regard. Greenfield Development Co. v. Wood, 172 Conn. 446, 451, 374 A.2d 1084 (1977).
 - **Date of valuation:** “This court held that, under § 46b-81, the date of dissolution is the appropriate date on which to value the parties’ assets” Bornemann v. Bornemann, 245 Conn. 508, 515-516, 752 A.2d 978 (1998).
- STATUTES:**
- CONN. GEN. STAT. § 46b-81 (2008).
 - (c). “In fixing the nature and value of the property, if any, to be assigned, the court, after hearing the witnesses, if any, of each party, except as provided in subsection (a) of section 46b-51, shall consider the length of the marriage, the causes for the annulment, dissolution of the marriage or legal separation, the age,

health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties and the opportunity of each for future acquisition of capital assets and income. The court shall also consider the contribution of each of the parties in the acquisition, preservation or appreciation in value of their respective estates.”

- CONN. GEN. STATS. § 46b-38oo (Effective October 1, 2005). “. . . a civil union shall be included in such use or definition.”

CHECKLISTS:

- 3 ARNOLD H. RUTKIN, GEN. ED., FAMILY LAW AND PRACTICE (2008).
Chapter 36. Valuation of Marital Property
§ 36.16. Valuation checklist
[1]. Marital assets
[2]. Liabilities
 [a]. Debts
 [b]. Liability for debts of third person
[3]. Documents
- 2 RICHARD E. CROUCH, FAMILY LAW CHECKLISTS (2001).
Chapter 8. Property division
Checklist 8-4. Valuation

CASES:

- Sowinski v. Sowinski, 72 Conn. App. 25, 27, 804 A.2d 872 (2002). “On appeal, the defendant specifically challenges the court’s finding with regard to the fair market value of the Copake property and requests that we reverse the court’s financial orders. He points out that the parties disputed the value of the Copake property at trial despite the fact that they had stipulated to the value of the Salisbury property. The defendant argues that the court improperly admitted hearsay as to that issue and that the court relied on such hearsay, in the absence of any other competent evidence in support of its finding, when arriving at its valuation of the Copake property. We agree.”
- Porter v. Porter, 61 Conn. App. 791, 800, 769 A.2d 725 (2001). “Here, neither party provided the court with expert testimony as to the value of the home. As a result, the court was left with the claims of the parties and its general knowledge to establish the value of the home. According to the defendant, the value of the home was \$285,000. The court, however, determined the value to be \$270,000, a figure slightly less than the value proposed by the plaintiff, \$271,750, which she derived from the mid range of a market analysis. Given the circumstances the court faced in determining the value of the marital home, we cannot conclude that its valuation of \$270,000 was clearly erroneous.”
- Bender v. Bender, 258 Conn. 733, 760, 785 A.2d 197

(2001). "We conclude that it is within the trial court's discretion, as it is in the context of vested pension benefits . . . to choose, on a case-by-case basis, among the present value method, the present division method of deferred distribution, and any other valuation method that it deems appropriate in accordance with Connecticut law"

- Bornemann v. Bornemann, 245 Conn. 508, 531, 752 A.2d 978 (1998). "The court need not, however, assign specific values to the parties' assets."
- Carlos v. Carlos, 19 Conn. App. 416, 419, 562 A.2d 580 (1989). "More important than any speculation about how the trial court might have arrived at the amount of the encumbrances is the fact that the parties had never agreed on these figures. We read the memorandum of decision as stating that the parties stipulated to facts including the total amount of the encumbrances. For that reason, we are constrained to find that the underpinning of the decision is not sound even though the award may be fair."
- Cuneo v. Cuneo, 12 Conn. App. 702, 709, 533 A.2d 1226 (1987). "That requirement is simply part of the broader principle that the financial awards in a marital dissolution case should be based on the parties' current financial circumstances to the extent reasonably possible."
- Turgeon v. Turgeon, 190 Conn. 269, 274-275, 460 A.2d 1260 (1983). "We have approved the capitalization of actual income as an appropriate method of valuation In the present case the defendant's company was, at the time of its valuation in 1980, a going concern. There was no evidence that it was in the process of liquidation. Although the trier was not obliged to accept the income approach he was not precluded from doing so merely because the company is a closely held, 'one-man' business."
- Valante v. Valante, 180 Conn. 528, 529-530, 429 A.2d 964 (1980). "The defendant first contends that the court could not properly decide the questions of periodic alimony and the assignment of property because it lacked sufficient information respecting the value of the plaintiff's interest in a closely held corporation, in his life insurance policies and in his pension rights. This position is curious. In addition to having access to the plaintiff's financial affidavit, the defendant was given a full opportunity to cross-examine the plaintiff at length regarding his financial circumstances. Further, the defendant had the opportunity to explore the plaintiff's financial circumstances through a variety of discovery procedures. Optimal use of the resources might well have generated additional pertinent facts for the court's consideration. From the defendant's failure to elicit such

information, however, it in no way follows that the court acted on insufficient evidence. Reviewing the record in this regard, we find that there was sufficient financial information before the court for it to fashion the appropriate orders on the financial aspects of the case."

**WEST KEY
NUMBERS:**

- *Divorce*
 - # 248. Disposition of property
 - # 253. —Proceedings for division or assignment
 - # 253(3). Valuation of assets

ENCYCLOPEDIAS:

- 24 AM. JUR. 2D *Divorce and Separation* (1998).
 - §§ 574-586 Valuation
 - §§ 574-579. In general
 - § 575. Time of valuation
 - § 576. Change in value after time of valuation
 - § 577. Effect of dissipation of marital assets
 - § 578. —Preventing dissipation
 - § 579. Use and costs of experts to assist evaluation
 - §§ 580-586. Specific types of property
- 27B C.J.S. *Divorce* (1986).
 - § 544. Valuation in general
 - § 545. Time of valuation
 - § 546. Expert evidence; appraisals
- Sonja A. Soehnel, Annotation, *Necessity That Divorce Court Value Property Before Distributing It*, 51 ALR4th 11 (1987).

**TEXTS &
TREATISES:**

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE, FAMILY LAW AND PRACTICE WITH FORMS (1999).
 - Chapter 27. Valuation of assets
 - § 27.1. In general
 - § 27.2. Date of valuation
 - § 27.3. Valuation methods and criteria
 - § 27.4. Book value
 - § 27.5. Assessed value
 - § 27.6. Sale price or purchase offer
 - § 27.7. Appraisal
 - § 27.8. Business type and history
 - § 27.9. General economic conditions
 - § 27.10. Earning capacity
 - § 27.11. Size of holding
 - § 27.12. Goodwill and intangible values
 - § 27.13. Buy-sell agreements
 - § 27.14. Other factors
- 2 FAMILY LAW PRACTICE IN CONNECTICUT (1996).
 - Chapter 12. QDROs and other Considerations for Retirement Plan Assets (by Elizabeth Lorion McMahon).
 - Chapter 13. Valuation of assets (by Lorraine D. Eckert)

- I. The Need for valuation
- II. How to value the asset
 - A. Valuation from inference, admission, owner's testimony
 - B. Expert testimony
 - C. How does the court determine value
 - D. Evidence: estimated versus speculative
 - E. Taxation
- JOHN DEWITT GREGORY ET AL. PROPERTY DIVISION IN DIVORCE PROCEEDINGS: A FIFTY STATE GUIDE (2003).
Chapter 4. Valuation of assets—General principles
- BRETT R. TURNER, EQUITABLE DISTRIBUTION OF PROPERTY (2nd ed. 1994 with 2004 supp.).
Chapter 7. Valuation of Assets
 - § 7.01. Need to value
 - § 7.02. Date of valuation
 - § 7.03. General rule: fair market value
 - § 7.04. Determining value: rules for the Court
 - § 7.05. Determining value: Advise for the parties
- RONALD L. BROWN, ED. VALUING PROFESSIONAL PRACTICES AND LICENSES, A GUIDE FOR THE MATRIMONIAL PRACTITIONER (3rd ed. 2004).
 - Part A: Basic concepts in valuing professional practices
 - Part B: Valuing law practices
 - Part C: Valuing medical practices
 - Part D: Valuing accounting practices
 - Part E: Valuing architectural and engineering practice
 - Part F: Valuing professional degrees and licenses
 - Part G: Merger and double counting
 - Part H: Handling celebrity cases
 - Part I: Miscellaneous topics
- 3 ARNOLD H. RUTKIN, GEN. ED., FAMILY LAW AND PRACTICE (2005).
Chapter 36. Valuation of Marital Property
 - § 36.02. The valuation process—an overview
 - § 36.06. The date of valuation
 - § 36.07. Discovery
 - § 36.09. Valuation expert
- 2 & 3 JOHN TINGLEY AND NICHOLAS B. SVALINA, MARITAL PROPERTY LAW (rev. 2d ed. 1995).
Chapter 41. Necessity that divorce value property before distributing it
Chapter 47. Method of valuation of life insurance policies in connection with trial court's division of property
Chapter 51. Valuation of stock options for purposes of divorce court's property division
- 2 RICHARD E. CROUCH, FAMILY LAW CHECKLISTS (2001).
Chapter 8. Property division

Checklist 8-4. Valuation

- BARTH H. GOLDBERG, VALUATION OF DIVORCE ASSETS (1984).
Chapter 1. Valuation process—Generally
Chapter 2. Experts and the use of them
Chapter 3. Understanding accounting protocol
Chapter 4. Use of financial statements
Chapter 5. Financial statement analysis

LAW REVIEWS:

- Judith I. Avner, *Using The Connecticut Equal Rights Amendment At Divorce To Protect Homemaker's Contributions To The Acquisition Of Marital Property*, 4 UNIV. OF BRIDGEPORT LAW REVIEW 265 (1983).

COMPILER:

Lawrence Cheeseman, Supervising Law Librarian, Connecticut Judicial Branch Law Library, One Court Street, Middletown, CT 06457. (860) 343-6560. [EMAIL](#)

Specific Issues in Property Valuation

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to the valuation of specific types of assets including pensions, professional licenses, degrees, and QDROs.
- CURRENCY:**
- 2008 Edition
- DEFINITIONS:**
- **Goodwill:** "It can hardly be doubted that the increment of value, loosely termed goodwill, that arises from the established reputation of a business for the quality of its goods or services may often be found to enhance the value of professional as well as other enterprises by increasing their ability to attract patrons." *Eslami v. Eslami*, 218 Conn. 801, 813, 591 A.2d 411 (1991).
- STATUTES:**
- CONN. GEN. STAT. (2008)
§ 46b-81. Assignment of property and transfer of title
 - 2005 CONN. ACTS 10 § 15 (eff. October 1, 2005). ". . . a civil union shall be included in such use or definition."
 - 42 USC (1998) § 407 (a). Assignment; amendment of section.
- CHECKLISTS:**
- 3 ARNOLD H. RUTKIN, GEN. ED., FAMILY LAW AND PRACTICE (2008).
Chapter 36. Valuation of Marital Property
§ 36.16. Valuation checklist
 - [1]. Marital assets
 - [2]. Liabilities
 - [a]. Debts
 - [b]. Liability for debts of third person
 - [3]. Documents
 - 2 RICHARD E. CROUCH, FAMILY LAW CHECKLISTS (2001).
Chapter 8. Property division
Checklist 8-4. Valuation
- CASES:**
- *Kiniry v. Kiniry*, 71 Conn. App. 614, 624 (2002). "On the one hand, stock options that are awarded prior to the date of dissolution and awarded solely for past services are

considered to be earned during the marriage and are, therefore, considered marital property subject to equitable distribution under § 46b-81 On the other hand, stock options that are earned prior to the date of dissolution, but that constitute compensation for future services, are not considered to be earned during the marriage and, therefore, are not subject to distribution as marital property under § 46b-81.”

- Eslami v. Eslami, 218 Conn. 801, 814, 591 A.2d 411 (1991). “We reject the notion that professional goodwill may be evaluated without consideration of the salability of the practice and the existence of a market for its purchase.”
- Sunbury v. Sunbury, 13 Conn. App. 651, 659-660, 538 A.2d 1082 (1988). “With regard to the valuation of the marital residence, we hold that the trial court’s finding was solidly based on the evidence produced at trial. The defendant testified that the fair market value of the home was \$75,000. The court was entitled to accept this testimony, especially in light of the fact that the only evidence produced by the plaintiff as to the value of the home was the testimony of an expert who did not know how many rooms the house had.”
- Krafick v. Krafick, 234 Conn. 783, 799, 663 A.2d 365 (1995). “We next must determine how vested pension benefits should be valued and distributed. The task of properly valuing pension benefits is complex because such benefits may be defeasible by the death of the employee spouse before retirement and the amount of benefits ultimately received depends upon a number of factors that remain uncertain until actual retirement. Therefore, a trial court, in valuing the parties’ assets upon dissolution, has considerable discretion in selecting and applying an appropriate valuation method.”

DIGESTS:

- ALR Digest: Divorce & Separation § 110
- US Led Digest: Divorce & Separation § 9 Property rights

ENCYCLOPEDIAS:

- 24 AM. JUR. 2D *Divorce and Separation* (1998).
 - §§ 574-586 Valuation
 - §§ 574-579. In general
 - §§ 580-586. Specific types of property
 - § 580. Generally; professional education and license
 - § 581. Professional practice
 - § 582. —Goodwill
 - § 583. —Accounts receivable and accounts payable
 - § 584. Stock or interest in close corporation
 - § 585. Pension rights
- 27C C.J.S. *Divorce* (1986).

§§ 549-571. Specific Kinds of Property or Interests”
 §556. Pensions
 §557. — Military Retirement Pay or Pensions
 § 558. — Valuation and allocation
 §560. Education, Degrees, or Professional Licenses; Future Earning Power
 § 561. Professional practices
 § 562. — Valuation
 § 563. Gifts; bequests, devises, or inheritances
 § 565. Interests in, and assets of, corporations, partnerships, or business
 § 566. — Valuation
 § 567. Real property
 § 568. Securities
 § 569. — Valuation
 § 570. Tort claims and settlements
 § 571. Miscellaneous property or interests

WEST KEY NUMBERS:

- Divorce
 - # 248. Disposition of property
 - # 253. ____ Proceedings for division or assignment
 - # 253(3). ____ Valuation of assets

TEXTS & TREATISES:

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE, FAMILY LAW AND PRACTICE WITH FORMS (1999).
 - Chapter 27. Valuation of assets
 - § 27.15. Valuation of particular assets
 - § 27.16. Real estate
 - § 27.17. Advanced education or professional license
 - § 27.18. Professional practices and other closely held businesses
 - § 27.19. Marketable securities
 - § 27.20. Pension, retirement and profit sharing plans
- 2 FAMILY LAW PRACTICE IN CONNECTICUT (1996).
 - Chapter 12. QDROs and other Considerations for Retirement Plan Assets (by Elizabeth Lorion McMahon)
 - Chapter 13. Valuation of assets (by Lorraine D. Eckert)
 - III. Valuation of specific assets
 - A. Inheritance and powers of appointment, bank accounts, royalties, gifts
 - B. Homemaker contributions
 - C. Retirement benefits
 - D. Professional licenses and degrees
 - E. Real estate valuation
 - F. Workers’ compensation and personal injury awards
 - G. Stock options
 - H. Collectibles
 - I. Lottery winnings
 - J. Business valuation
- JOHN DEWITT GREGORY ET AL. PROPERTY DIVISION IN DIVORCE

- PROCEEDINGS: A FIFTY STATE GUIDE (2003).
 Chapter 5. Pension and retirement benefits
 Chapter 6. Professional practices and closely held business interests
 Chapter 7. Degrees, licenses, and career enhancement
 Chapter 8. Personal injury and workers' compensation awards and life insurance
 Chapter 9. Gifts and inheritances
 Chapter 10. Allocation of debts on divorce
- BRETT R. TURNER, *EQUITABLE DISTRIBUTION OF PROPERTY* (2nd ed. 1994 with 2004 supp.).
 Chapter 6. Specific property
 Chapter 7. Valuation of assets
 § 7.06. Valuation of businesses: general rules
 § 7.07. Valuation of businesses: Total value method
 § 7.08. Valuation of businesses: Going concern method
 § 7.09. Valuation of businesses: Choosing a method
 - 3 ARNOLD H. RUTKIN, GEN. ED., *FAMILY LAW AND PRACTICE* (2008).
 Chapter 36. Valuation of Marital Property
 § 36.10. The closely held corporation—background
 § 36.12. A special look at the professional practice
 § 36.13. Valuation of retirement benefits
 § 36.14. Degrees and licenses
 § 36.15. Valuation of non-economic contributions
 § 36.16. Valuation checklist
 - BARTH H. GOLDBERG, *VALUATION OF DIVORCE ASSETS* (1984).
 Chapter 6. Valuation of closely held corporations
 Chapter 8. Valuation of professional entities, goodwill, and license interests
 §8.6. Property Rights in Licenses and Degrees – State by State Analysis
 Chapter 9. Valuing retirement plans
 Chapter 14. Valuation of collectibles
 Chapter 15. A compendium of valuation cases covering specific assets
 - RONALD L. BROWN, ED. *VALUING PROFESSIONAL PRACTICES AND LICENSES, A GUIDE FOR THE MATRIMONIAL PRACTITIONER* (3rd ed. 2004).
 Part A: The professional client
 Part B: Basic concepts in valuing professional practices
 Part C: Valuing law practices
 Part D: Valuing medical practices
 Part D-1: Valuing accounting practices
 Part E: Valuing professional degrees and licenses
 Part F: Merger and double counting
 Part G: Handling celebrity cases
 Part H: Miscellaneous topics
 - 2 RICHARD E. CROUCH, *FAMILY LAW CHECKLISTS* (2001).

Chapter 8. Property division
Checklist 8-4. Valuation
Chapter 9. Pensions

- MARSHAL S. WILICK, *MILITARY RETIREMENT BENEFITS IN DIVORCE: A LAWYER'S GUIDE TO VALUATION AND DISTRIBUTION* (1998).

LAW REVIEWS:

- *Difficult Valuation Issues Symposium*, 35 FAMILY LAW QUARTERLY No. 2 (Summer 2001).
 - Challenges in valuing pension plans
 - The challenges of stock options
 - Exploring the use of the time rule in the distribution of stock options on divorce
 - Valuation basics and beyond: tackling areas of controversy
 - The effect of goodwill in determining the value of a business in a divorce
- Mark E. Sullivan, *Military Pension Division: Crossing The Minefield*, 1999 WILEY FAMILY LAW UPDATE (1999).

COMPILER:

Lawrence Cheeseman, Supervising Law Librarian, Connecticut Judicial Branch Law Library, One Court Street, Middletown, CT 06457. (860) 343-6560. [EMAIL](#)

Table 12 Valuing and Distributing Pensions and Retirement Benefits

Valuing and Distributing Pension and Retirement Benefits [Cont'd]

"There are three widely approved methods of valuing and distributing pension benefits." Krafick v. Krafick, 234 Conn. 783, 800, 663 A.2d 365 (1995).

1. Present value (or offset) method

"The first method involves placing a present value on the retirement plan, as of the date of dissolution, by using actuarial tables to determine the life expectancy of the employee-spouse, by considering all the circumstances of the case, and by evaluating the probability that the employee-spouse will eventually exercise his or her rights under the retirement plan." In re Marriage of Grubb, 745 P.2d 661 (Colo. 1987).

"Calculating a pension's present value depends on several factors, including the employee spouse's life expectancy, the proper interest rate for discount and the date of retirement." Krafick v. Krafick, 234 Conn. 783, 800, 663 A.2d 365 (1995).

"Once the court has determined the present value of the benefits at issue, it may, in light of relevant equitable considerations, award those benefits to the employee spouse and/or may offset the nonemployee's equitable share in the pension benefits with an award of other assets." *Ibid.*, p. 801

Advantage: The offset method has the advantage of effecting a 'clean break' between the parties." *Ibid.*, p. 802.

Disadvantage: "The drawback to the offset method is that it places the entire risk of forfeiture before maturity on the employee spouse. Further, this method is not feasible when there are insufficient other assets by which to offset the value of the pension" *Ibid.*

2. Present Division Method

". . . involve[s] delaying distribution until the pension matures." *Ibid.*, p. 803.

"Under the 'present division' method, the trial court determines at the time of trial, the percentage share of the pension benefits to which the nonemployee spouse is entitled. The court may then, through a QDRO for pensions covered by ERISA or some equivalent if the non-ERISA plan permits, presently divide or assign the pension benefits between the spouses." *Ibid.*

Advantage and disadvantage: "the advantage of imposing on the parties equally the risk of forfeiture, but have the cost of prolonging the parties' entanglement with each other." *Ibid.*, pp. 803-804.

". . . favored when there are insufficient assets to offset the award of the pension to the employee spouse alone or when the evidence is inadequate to establish present value."

[Cont'd]

Valuing and Distributing Pension and Retirement Benefits [cont'd]

3. Reserved Jurisdiction Method

". . . involve[s] delaying distribution until the pension matures." Ibid., p. 803.

"Alternatively, under the 'reserved jurisdiction' method, the trial court reserves jurisdiction to distribute the pension until benefits have matured. Once matured, the trial court will determine the proper share to which each party is entitled and divide the benefits accordingly." Ibid., p. 803

Advantage and disadvantage: "the advantage of imposing on the parties equally the risk of forfeiture, but have the cost of prolonging the parties' entanglement with each other." Ibid., pp. 803-804.

". . . favored when there are insufficient assets to offset the award of the pension to the employee spouse alone or when the evidence is inadequate to establish present value."

"These methods are not exclusive.

A trial court retains discretion to select any other method to take account of the value of a pension asset 'that might better address the needs and interests of the parties.' In re Marriage of Grubb, supra, 745 P.2d 666. The touchstone of valuation, as well as the ultimate distribution of pension benefits, is the court's 'power to act equitably.' Pasquariello v. Pasquariello, 168 Conn. 579, 585, 362 A.2d 835 (1975)." Ibid., 804

Table 13 QDROs: Sample & Model Forms



- 8A ARNOLD H. RUTKIN ET AL. CONNECTICUT PRACTICE SERIES. FAMILY LAW AND PRACTICE WITH FORMS [VOL. 8 CONNECTICUT PRACTICE BOOK ANNOTATED]. ET AL., CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS (2d ed. 2000).
 § 50.58. Sample Qualified Domestic Relations Order (QDRO)
- 3 VALUATION AND DISTRIBUTION OF MARITAL PROPERTY (1998).
 Appendix 47A. Sample Qualified Domestic Relations Orders (QDRO), Related Forms and Selected Internal Revenue Code Provisions
 § 47A.01. Sample QDRO providing for division of pension benefits
 § 47A.02. Sample QDRO provision providing for waiver of pension benefits
 § 47A.03. Separation agreement provision providing for waiver of pension benefits
 § 47A.04. Separation agreement provision providing for award of pension benefits to alternate payee
- 1B AMERICAN JURISPRUDENCE LEGAL FORMS 2d (1999 rev.)
 § 17:183. Retirement Benefits—Distribution Of Pension With Qualified Domestic Relations Order
- 4 ARNOLD H. RUTKIN, GEN. ED., FAMILY LAW AND PRACTICE (1999).
 § 46.08. Forms
 [1]. MODEL FORMS: Order for assignment of interest in retirement plan
 [2]. MODEL FORM: Qualified Domestic Relations Order
 [3]. FORM: Determination as to qualification of domestic relations Order, Notice of Participant and alternate payee, agreement to comply with order and other relief
 [4]. FORM: Letter to plan administrator
- 7 WEST'S LEGAL FORMS (rev. second ed., 1983).
 Chapter 14. Qualified Domestic Relations Orders
 § 14.4. Letter To Plan Administrator Requesting Sample Qualified Domestic Relations Order, Summary Plan Description And Plan Requirements Information
 § 14.5. Letter From Plan Participant Authorizing Release Of Information
 § 14.6. Letter To Plan Administrator Enclosing Copy Of Proposed Qualified Relations Order For Pre-Approval
 § 14.7. Letter From Plan Administrator With Sample Language For Qualified Domestic Relations Order
 § 14.8. _____. Another Form
 § 14.9. Segregation And Deferral Of Alternate Payee's Percentage Interest In Defined Benefit Pension Plan—Order
 § 14.10. Segregation And Deferral Of Alternate Payee's Specific Dollar Amount Interest In Defined Benefit Profit-Sharing Plan—Order
 § 14.11. Immediate Transfer Of Specific Dollar Amount From Defined Benefit Pension Plan To Ira Where Alternate Payee Is Eligible For Transfer—Order
 §14.12. Letter Forwarding Fully Executed And Filed Qualified Domestic Relations Order To Plan Administrator

Table 14 ALR Annotations on Property Valuation

<p>Accounting practice</p>	<p>Michael J. McMahon, Annotation, <i>Valuation Of Goodwill In Accounting Practice For Purposes Of Divorce Court's Property Distribution</i>, 77 ALR 4th 609 (1990).</p>
<p>Dental practice</p>	<p>Michael J. McMahon, Annotation, <i>Valuation Of Goodwill In Medical Or Dental Practice For Purposes Of Divorce Court's Property Division</i>, 78 ALR4th 853 (1990).</p>
<p>Law firm</p>	<p>Dag E. Ytreberg, Annotation, <i>Evaluation Of Interest In Law Firm Or Medical Partnership For Purposes Of Division Of Property In Divorce Proceedings</i>," 74 ALR 3d 621 (1976).</p>
<p>Law practice</p>	<p>Michael J. McMahon, Annotation, <i>Valuation Of Good Will In Law Practice For Purpose Of Divorce Court's Property Settlement</i>," 77 ALR 4th 683 (1990).</p>
<p>Medical partnership</p>	<p>Dag E. Ytreberg, Annotation, <i>Evaluation Of Interest In Law Firm Or Medical Partnership For Purposes Of Division Of Property In Divorce Proceedings</i>," 74 ALR 3d 621 (1976).</p>
<p>Medical practice</p>	<p>Michael J. McMahon, Annotation, <i>Valuation Of Goodwill In Medical Or Dental Practice For Purposes Of Divorce Court's Property Division</i>, 78 ALR4th 853 (1990).</p>

Section 5.5

Distribution Of Property

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic materials resources relating to methods and formulas for division of assets relating to marriage or civil union in Connecticut, effective October 1, 2005.
- CURRENCY:**
- 2008 Edition
- DEFINITIONS:**
- **Coverture:** "is defined as '[t]he status and rights of the wife arising from the marriage relationship'; *Ballentine's Law Dictionary* (3d Ed. 1989); and has a long history of use regarding marital assets." *Wendt v. Wendt*, 59 Conn. App. 656, 666, 757 A.2d 1225 (2000).
 - **Coverture fraction:** "established by the court for the unvested stock options consisted of a fraction, 'the denominator of which shall be the number of months from the date of grant to the date of vesting [when the options no longer will be] subject to divestment, and the numerator [of which shall] be the number of months from the date of grant to December 1, 1995 [the date of the parties' separation].' Specifically, the plaintiff challenges the coverture numerator, contending that the court should have used the date that the defendant's employment commenced instead of the date that the unvested assets were granted and the date of dissolution instead of the date of separation. We disagree." *Ibid.*, 665-666.
- STATUTES:**
- CONN. GEN. STAT. § 46b-81 (2008).
(c). "In fixing the nature and value of the property, if any, to be assigned, the court, after hearing the witnesses, if any, of each party, except as provided in subsection (a) of section 46b-51, shall consider the length of the marriage, the causes for the annulment, dissolution of the marriage or legal separation, the age,

health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties and the opportunity of each for future acquisition of capital assets and income. The court shall also consider the contribution of each of the parties in the acquisition, preservation or appreciation in value of their respective estates."

- CONN. GEN. STATS. § 46b-380o (Effective October 1, 2005). ". . . a civil union shall be included in such use or definition." (eff. October 1, 2005).

CHECKLISTS:

- 3 ARNOLD H. RUTKIN, GEN. ED., FAMILY LAW AND PRACTICE (2008). Chapter 38. A practical guide to equitable distribution § 38.04[2]. The Check: an asset-by-asset guide

CASES:

- Wendt v. Wendt, 59 Conn. App. 656, 666, 757 A.2d 1225 (2000). "In modern times, a coverture factor has reemerged as a mechanism for apportioning between spouses the benefit or value of unvested stock options, retirement plans or other benefits that were earned partially during and partially after the marriage."
- Damon v. Damon, 23 Conn. App. 111, 114, 579 A.2d 124 (1990). "The plaintiff complains that the judgment, providing that the contents of the home "shall become the sole property of the defendant unless within one month of the date of the Judgment the parties agree on a division of said contents between themselves," is an improper delegation of the court's power to make the distribution. The essential meaning of these words is that the defendant would be the owner of the personalty unless she chose to give the plaintiff some of it. The court did not, therefore, delegate its authority to distribute assets."
- Vincent v. Vincent, 178 Conn. 212 at 212, 423 A.2d 879 (1979). "In this action, both parties alleged that the marriage was broken down irretrievably. The court dissolved the marriage and ordered that the real estate in the name of the plaintiff husband be transferred to the defendant wife and then be sold by the defendant without delay. Upon completion of the sale, deducting all necessary expenses, the net proceeds were to be divided equally between the parties. The plaintiff husband has appealed from this judgment."
- Ehrenkranz v. Ehrenkranz, 2 Conn. App. 416, 421-422, 479 A.2d 826 (1984). "The defendant's claim that he is left with a minus net worth must be weighed in view of the facts that the payment of the five annual installments of lump sum alimony was not to start until January 1, 1983, and that he was left with substantial income producing assets."
- Murphy v. Murphy, 180 Conn. 376, 378, 429 A.2d 897

(1980). "Rather than determine what each party had contributed to every category of property in dispute, that is, real property, personal property, bank accounts, and other assets, the court considered their property as a whole."

- Croke v. Croke, 4 Conn. App. 663, 663-664, 496 A.2d 235 (1985). "The judgment of December 11, 1980, provides that the plaintiff has the right to occupy jointly owned real property located at 276 Park Street in New Canaan, with the parties' minor child until the minor child attains age eighteen, or residential custody of the minor child is transferred to the defendant, or the death or remarriage of the plaintiff or her cohabitation with another person under circumstances which would warrant the modification of periodic alimony pursuant to the provisions of General Statutes 46b-86, or the plaintiff elects to vacate the premises."
- Ivey v. Ivey, 183 Conn. 490, 493, 439 A.2d 425 (1981). "The decree rendered in the present case was of the second type, i.e., it ordered the plaintiff to transfer her interest in the Florida property to the defendant. The order did not purport to transfer title to out-of-state realty by its own terms. The plaintiff's argument that the court below was bound to apply Florida law, when it made its order relating to the Florida land, lacks merit. Inasmuch as the decree did not directly affect title to the Florida lands, this dissolution action did not differ materially from any other dissolution."

**WEST KEY
NUMBER:**

- *Divorce* # 248. Disposition of property
- *Divorce* # 252.2. ___ Proportion or share given on division
- *Divorce* # 252.3. ___ Particular property or interest and mode of distribution
- *Divorce* # 252.4. ___ Debts and liabilities, allocation of; creditors' rights
- *Divorce* # 252.5. ___ Homestead or residence; disposition of
- *Divorce* # 253. ___ Proceedings for division or assignment

ENCYCLOPEDIAS:

- 24 AM. JUR. 2D *Divorce and Separation* (1998).
 - §§ 565-586. Manner of division
 - §§ 565-573. In general
 - § 565. Generally, "equitable" and "equal" distinguished
 - § 566. —Equal division as starting point; presumption of equal division
 - § 567. Award of money or distribution in kind
 - § 568. Partition
 - § 569. Use of mathematical formulas
 - § 570. Joint ownership after dissolution
 - § 571. Division of debt
 - § 573. Division of nonmarital property; invasion of separate property

- 27B C.J.S. *Divorce* (1986).
 §§ 527-548. Mode of allocation; proportion or shares given on division
 §§ 549-571. Specific kinds of property or interests
- Amy P. Bunk, Annotation, Division of Lottery Proceeds in Divorce Proceedings, 124 ALR5th 537 (2004).
- Sonja A. Soehnel, Annotation, *Divorce: Propriety Of Property Distribution Leaving Both Parties With Substantial Ownership Interest In Same Business*, 56 ALR4th 862 (1987).
- Ferdinand S. Tinio, Annotation, *Divorce Or Separation: Consideration Of Tax Liability Or Consequences In Determining Alimony Or Property Settlement Provisions*, 51 ALR3d 461 (1973).

TEXTS & TREATISES:

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE, FAMILY LAW AND PRACTICE WITH FORMS (1999).
 Chapter 29. Distribution of Assets
 § 29.1. Methods of distribution
 § 29.2. Sale or buy-out
 § 29.3. Distribution in kind
 § 29.4. Offsetting assets and credits
 § 29.5. Deferred sale or distribution
 § 29.6. Time rule for distribution
 § 29.7. Distribution of particular types of assets
 § 29.8. Marital home
 § 29.9. Allocation of expenses and/or appreciation
 § 29.10. Allocation of equity
 § 29.11. Outright transfer and allocation of liabilities
 § 29.12. Present or future buy-out
 § 29.13. Family business
 § 29.14. Pension, retirement and deferred compensation interests
 § 29.15. Insurance interests
 § 29.16. Effect of transfers prior to trial
 § 29.17. Distribution to children or other third party
 § 29.18. Effect of distribution on rights of creditors
 § 29.19. Finality of distribution; effect of after discovered property
- JOHN DEWITT GREGORY ET AL. PROPERTY DIVISION IN DIVORCE PROCEEDINGS: A FIFTY STATE GUIDE (2003).
 Chapter 11. Fair and equitable distribution
 Chapter 12. Dissipation of assets and marital misconduct or fault
 Chapter 13. Marital agreements
- BRETT R. TURNER, EQUITABLE DISTRIBUTION OF PROPERTY (2nd ed. 1994). Chapter 9. Mechanics of Division
- 3 ARNOLD H. RUTKIN, GEN. ED., FAMILY LAW AND PRACTICE (2008).

Chapter 37. Principles of property distribution
§ 37.06. Division of property by the court
 [1]. Determining an “equitable” distribution
 [2]. Ordering distribution
§ 37.07. The marital home
§ 37.08. Business interests
§ 37.09. Professional goodwill
§ 37.10. Increased earning capacity resulting from a
 professional license, graduate degree, or
 education
§ 37.11. Retirement benefits
§ 37.12. Federal government benefits
§ 37.13. Personal injury, worker’s compensation,
 and other awards and claims
§ 37.14. Debts

- MARSHAL S. WILLOCK, *MILITARY RETIREMENT BENEFITS IN DIVORCE: A LAWYER’S GUIDE TO VALUATION AND DISTRIBUTION* (1998).

LAW REVIEWS:

- *Difficult Valuation Issues Symposium*, 35 FAMILY LAW QUARTERLY No. 2 (Summer 2001).
 - Challenges in valuing pension plans
 - The challenges of stock options
 - Exploring the use of the time rule in the distribution of stock options on divorce
 - Valuation basics and beyond: tackling areas of controversy
 - The effect of goodwill in determining the value of a business in a divorce
- Mark E. Sullivan, *Military Pension Division: Crossing The Minefield*, 1999 WILEY FAMILY LAW UPDATE (1999).
- Judith I. Avner, *Using The Connecticut Equal Rights Amendment At Divorce To Protect Homemaker’s Contributions To The Acquisition Of Marital Property*, 4 UNIV. OF BRIDGEPORT LAW REVIEW 265 (1983).

COMPILER:

Lawrence Cheeseman, Supervising Law Librarian, Connecticut Judicial Branch Law Library, One Court Street, Middletown, CT 06457. (860) 343-6560. [EMAIL](#)

Section 5.6

Factors In Equitable Distribution of Property

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to non-financial factors to be considered in the equitable distribution of property.
- CURRENCY:**
- 2008 Edition
- STATUTES:**
- CONN. GEN. STAT. § 46b-81 (2008).
(c). "In fixing the nature and value of the property, if any, to be assigned, the court, after hearing the witnesses, if any, of each party, except as provided in subsection (a) of section 46b-51, shall consider the length of the marriage, the causes for the annulment, dissolution of the marriage or legal separation, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties and the opportunity of each for future acquisition of capital assets and income. The court shall also consider the contribution of each of the parties in the acquisition, preservation or appreciation in value of their respective estates."
 - CONN. GEN. STAT. § 46b-3800 (Effective October 1, 2005). ". . . a civil union shall be included in such use or definition." (eff. October 1, 2005). ". . . a civil union shall be included in such use or definition."
- CASES:**
- Greco v. Greco, 70 Conn. App. 735, 740, 799 A.2d 331 (2002). "Despite the defendant's contentions to the contrary and his own review of the criteria set forth in § 46b-81, we cannot construe the court's award as an abuse of discretion in light of the court's finding that the defendant's infidelity was the cause of the breakdown of the marriage. That is a factor that the court was required to consider pursuant to § 46b-81."
 - Solomon v. Solomon, 67 Conn. App. 91, 92-93, 787 A.2d 4 (2001). "The transcript reveals that the court took into consideration, among other things, the occupations of the parties, their ages, their contributions to the marriage, the cause of the breakdown of the marriage and their opportunities for future earnings, and therefore properly considered factors set forth in General Statutes §§ 46b-81 (c) (setting forth factors for distribution of assets) and 46b-82 (setting forth factors for determining alimony). It is clear that the court properly applied the law and reasonably

rendered its orders on the basis of all of the facts.”

**WEST KEY
NUMBERS:**

- *Divorce*
 - # 248. Disposition of property
 - # 253. —Proceedings for division or assignment

ENCYCLOPEDIAS:

- 24 AM. JUR. 2D *Divorce and Separation* (1998).
 - §§ 548-564. Factors considered in division
 - §§ 548-560. In general
 - §§ 561-564. Marital misconduct
- Lee R. Russ, Annotation, *Divorce: Equitable Distribution Doctrine*, 41 ALR4th 481 (1985).
 - §§ 11-13. Nonfinancial Factors Considered
- Kristine Cordier Karnezis, Annotation, *Fault As Consideration In Alimony, Spousal Support, Or Property Division Awards Pursuant To No-Fault Divorce*, 86 ALR3d (1978).

**TEXTS &
TREATISES:**

- 7ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE, FAMILY LAW AND PRACTICE WITH FORMS (1999).
 - Chapter 28. Factors to be considered for Division of Property
 - § 28.1. In general
 - § 28.2. Length of the marriage
 - § 28.3. Causes for the dissolution
 - § 28.4. Age of the parties
 - § 28.5. Health of the parties
 - § 28.6. Station of the parties
 - § 28.7. Occupation
 - § 28.8. Amount and source of income
 - § 28.9. Vocational skills and employability of the parties
 - § 28.10. Estates of the parties
 - § 28.11. Liabilities and needs of the parties
 - § 28.12. Opportunity for future acquisitions of assets and income
 - § 28.13. The contributions of each party to the acquisition, preservation or appreciation of assets
 - § 28.14. Other factors considered
- 2 FAMILY LAW PRACTICE IN CONNECTICUT (1996).
 - Chapter 12. QDROs and other considerations for retirement plan assets upon divorce
 - Chapter 13. Valuation of assets
 - Chapter 14. Enforcement of judgments
- 2 RICHARD E. CROUCH, FAMILY LAW CHECKLISTS (2001).
 - Chapter 8. Property division
 - Checklist 8-5. Property division factors and criteria
- 2 JOHN TINGLEY AND NICHOLAS B. SVALINA, MARITAL PROPERTY LAW

(rev. 2d ed. 1995).

Chapter 40.03, Nonfinancial factors considered

- 3 ARNOLD H. RUTKIN, GEN. ED., FAMILY LAW AND PRACTICE (2005).
Chapter 37. Principles of property distribution
§ 37.06. Division of property by the Court
[1]. Determining an “equitable” distribution
[2]. Contributions of the parties
Chapter 38. A practical guide to equitable distribution
- BRETT R. TURNER, EQUITABLE DISTRIBUTION OF PROPERTY (2nd ed. 1994 with 2004 supp.).
Chapter 8. Division of Assets
- GARY A. SHULMAN AND DAVID I. KELLEY, DIVIDING PENSIONS IN DIVORCE (2d ed. 1999). [Available at the Norwich Law Library]

COMPILER:

Lawrence Cheeseman, Supervising Law Librarian, Connecticut Judicial Branch Law Library, One Court Street, Middletown, CT 06457. (860) 343-6560. [EMAIL](#)

Table 15 Factors for consideration in equitable distribution of property

Factors	Rutkin*	LPH**
Length of marriage	§ 26.2	
Causes for dissolution	§ 26.3	
Age	§ 26.4	
Health	§ 26.5	
Station	§ 26.6	
Occupation	§ 26.7	
Amount and sources of income	§ 26.8	
Vocational skills and employability of parties	§ 26.9	
Estates of the parties	§ 26.10	
Liabilities and Needs of the Parties	§ 26.11	
Opportunity for Future Acquisition of Assets and Income	§ 26.12	
Contributions of Each Party	§ 26.13	§13.20
Other Factors	§ 26.14	

* 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE, FAMILY LAW AND PRACTICE WITH FORMS (1999).

** *Valuation of Assets* by Lorraine D. Eckert, 2 FAMILY LAW PRACTICE IN CONNECTICUT (1996).

Table 16 Treatment of various types of property in each stage of determination

“There are three stages of analysis regarding the equitable distribution of each resource: first, whether the resource is property within § 46b-81 to be equitably distributed (classification); second, what is appropriate method for determining the value of the property (valuation); and third, what is the most equitable distribution of the property between the parties (distribution). *Krafick v. Krafick*, 234 Conn. 783, 792-793 (1995).

	Classification	Valuation	Distribution
Businesses and corporations (including closely held corporations)	RUTKIN ET AL. § 26.8 (financial interests) and § 26.10 (receivables) 24 AM JUR 2d <i>Divorce and Separation</i> § 519 27C C.J.S. <i>Divorce</i> §§ 565	GOLDBERG, Chap. 6 RUTKIN ET AL. § 27.18 TURNER §§ 7.06-7.09 27C C.J.S. <i>Divorce</i> §§ 566	RUTKIN ET AL. § 29.13 (family business)
Collectibles such as baseball cards, books, furniture, paintings, etc.		GOLDBERG Ch.14	
Debts and liabilities	TURNER § 6.29; RUTKIN ET AL. § 26.20	GOLDBERG § 15.311 TURNER § 6.29	RUTKIN § 37.14 TURNER § 6.29
Gifts (including engagement rings, wedding presents and interspousal gifts)	TURNER § 5.15-5.19 RUTKIN § 37.10 RUTKIN ET AL. § 26.15 2 WILLIAMS, Chap. 30 24 AM JUR 2d <i>Divorce and Separation</i> §§ 504-506 27C C.J.S. <i>Divorce</i> § 563	GOLDBERG §§ 12.2 and 15.106	RUTKIN § 37.10
Inheritances	TURNER §§ 5.20 and 6.27 RUTKIN ET AL. § 26.16 27C C.J.S. <i>Divorce</i> § 563 24 AM JUR 2d § 503		

	Classification	Valuation	Distribution
Marital Home	TURNER § 6.25 RUTKIN § 37.07[1] RUTKIN ET AL. § 26.5 24 AM JUR 2d <i>Divorce and Separation</i> §§ 523-524 27C C.J.S_ <i>Divorce</i> § 549	GOLDBERG, §§ 15.151 – 15.159 TURNER § 6.25 RUTKIN § 37.07[2] 27C C.J.S_§550	RUTKIN § 37.07[3] RUTKIN ET AL. § 29.8 TURNER § 6.25 27C C.J.S §551
Pensions and retirement plans	TURNER §§ 6.09 and 6.10 RUTKIN ET AL. § 26.11 2 WILLIAMS, Chap.45 24 AM JUR 2d <i>Divorce and Separation</i> §§ 532-536 27C C.J.S_ <i>Divorce</i> §§ 553-559	GOLDBERG, Chap. 9 TURNER § 6.12 GOLDBERG Ch.9 RUTKIN ET AL. § 27.20 24 AM JUR 2d <i>Divorce and Separation</i> §§ 585-586 27C C.J.S_ <i>Divorce</i> §§ 558	RUTKIN §§ 37.11, 38.05[1][f] RUTKIN ET AL. § 29.14 TURNER § 6.11 27C C.J.S_ <i>Divorce</i> §§ 558
Personal injury, worker's compensation and other awards (Tort)	RUTKIN § 37.13; RUTKIN ET AL. § 26.21 TURNER §§ 6.17-6.19 3 WILLIAMS, Chap. 48 24 AM JUR 2d <i>Divorce and Separation</i> §§ 546-547 27C C.J.S_ <i>Divorce</i> §§ 570	GOLDBERG, § 12.10	RUTKIN § 37.13 TURNER § 6.18
Personal property	RUTKIN ET AL. § 26.7	GOLDBERG, Chap. 15	
Prizes and awards	TURNER § 6.24		RUTKIN § 37.13[5]
Professional Practices including goodwill	TURNER § 6.22 RUTKIN §37.08[1], §37.09 RUTKIN ET AL. § 26.14 24 AM JUR 2d <i>Divorce and Separation</i> §§ 530-531 27C C.J.S §561, 565	BROWN GOLDBERG Chap. 8 TURNER 7.06-7.09 RUTKIN § 37.08[2] RUTKIN ET AL. § 27.18 24 AM JUR 2d <i>Divorce and Separation</i> §§ 580-583	RUTKIN, §§ 37.08[3] and 38.05[1][d] & [e]
Real estate	RUTKIN ET AL. § 26.4 27C C.J.S_ <i>Divorce</i> §§ 567	GOLDBERG §12.7; RUTKIN ET AL. § 27.16	

	Classification	Valuation	Distribution
Stocks and Securities	TURNER § 6.15 3 WILLIAMS, Chap.50-51 RUTKIN ET AL. § 26.8 24 AM JUR 2d <i>Divorce and Separation</i> §§ 520-521 27C C.J.S. <i>Divorce</i> §§ 568	GOLDBERG, Chap. 7 WILLIAMS Ch.51 RUTKIN ET AL. § 27.19 24 AM JUR 2d <i>Divorce and Separation</i> § 584	
Trusts	Turner, § 6.28		Turner, § 6.28

24 AM JUR = 24 AM JUR 2d *Divorce and Separation* (1998).

BROWN = RONALD L. BROWN, *VALUING PROFESSIONAL PRACTICES AND LICENSES: A GUIDE FOR THE MATRIMONIAL PRACTITIONER* (2d ed. 1997).

27C CJS = 27C C.J.S. *Divorce* (1986).

GOLDBERG = BARTH H. GOLDBERG, *VALUATION OF DIVORCE ASSETS* (1984).

RUTKIN = 3 ARNOLD H. RUTKIN, GEN. ED., *FAMILY LAW AND PRACTICE* (2002).

RUTKIN ET AL. = 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, *CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS* (1999).

TURNER = BRETT R. TURNER, *EQUITABLE DISTRIBUTION OF PROPERTY* (2d ed. 1994).

WILLIAMS = ELIZABETH WILLIAMS, *MARITAL PROPERTY LAW* (rev. 2d ed. 2002).