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Legal Matters®

Must couples share property they acquire **after** they split up?

Most people assume that a divorcing couple's assets will be divided according to what they own at the time they separate. But in some cases, things that happen *after* a couple split up can affect what they're entitled to in a divorce.

Only an attorney with expertise in divorce law can determine exactly what you might be entitled to...so it's important to tell your attorney about anything that could affect the prospects of both you and your spouse down the road.

Take the case of a man in South Carolina who was a 25% partner in a real estate development project at the time he and his wife filed for divorce. While the divorce was pending, the value of his share increased...and his partner then bought out his interest in the project for \$1.6 million.

The wife wanted to share in the increased value of the partnership, while the husband argued that his interest

should be valued as of the date they filed for divorce.

The South Carolina Supreme Court ruled that the appreciation in value could be included in the couple's marital property if it occurred "passively," meaning it was due to factors other than the efforts of the spouse.

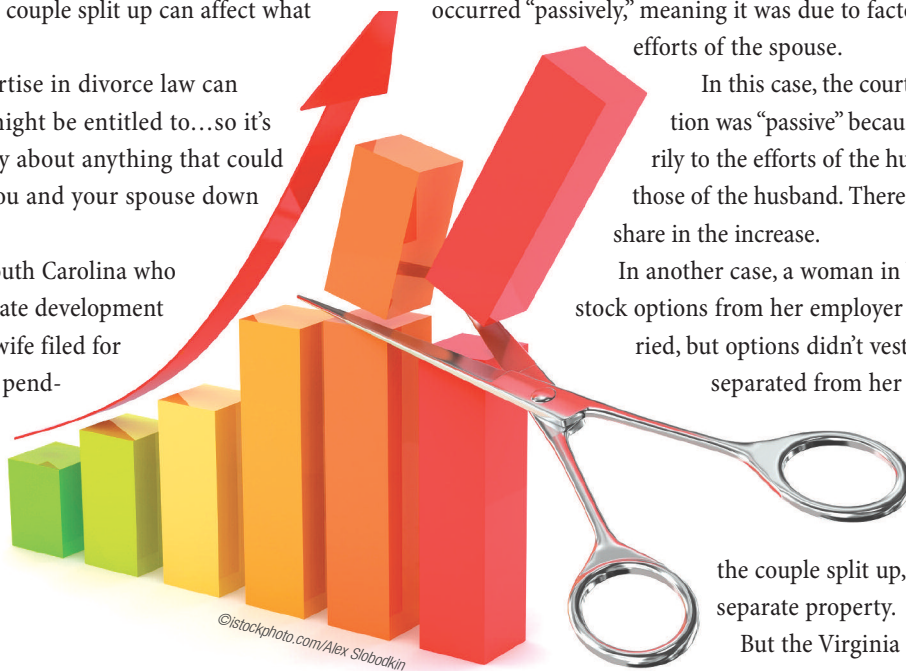
In this case, the court said, the appreciation was "passive" because it was due primarily to the efforts of the husband's partner, not those of the husband. Therefore, the wife could share in the increase.

In another case, a woman in Virginia received stock options from her employer while she was married, but options didn't vest until after she had separated from her husband.

The wife argued that because the options hadn't yet vested when the couple split up, they were her own separate property.

But the Virginia Supreme Court

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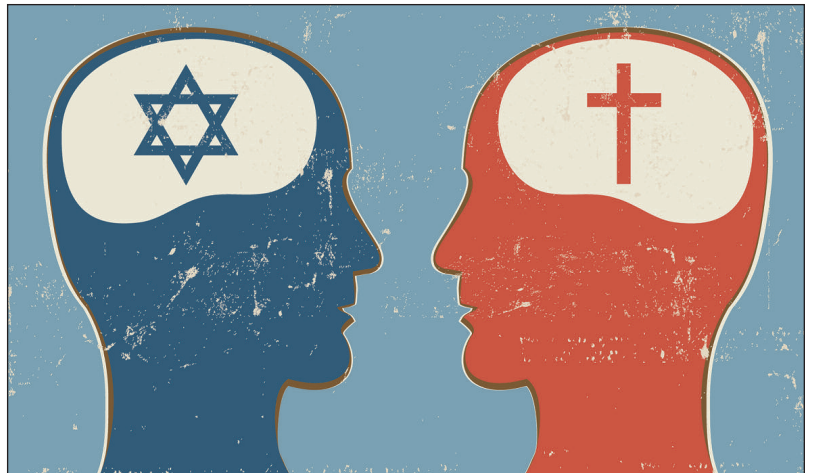
Custody order couldn't favor one parent's religion

A custody order that gave one spouse's religion priority over all other issues violated the separation of church and state.

There's no question that a child custody order can take the parents' religion – and the children's religious education and observance – into account. But a recent case shows that a custody order that goes too far in favor of one parent's religion might not be okay.

In this case, Howard Rosenstein wanted to raise his two children as Jews. A custody order allowed him to have the children on all Wednesday evenings and Sunday mornings so they could attend Jewish religious training, and also said that he could have custody on major Jewish holidays, including Passover and all eight days of Hanukkah. The father's right to the children on these occasions would take precedence over all other custody arrangements.

On appeal, however, the Texas Court of Appeals questioned whether this order went too far. It noted, for instance, that the mother would never be able to see her children on Christmas, New Year's or Easter if those dates conflicted with a Hanukkah or



Passover celebration.

After reviewing the case, the court decided that the order violated the First Amendment of the U.S. Constitution, which governs the separation of church and state and says that the government can't favor one religion over others.

As long as there was nothing illegal or immoral about the mother's religious preference – or even lack of a religious preference – a custody order that gave her husband's religion absolute priority over all other considerations was too extreme, the court ruled.

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Mother didn't have to move to accommodate visitation

A mother who moved from Missouri to Ohio can't be legally required to move back to Missouri in order to accommodate the father's visitation rights, the Missouri Supreme Court recently decided.

The mother had given birth to a child out of wedlock. After the father's paternity was established through biological testing, he filed a lawsuit seeking custody or visitation.

The mother had moved to Ohio while the case was pending. A judge awarded her custody, but ordered her to return to Missouri so it would be easier for the father to visit the child.

But on appeal, the Missouri Supreme Court said this was wrong, because a judge has no right to force parents to relocate from their chosen place of residence.

Paternity claim against married woman allowed

A man can sue to establish that he's the father of a child born to a married woman with whom he had an affair, the Kentucky Supreme Court recently ruled.

The mother had stopped the affair when she learned that she was pregnant. Shortly after the child's birth, genetic testing revealed that the man was actually the father.

When the man sued to establish his paternity, the mother argued that under state law, such a suit could be brought only if a child was born out of wedlock.

But the court ruled that the child in this case was in fact born "out of wedlock," since the mother wasn't married to the child's biological father at the time of conception.

Federal government benefits can be divided at divorce

Federal government benefits – such as from Social Security or the military – have their own rules, and those rules usually trump state law. So sometimes it's unclear whether a state divorce court can divide up a federal payment.

However, in several recent cases, it was determined that federal payments could be split at divorce.

- A military retiree's health insurance benefits can be split at divorce, the Alaska Supreme Court decided.

That's because of a federal law called the Uniformed Services Former Spouse Protection Act. Under that law, military retirement pay can be either individual property or marital property, depending on a state's own divorce laws. And though laws differ between states, in Alaska such benefits are considered marital property.

- Veterans' disability benefits can be taken into account in deciding how much alimony a veteran's ex-wife is entitled to, the South Dakota Supreme Court recently ruled.

A federal law prohibits the seizure or taxation of

VA disability benefits. But the court said the benefits could be considered in deciding a proper amount of alimony, because that's different from seizing them to pay a debt or imposing a tax on them.

- A woman receiving Social Security disability benefits might have to pay some of the money as child support, says the Kentucky Supreme Court.

In that case, an unmarried father was awarded custody. The mother, whose mental illness made her unable to work or manage her own affairs, fell behind in her support obligations. But the court said the fact that she was receiving federal disability benefits didn't excuse her from paying what she could toward caring for her child.



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decided that even if the options hadn't vested, they could still be divided at divorce in a similar way to other types of deferred compensation, such as pensions or retirement benefits.

A Pennsylvania case involved a couple who had a pending personal injury lawsuit when they divorced.

In that case, the husband had been seriously injured in an accident at a racetrack. The couple sued for the injury, but they separated before the case was settled.

After the case was settled, the wife argued that she should get a share of \$60,000 in settlement money.

The Pennsylvania Supreme Court sided with the wife, ruling that because the couple were married when the injury occurred and when the suit was filed,

any proceeds from the suit were marital property.

In yet another case, a divorcing couple in Vermont didn't have much money, but the husband came from a wealthy family, and it was likely that he would inherit significant assets in the future through family wills and trusts. The wife argued that this should be considered in dividing up the marital assets.

The Vermont Supreme Court agreed, saying that even though the husband's potential inheritances weren't property – they were merely an “expectancy” – they could still be considered when dividing the couple's assets, so that the wife could get a larger share.

Of course, as always, the law can vary from state to state and from case to case. But it's important to tell your family law attorney about possible future events that could affect either you or your spouse, because they might be relevant to a divorce.

It's very important to tell your family law attorney about possible future events that could affect either you or your spouse.

Couple ordered to reveal passwords for dating sites, Facebook

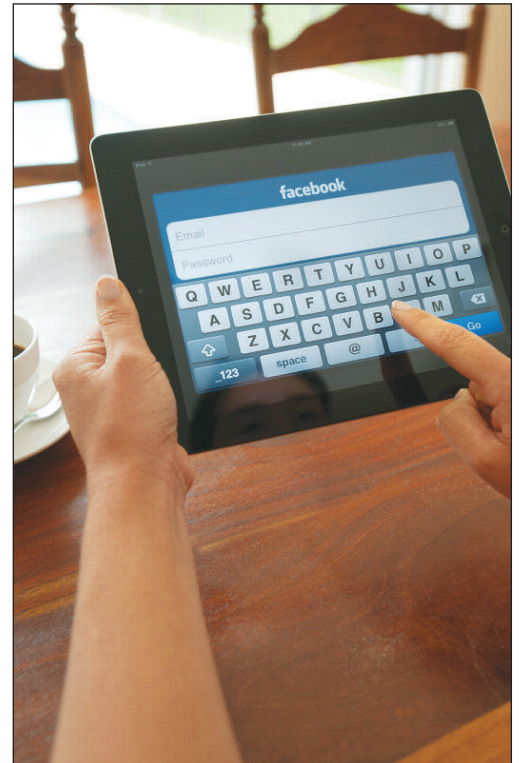
People who are thinking about divorce should never post anything online that they wouldn't want to be revealed in court.

A judge in Connecticut ordered a divorcing couple to give each other their passwords to Facebook, eHarmony, and Match.com, and not to delete any information from the sites.

While this is a highly unusual step, it shows how increasingly relevant social media and dating websites are to divorce cases...and it's yet another reminder that people who are contemplating divorce shouldn't post anything online that they wouldn't want to be revealed during the divorce proceedings, because they might well be.

Stephen Gallion claimed that he found some information on his wife Courtney's computer that would be relevant to his argument that he should get full custody of the couple's children. He asked for Courtney's passwords, believing that there might be additional information on password-protected websites, and he claimed Courtney immediately began trying to delete information.

That's when a judge got involved and told the pair to exchange passwords and not to remove anything from the websites.



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