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**Welcome** to *Bits and Bytes™*, our bi-monthly electronic newsletter published for attorneys registered with New York Divorce and Family Law. This electronic newsletter will be sent to you by email each a month to keep you up to date on important developments in New York Divorce and Family Law. If you do not wish to receive it or are receiving it in error, please send an email to [unsubscribe@nysdivorce.com](mailto:unsubscribe@nysdivorce.com), with the words "unsubscribe" in the subject line.

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### *2005 Equitable Distribution Decisions Update*

**Bennett v Bennet**, 2005 WL 3019118 (NYAD 4 Dept)

Years Married: 32. Maintenance Award: \$1300 a week until age 69. [Continuing Maintenance Award until wife reached 75 would be onerous for plaintiff who was planning to retire earlier. W Proper to decline to consider tax consequences of a distributive award from pension and distribution from dissolution of law firm where neither party presented evidence to support a determination. Wife properly awarded interest on distributive award.]

**D'Angelo v D'Angelo**, \_\_AD3d\_\_, 788 NYS2d 154 (2d Dept.,2005)

[Valuation date for marital assets must be between the date of commencement and the date of trial. Where the appraisal of the marital residence was conducted 3 years before the trial and the appraiser testified that property values had changed the court should have ordered a new appraisal. Failure to respond to a notice to admit that a debt is marital is a concession that it is.]

**D'Elia v D'Elia**, \_\_AD3d\_\_, 788NYS2d 156 (2d Dept.,2005)

[Can not cure defective acknowledgment of antenuptial agreement by submitting duly executed certificate of acknowledgment at trial. However, deed from husband to wife of undivided half interest in property changed its character from separate to marital.]

**Falgoust v Falgoust**, \_\_AD3d\_\_, 790 NYSd 532 WL 469305 (2d Dept.,2005)

Years Married: 8. Maintenance Award: \$500 per week for two years. [Federal and State taxes are not deducted from a parents income for purposes of calculating child support. Maintenance Award for two years proper where wife received a considerable distributive award and was capable of being self-supporting. Wife entitled to 1/3 of appreciation of value of husbands separate residence where he maintained and improved the property with his earnings during he marriage and she took care of the children and did household chores.]

**Hale v Hale**, 2005 WL 612968 (NYAD 1 Dept)

Years Married: 6. Maintenance Award: to wife for four years. [Although distributive award and equitable distribution are different elements of relief and Maintenance Award differs from both, husband permitted to appeal even though his notice of appeal was limited. Since wife paid some role in upkeep and Maintenance Award of condo,(which appears to be husbands separate property) it was not an abuse of discretion to award her a share of its appreciated value. Even though wife did not produce witnesses to refute husbands testimony that his employer loaned him substantial sums of money the

burden remained on him to prove that travelers checks and other sums were loans and not salary, and he failed to sustain burden. Husband entitled to share of wife's frequent flyer miles. Husband should not have been given credit for all mortgage, principal and interest payments on co-op but since wife awarded 50% of the co-op, credit should be for only 50% of principal payments. Boat should be valued at date of commencement which husband estimated at \$450,000. He should be responsible for any drop in value in light of his witness testimony that increased engine use would hasten depreciation.]

Hendricks v Hendricks, \_\_AD3d \_\_, 788 NYS2d 190 (3d Dept.,2004)

Years Married: 35. Husbands Age: 59., Husbands Income: \$73,500. Wife's Age: 58. Wife's income: \$450/mo Soc Sec. Maintenance Award: \$1275 per month until husband retires. Counsel Fee: denied. [remitted to determine issues of health insurance and life insurance]

Puglisi v Puglisi, 2005 WL 599981 (NYAD 2 Dept)

Maintenance Award: Denied. [ Proper to distribute wife's pension entirely to her considering that the parties led separate economic lives during their marriage.]

Redder v Redder, \_\_AD2d \_\_, 2005 WL 549412 (NYAD 3 Dept)

Husbands Income: \$80000. Wife's Income: \$27,000 imputed. Child Support Award: \$250 per week. Maintenance Award: \$1500 per month for 24 months. Counsel Fee: denied. [Supreme Court did not have the authority to direct the parties to pay the fees of the Law Guardian. They are limited to compensation from the state (specifically rejecting the First Department view. Father deeded non custodial parent, where joint custody and equal time sharing, for purposes of child support award where he was greater wage earner.]

Redgrave v Redgrave, 2004 WL 3015135 (NYAD 3 Dept)

Years Married: 29. Husbands Age: 54. Husbands Income: \$34,000. Wife's Age: 50. Wife's Income: \$273,000. Maintenance Award: award to husband reversed on appeal. [Proper to deny wife a share of husbands \$20,623 per year pension where he earned \$34,494 from his other employment and wife earned \$273,551. Proper to award husband 50% of wife's share in title company where he made economic and non-economic contributions. Improper to direct husband be reimbursed for all pendent lite expenditures he made for the marital residence where wife continued to share in payment of mortgage and taxes and he had exclusive occupancy.]

Snow v Snow, \_\_AD3d \_\_, 2004 WL 3052077 (3d Dept.,2005)

Years Married: 25. Husbands Income: \$6900. Child Support Award: \$425.00 per month. Property Distribution to Wife: remitted. [Supreme Court may not impose a Child Support Award obligation that will reduce a non-custodial parents income below the federal poverty level.]

Wade v Steinfeld, \_\_AD2d \_\_, 790 NYS2d 64 (2d Dept.,2005)

Maintenance Award: lifetime award to wife. Counsel Fee: \$29,092 to wife. Property Distribution to Wife: one half of marital portion of husbands interest in benefits from NYS Teachers Retirements System. [Husband not awarded any portion of wife's law license. Wife entitled to credit for her separate property contribution to marital residence where she overcame presumption that she intended to commingle her funds by depositing them for 3 days in parties joint account]

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