

Family Law: Equitable Distribution and Proper Valuation of Marital Property

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I. INTRODUCTION

Three developments during this survey period had an important impact on the division and valuation of marital property when a couple undergoes a divorce. The Indiana Court of Appeals rejected the approach that the starting point for determining an equitable distribution of marital property is to split the property equally between the spouses. In two other important cases, Indiana courts faced the issue of the proper valuation of marital property in the contexts of jointly held stock and professional partnership interests. This Article will discuss the theory and development of equitable distribution in Indiana and will show that Indiana courts have taken unique approaches in valuing certain types of marital property for purposes of dividing it between divorced spouses.

II. EQUITABLE DISTRIBUTION AFTER *Luedke*

During this survey period, the Indiana Supreme Court decided that it would not join other states that have adopted the theory that the starting point for an equitable distribution of property upon marriage dissolution should be an equal split between the spouses.¹ In *Luedke v. Luedke*,² the Fourth District Court of Appeals of Indiana had held that when considering the contribution of each spouse to the acquisition of property pursuant to Indiana Code section 31-1-11.5-11(b)(1), a potentially equal division of the marital property should be the starting point for the trial court's analysis of the evidence relevant to property distribution upon marriage dissolution.³ The Indiana Supreme Court rejected this approach and stated that while perhaps one's mind *ought* to lean toward an equal division, to *require* such would impose an artificial structure on the fact-finding process that may hinder a trial judge's ability to weigh openly all the facts in the case.⁴

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¹See *Luedke v. Luedke*, 487 N.E.2d 133 (Ind. 1985).

²476 N.E.2d 853 (Ind. Ct. App.), *vacated*, 487 N.E.2d 133 (Ind. 1985).

³*Id.* at 865.

⁴*Luedke*, 487 N.E.2d at 134 (emphasis in original). A bill, House Bill 1452, was in-

The following discussion will review the theory and history of the concept of equitable distribution, consider the process of the law in Indiana concerning equitable distribution up to the time of *Luedke*, analyze the circuit and supreme court decisions in *Luedke*, and conclude with its effect on subsequent cases.

A. *The Theory of Equitable Distribution*

Equitable distribution is a method of dividing property upon divorce premised upon the theory that marriage is a voluntary partnership where both spouses contribute, whether such contribution is in the form of monetary contributions or nonfinancial contributions such as homemaker services.⁵ This view is not new in that it has its "doctrinal roots" in community property law.⁶ The theory behind community property law is that marriage is an economic unit where each spouse makes his or her unique contributions.⁷ The contribution of the homemaker is considered to have equal significance with that of the wage earner, regardless of which spouse performs which service.⁸ It has been noted that the primary difference between equitable distribution and community property states is that the latter states restrict the manner in which the parties can deal with marital property during the marriage and prior to divorce.⁹

The application of community property concepts to equitable distribution theory can be contrasted with the common law theory of property distribution upon marriage dissolution. At common law, upon marriage dissolution, all rights to property were based upon which spouse had title.¹⁰ Thus, a spouse who had no assets in his or her own name was forced to rely upon alimony to obtain financial support.¹¹ Thus a major difference arose between the common law and equitable distribution theories. Under the latter, one could consider noneconomic factors when disposing of marital property, such as homemaking contributions, a spouse's lost opportunities for employment when staying home, and

roduced in the 1987 session of The Indiana Legislature which, if passed, would significantly influence property distribution in Indiana. Therefore, practitioners faced with this issue should investigate the impact of recent legislature developments, if any.

⁵L. GOLDEN, *EQUITABLE DISTRIBUTION OF PROPERTY* 1-2 (1983).

⁶*Id.* at 2. Community property law is practiced in eight southern and western states: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, and Washington. *Id.* at 5 & n.22.

⁷*Id.* at 2.

⁸*Id.*

⁹Annotation, *Divorce: Equitable Distribution Doctrine*, 41 A.L.R.4th 484, 484-85 (1985).

¹⁰L. GOLDEN, *supra* note 5, at 4-5.

¹¹*Id.* at 5. The concept of alimony is tied to a fault-based system of divorce, whereas equitable distribution principles are generally founded upon a no-fault theory of divorce. *Id.* at 4-5; see also Lacayo, *Second Thoughts About No-Fault*, TIME, Jan. 13, 1986, at 55, col. 1.

a spouse's performance of various social obligations on behalf of his or her spouse.¹² Many jurisdictions rejected the inequities of common law distribution theory by adopting equitable distribution status. Currently at least thirty-eight states have adopted some form of equitable distribution by statute.¹³ These statutes typically mandate either a "just," "equitable," or "just and reasonable" disposition.¹⁴ Indiana's equitable distribution statute similarly calls for a division of property which is "just and reasonable."¹⁵ In defining a just or equitable distribution, most courts consider that this does not require a property division to be equal,¹⁶ while a few states consider that such a property division should be as equal as possible.¹⁷ In those states that do not require an equal division of property in order to effect a just or reasonable distribution, the trial judge is typically vested with much discretion to apportion property.¹⁸ This approach has been criticized in that such discretion results in prejudice and increased costs and delay at trial.¹⁹

B. *The Roots of Equitable Distribution in Indiana*

Prior to the time of the decision of the Indiana Court of Appeals in *Luedke v. Luedke*,²⁰ Indiana recognized that trial judges have wide authority to allocate property upon divorce and should be reversed on appeal only for an abuse of discretion.²¹ In dividing property upon divorce, Indiana courts are guided by Indiana Code section 31-1-11.5-11, which mandates that property be distributed in a just and reasonable manner whether the property is owned by either spouse prior to marriage or acquired individually during marriage, or acquired jointly during marriage.²² The court is mandated to consider the following five factors in determining what is a just and reasonable disposition:

- (1) The contribution of each spouse to the acquisition of the property, including the contribution of a spouse as homemaker.

¹²Annotation, *supra* note 9, at 487.

¹³[Reference File] Fam. L. Rep. (BNA) 400: i-ii (1986).

¹⁴L. GOLDEN, *supra* note 5, at 240-41.

¹⁵IND. CODE § 31-1-11.5-11(b) (Supp. 1986).

¹⁶Annotation, *supra* note 9, at 502-04. *See infra* text accompanying notes 70-71.

¹⁷*Id.* at 505-07. *See infra* text accompanying notes 67-69, 74-78.

¹⁸L. GOLDEN, *supra* note 5, at 3-4.

¹⁹*Id.* The National Conference of Commissioners on Uniform State Laws responded to these criticisms by proposing The Uniform Marital Property Act. The Prefatory Note to the Act indicates that it is a property law, the aim of which is to recognize shared property rights of spouses during marriage. UNIF. MARITAL PROPERTY ACT, Prefatory Note, 9A U.L.A. 21 (Supp. 1986).

²⁰476 N.E.2d 853 (Ind. Ct. App.), *vacated*, 487 N.E.2d 133 (Ind. 1985).

²¹*Swinney v. Swinney*, 419 N.E.2d 996, 997-98 (Ind. Ct. App.), *transfer denied*, 426 N.E.2d 658 (Ind. 1981).

²²IND. CODE § 31-1-11.5-11(b) (Supp. 1986).

(2) The extent to which the property was acquired by each spouse prior to the marriage or through inheritance or gift.

(3) The economic circumstances of each spouse at the time the disposition of the property is to become effective, including the desirability of awarding the family residence or the right to dwell in that residence for such periods as the court may deem just to the spouse having custody of any children.

(4) The conduct of the parties during the marriage as related to the disposition or dissipation of their property.

(5) The earnings or earning ability of the parties as related to a final division of property and final determination of the property rights of the parties.²³

The court of appeals in *Luedke* observed that while factors two and four could be readily identified and traced and factors three and five are economic factors susceptible of proof, factor one, involving the contribution of each spouse, is nebulous and therefore not subject to any precise measurement.²⁴

The standard of review when determining whether the trial court abused its discretion is to determine whether the result reached is clearly against the logic and effect of all facts and circumstances before the court.²⁵ In *Swinney v. Swinney*,²⁶ the court of appeals stated that a "just and reasonable" distribution under Indiana Code section 31-1-11.5-11 requires fairness; however, it does not require equality in distribution between the spouses.²⁷ In reviewing whether it was an abuse of discretion to award the wife ninety-seven percent of the marital assets including a house that had been given to both parties by the wife's father, the court reviewed each statutory factor enumerated in section 31-1-11.5-11(c). In examining the second statutory factor, the extent to which property was acquired by each spouse prior to marriage through inheritance or gift, the court determined that where *both* parties had received a gift from the wife's father, such gift should be included in the marital pot.²⁸ Thus by considering the "total circumstances," the court could determine whether a substantial contribution by one spouse under one subparagraph offset the contribution of the other spouse under a different subparagraph.²⁹ After engaging in this analysis and weighing

²³*Id.* § 31-1-11.5-11(c).

²⁴476 N.E.2d at 863-64 n.11.

²⁵*Swinney*, 419 N.E.2d at 997-98.

²⁶419 N.E.2d 996 (Ind. Ct. App. 1981).

²⁷*Id.* at 998.

²⁸*Id.*

²⁹*Id.* at 999.

the evidence in favor of the appellee, the court concluded that the trial court had abused its discretion in awarding the wife ninety-seven percent of the assets.³⁰ Thus, it appears that the standard of review for the trial court's abuse of discretion is not totally toothless.

Subsequent cases in Indiana similarly held that the just and reasonable division of property does not require that the division be equal.³¹ In acknowledging the presumption that the trial court's division of property is correct, the appellate court looks at the evidence most favorable to the judgment and often surmises circumstances that the trial court could have considered to support its decision.³²

In considering the first statutory factor under section 31-1-11.5-11(c)(1), the contribution of each spouse to the acquisition of property, including the contribution of a spouse as a homemaker, Indiana recognizes that this provision mandates the consideration of the homemaking endeavors of both husband and wife in a marriage.³³ Thus, it is evident that noneconomic factors should be considered in achieving equitable distribution.³⁴ In *Temple v. Temple*,³⁵ the wife on appeal challenged the award of sixty-nine percent of the marital property to her, contending among other matters that the trial court had not considered her contribution financially as the primary homemaker to the acquisition of marital assets. The court reiterated the standard that it does not weigh the evidence or substitute its discretion for that of the trial judge.³⁶ Thus, the court concluded that inevitably the trial court considered the very factors that the appellant contended had been omitted.³⁷

Indiana also recognizes that forgone career opportunities by a spouse should be recognized in achieving equitable distribution.³⁸ In *Taylor v. Taylor*,³⁹ the husband on appeal contended that the lower court decision

³⁰*Id.*

³¹*See, e.g.,* Kaply v. Kaply, 453 N.E.2d 331, 332, 335 (Ind. Ct. App. 1983) (court upheld a lower court decision awarding husband approximately twenty percent of the marital property and awarding wife eighty percent); *In re* Marriage of Salas, 447 N.E.2d 1176, 1180 (Ind. Ct. App. 1983) (court reversed lower court because it failed to consider parties' debts when it issued its award); Dean v. Dean, 439 N.E.2d 1378, 1381, 1383 (Ind. Ct. App. 1982) (court upheld award to husband of two and one-half times more property than to his wife); Cunningham v. Cunningham, 430 N.E.2d 809, 814 (Ind. Ct. App. 1982) (court upheld trial court's order for wife to reconvey real estate to husband where parties had been in a short term marriage and both were financially independent).

³²*Cunningham*, 430 N.E.2d at 814.

³³*Temple v. Temple*, 435 N.E.2d 259, 262 (Ind. Ct. App. 1982).

³⁴Annotation, *supra* note 9, at 510-15.

³⁵435 N.E.2d 259 (Ind. Ct. App. 1982).

³⁶*Id.* at 262.

³⁷*Id.*

³⁸*Taylor v. Taylor*, 420 N.E.2d 1319, 1323 (Ind. Ct. App. 1981); *see also* Annotation, *supra* note 9, at 509-15.

³⁹420 N.E.2d 1319 (Ind. Ct. App. 1981).

was erroneous since his share of the assets upon dissolution amounted to less than those he had brought into the marriage. The court acknowledged that all factors in section 31-1-11.5-11(c) must be balanced against one another when awarding marital property.⁴⁰ The court observed that while the husband was a skilled businessman, the wife was unskilled, having forgone a career outside the home.⁴¹ Thus, the court concluded that the trial court's distribution of property was not clearly against the logic and effect of the facts and circumstances before it.⁴²

The standard of review for determining whether a trial court has abused its discretion has not gone uncriticized although the trial court's job has been described as a "Herculean task."⁴³ While the court applied this standard again in *Lord v. Lord*,⁴⁴ it acknowledged that such a standard is imprecise and gives a trial judge a limitless range of choice. Therefore, such a review is meaningless.⁴⁵ The court contrasted this with the more measurable objective of obtaining a "just and proper" alimony distribution. Specifically, this term required that the alimony award leave an injured wife in as good a condition as she would have been had her husband died.⁴⁶

C. *Luedke v. Luedke: Rejection of the Equal Split Starting Point*

In *Luedke v. Luedke*,⁴⁷ the Indiana Court of Appeals approved of the "just" criticism of the abuse of discretion standard as previously made in *Lord v. Lord*⁴⁸ and determined that this situation was in need of repair.⁴⁹ In *Luedke*, the court addressed the issue of whether the trial court abused its discretion in awarding fifty-seven percent of the property to the husband and forty-three percent to the wife.⁵⁰ In an unprecedented opinion, the court, while recognizing perhaps that this was a change in the law, held that the language of section 31-1-11.5-11(c)(1) regarding the marital contribution of the parties means that a *potentially* equal division of the marital property should be the starting point for a trial

⁴⁰*Id.* at 1323.

⁴¹*Id.*

⁴²*Id.* at 1324.

⁴³*Temple v. Temple*, 435 N.E.2d 259, 262 (Ind. Ct. App. 1982).

⁴⁴443 N.E.2d 847 (Ind. Ct. App. 1982).

⁴⁵*Id.* at 850-51 n.4.

⁴⁶*Id.* The appellate court in *Luedke* similarly acknowledged that the standard applicable to an alimony distribution under the prior Indiana divorce statute provided the judge with a range of choice within which to act, contrary to the current dissolution act. *Luedke v. Luedke*, 476 N.E.2d 853, 859 (Ind. Ct. App.), *vacated*, 487 N.E.2d 133 (Ind. 1985).

⁴⁷476 N.E.2d 853 (Ind. Ct. App.), *vacated*, 487 N.E.2d 133 (Ind. 1985).

⁴⁸443 N.E.2d 847 (Ind. Ct. App. 1982).

⁴⁹*Luedke*, 476 N.E.2d at 859-60, 865.

⁵⁰*Id.* at 855.

court's analysis of the other statutory factors.⁵¹ If, however, one spouse has neglected his or her role, this fifty-fifty split under section 31-1-11.5-11(c)(1) is not required.⁵²

The parties in *Luedke* had been married for nineteen years and had three children. At the time of the divorce, Robert was an executive with Eli Lilly and Company while his wife, Shari, had returned to school to prepare for a job as a respiratory therapist after having been out of the work force for their nineteen years of marriage. During those years, Shari was a full-time homemaker and mother. The trial court awarded fifty-seven percent of the marital property to Robert and forty-three percent to Shari.⁵³ On appeal, Shari contended that the trial court abused its discretion in this division of the marital property.

The court proceeded to an analysis of the relevant statutory factors, sections 31-1-11.5-11(c)(1), (3), and (5). In reviewing the economic circumstances of each spouse at the time of property disposition, it was evident that Robert had the advantaged position due to his secure position with a stable company.⁵⁴ In reviewing the earnings abilities of the parties, it was also evident that Robert had the superior position.⁵⁵ The court then turned to an analysis of section 31-1-11.5-11(c)(1) to determine if this would offset the favorable position of Robert under sections 31-1-11.5-11(c)(3) and (5), thereby justifying an award in his favor of fifty-seven percent of the property. The court recognized, as previously held in *Temple v. Temple*,⁵⁶ that this section recognized the contribution of homemaking endeavors to the acquisition of marital property.⁵⁷ Furthermore, a necessary corollary is the rebuttable presumption that the contribution of the homemaker is equal to that of the wage earner.⁵⁸ Thus, the court held that the starting point for the division of property is a potentially equal one under section 31-1-11.5-11(c)(1), which can be rebutted by either party's proof that an equal division would not be just and reasonable.⁵⁹ Therefore, a burden is placed on each party to prove that an equal division of property would not be just or reasonable.⁶⁰ Thus the court emphasized that its holding is not in contravention of prior cases which held that the division of property need not be equal in order to effect a just and reasonable division of property.⁶¹

⁵¹*Id.* at 865 (emphasis original).

⁵²*Id.* at 859-60.

⁵³*Id.* at 855.

⁵⁴*Id.* at 861.

⁵⁵*Id.* at 862.

⁵⁶435 N.E.2d 259 (Ind. Ct. App. 1982).

⁵⁷*Luedke*, 476 N.E.2d at 863. See *supra* text accompanying notes 33-34.

⁵⁸*Luedke*, 476 N.E.2d at 864-65.

⁵⁹*Id.* at 865.

⁶⁰*Id.*

⁶¹*Id.* See *supra* note 31.

In supporting its decision to begin with an equal division of property in a marital dissolution, the court offered several reasons. First, a definite starting point for property distribution provides the "necessary structure" in which the trial court can weigh evidence in rebuttal to an equal division.⁶² Second, it provides a more meaningful appellate court review because there is an articulated starting point, contrary to the prior limitless range of choice exercised by the trial court.⁶³ Third, litigants would be aided in negotiating property settlements because they would have a starting point from which to begin negotiations.⁶⁴ Fourth, the court reasoned that the legislature meant to recognize the marriage relationship as "a common enterprise, a voluntary union of co-equals in which the parties define and agree upon their roles."⁶⁵

Thus, in effect the court applied a formula approach in reviewing the trial court. Because factors two and four in section 31-1-11.5-11(c) were irrelevant, factor one established a rebuttable presumption of an equal division of property. However, factors three and five were in Robert's favor. "[B]ecause of Robert's superior economic circumstances and earning ability[,]"⁶⁶ the presumption of equal distribution was rebutted, in favor of Shari. It therefore followed that the award of fifty-seven percent of the property to Robert was an abuse of discretion.

The appellate court in *Luedke* supported its position that a potentially equal division of property should be the starting point for a trial judge in a dissolution action by reference to other jurisdictions adopting this same approach.⁶⁷ The court also noted that two states, Arkansas and North Carolina, maintain a rebuttable presumption of an equal distribution of property by statute.⁶⁸ In analyzing the interpretation of the North Carolina statute, the North Carolina Court of Appeals, in *White*

⁶²*Luedke*, 476 N.E.2d at 865.

⁶³*Id.*

⁶⁴*Id.*

⁶⁵*Id.* at 866.

⁶⁶*Id.* at 867.

⁶⁷*Id.* at 865-66. See, e.g., *Cherry v. Cherry*, 66 Ohio St. 2d 348, 348, 353-56, 421 N.E.2d 1293, 1294, 1298-99 (1981), where the Supreme Court of Ohio rejected the contention that an irrebuttable or rebuttable presumption existed that mandated an equal division of property under the Ohio dissolution statute, but accepted the proposition that a potentially equal division should be the starting point from which a trial judge should proceed. *Accord*, *Paul W. v. Margaret W.*, 8 Fam. L. Rep. (BNA) 3013, 3015-16 (C.P. Allegheny County (Pa.) Dec. 1, 1981).

⁶⁸*Luedke*, 476 N.E.2d at 866; see also ARK. STAT. ANN. § 34-1214(A)(1) (Supp. 1985) ("All marital property shall be distributed one-half [1/2] to each party unless the court finds such a division to be inequitable, in which event the court shall make some other division that the court deems equitable . . ."); N.C. GEN. STAT. § 50-20(c) (Supp. 1983) ("There shall be an equal division . . . unless the court determines that an equal division is not equitable. If the court determines that an equal division is not equitable, the court shall divide the marital property equitably. . ."). In *Glover v. Glover*, 4 Ark.

v. White,⁶⁹ compared the statute to other equitable distribution statutes. The court noted that the vast majority of states vest the decision regarding the distribution of property in the individual judge's discretion, given the particular circumstances at hand.⁷⁰ In such states no presumption of equality in distribution exists.⁷¹ The court contrasted these states with North Carolina's statute which was deemed indistinguishable from the Arkansas statute, which also establishes a rebuttable presumption of an equal division of property.⁷² Thus the court rejected the wife's contention that the trial court's equal distribution of property was erroneous where she had contributed services that exceeded the value of her interest in jointly and separately held property.⁷³

In addition to Arkansas and North Carolina, Wisconsin has a statute that presumes an equal division of property as to property not acquired prior to or during marriage through gift, bequest, or inheritance.⁷⁴ This distribution can be offset, however, by considering various statutory factors.⁷⁵ In *Jasper v. Jasper*,⁷⁶ the Wisconsin Supreme Court considered the rationale behind Wisconsin's statute to be that marriage should be viewed as a partnership where the contribution of a full-time homemaker has value at least as great as that of the contribution of the breadwinner. Specifically, the homemaking partner has forgone career opportunities

App. 27, 29, 627 S.W.2d 30, 31, *reh'g denied*, 628 S.W.2d 882 (Ark. App. 1982), the court interpreted the above Arkansas statute and stated that when a trial court distributes property in an unequal manner, it must give its reasons for such disposition.

⁶⁹64 N.C. App. 432, 308 S.E.2d 68 (1983), *aff'd as modified*, 312 N.C. 770, 324 S.E.2d 829 (1985).

⁷⁰308 S.E.2d at 71.

⁷¹*Id.*

⁷²*Id.*

⁷³*Id.* at 72.

⁷⁴WIS. STAT. ANN. § 767.255 (West 1981). Wisconsin also adopted the Uniform Marital Property Act (UMPA), which became effective in that state on January 1, 1986. WIS. STAT. ANN. § 766.001 to -.97 (West Supp. 1986). The Prefatory Note to the UMPA states that the Act is a property law merely governing the rights of spouses to property during marriage. UNIF. MARITAL PROPERTY ACT, Prefatory Note, 9A U.L.A. 21 (Supp. 1986). The theory behind the act is that the contributions of both spouses during a marriage are equal such that they share equal undivided ownership of marital property. Two propositions behind the Act are that: (1) marriage involves a mode of sharing, and (2) that this sharing mode is an ownership right upon divorce. *Id.* at 22. Thus, the UMPA merely takes the parties "to the door of the divorce court." *Id.* at 23. The comments emphasize that the appropriate procedures for dividing property should be determined from individual states' dissolution statutes. *Id.* The Indiana General Assembly has twice rejected Senate Bill No. 6, which would adopt the UMPA in Indiana. It will be before the General Assembly again in 1987 with some amendments. See S. 6, 1986 GEN. ASSEMBLY §§ 1-25 (1986); Middleton, *Confusion, Uncertainty Surround Equitable Distribution*, Nat'l L. J., May 26, 1986, at 31, col. 1.

⁷⁵WIS. STAT. ANN. § 767.255 (West 1981).

⁷⁶107 Wis. 2d 59, 318 N.W.2d 792 (1982).

to further those of that partner's spouse.⁷⁷ In spite of the above reasoning, the court upheld an unequal division of property where the evidence supported the finding that the husband had contributed more to the marriage financially and in caring for minors than the wife had.⁷⁸

The *Jasper* court's explanation of the rationale behind the Wisconsin statute is strikingly similar to the propositions of Indiana courts as previously set forth in *Temple* and *Taylor v. Taylor*,⁷⁹ where the contributions of a homemaker to the marriage as well as that individual's forgone career opportunities were recognized as factors to be considered in achieving equitable distribution. Thus, the recognition of marriage as a partnership permeates all equitable distribution statutes regardless of whether or not those statutes are accompanied by a mandate for the trial judge to begin his analysis with a rebuttable presumption of equality in distribution. One commentator has said that the doctrine of a fifty-fifty split as the starting point for equitable distribution is merely a means to "structure the court's deliberative process" in reviewing the statutory factors.⁸⁰ In other words, this commentator surmised that perhaps the true reasoning behind this "starting point analysis" is that one cannot expect judges to adhere to the policies recognizing a homemaker's contributions and forgone career opportunities to the marriage partnership when attempting to achieve an equitable distribution.⁸¹

The Indiana Supreme Court rejected this distrust of the ability of trial court judges properly to apply the policies of equitable distribution when the supreme court reviewed the lower court's decision in *Luedke*. In a cursory opinion, the Indiana Supreme Court rejected the appellate court's interpretation of section 31-1-11.5-11(c)(1) and stated that while perhaps one's mind "ought to lean toward an equal division" of property, "to require [such] as a matter of law . . . impinge[s] [upon] the trial judge's ability to openly weigh all the facts and circumstances"⁸² The court reasoned that the daily actions of people are not readily susceptible to mathematical application when it comes to marital dissolution actions.⁸³ Thus the court rejected the appellate court's formula-like application of section 31-1-11.5-11(c). The court also reasoned that due to the sensitive and difficult task at hand in a property dissolution action, a trial judge should be vested with broad discretion. The court also cited many prior cases holding that the statutory term mandating

⁷⁷*Id.* at 68, 318 N.W.2d at 797.

⁷⁸*Id.*

⁷⁹420 N.E.2d 1319 (Ind. Ct. App. 1981).

⁸⁰L. GOLDEN, *supra* note 5, at 244.

⁸¹*Id.* at 245 n.64; see also Foster, *Commentary on Equitable Distribution*, 26 N.Y.L. SCH. L. REV. 1, 31-32 (1981).

⁸²*Luedke*, 487 N.E.2d at 134.

⁸³*Id.*

a "just and reasonable" distribution does not require an equal or relatively equal division of property.⁸⁴ Thus, it appears that the partnership theory of marriage behind equitable distribution should be a sufficient guide for trial judges dividing property upon marriage dissolution without imposing upon them an analytical framework for their "Herculean task."⁸⁵

Cases decided subsequent to *Luedke* during this survey period have followed *Luedke*, although not without criticism. In *Baker v. Baker*,⁸⁶ the Fourth District Court of Appeals that had decided *Luedke* was again faced with the issue of whether the trial court's division of marital property was just and reasonable where the wife was awarded sixty percent of the marital assets. The husband contended that this distribution was not just and reasonable in light of *Luedke*.⁸⁷ Relying on the supreme court's decision in *Luedke*, the court of appeals in *Baker* rejected the husband's contention, finding that the great earnings disparity in favor of the husband supported the lower court's decision.⁸⁸ The court reaffirmed the prior principles established in *Temple* and *Swinney v. Swinney*⁸⁹ that in a property dissolution action a trial court's action will be presumed to be correct, and a trial court will be reversed only for an abuse of discretion.⁹⁰

Judge Young, in a concurring opinion, criticized this result in several respects. In a somewhat cynical view, he first concurred on the basis that the supreme court's decision in *Luedke* virtually precluded an appellate court's review of a trial court's discretion. He stated, "[O]ur supreme court has reinstated the pre-*Luedke* situation in which a trial court's range of choice is virtually limitless and our review little more than pretense."⁹¹ He argued that the distribution of assets will vary from court to court based on the particular "disposition or whim" of a certain judge who may be tempted to resort to who was "good" or "bad," thereby reinstating fault-based concepts of divorce.⁹² He further argued that the fifty-fifty starting point of *Luedke* would have provided a real basis for appellate review and precluded the possibility that the "financial

⁸⁴*Id.* at 135. See, e.g., *Van Riper v. Keim*, 437 N.E.2d 130 (Ind. Ct. App. 1982); *Irwin v. Irwin*, 406 N.E.2d 317 (Ind. Ct. App. 1980); *In re Marriage of Julien*, 397 N.E.2d 651 (Ind. Ct. App. 1979); *Dahlin v. Dahlin*, 397 N.E.2d 606 (Ind. Ct. App. 1979); *In re Marriage of Davis*, 182 Ind. App. 342, 395 N.E.2d 1254 (1979).

⁸⁵*Temple v. Temple*, 435 N.E.2d 259, 262 (Ind. Ct. App. 1982).

⁸⁶488 N.E.2d 361 (Ind. Ct. App. 1986).

⁸⁷*Id.* at 364.

⁸⁸*Id.* at 365.

⁸⁹419 N.E.2d 996 (Ind. Ct. App.), *transfer denied*, 426 N.E.2d 658 (Ind. 1981).

⁹⁰*Baker*, 488 N.E.2d at 364.

⁹¹*Id.* at 366.

⁹²*Id.* at 366-67.

well-being of [dissolution litigants] [would be] left to the good graces of a particular trial judge"⁹³ Indeed, one commentator has mentioned that with the advent of no-fault divorce, society has merely changed its focus of unpleasantness from the reasons for a marriage break-up to disputes over factors affecting property distribution.⁹⁴

In *Planert v. Planert*,⁹⁵ another case subsequent to *Luedke*, the court of appeals seemed to come to a merely talismanic conclusion that the property distribution was just and reasonable after determining that the lower court based its decision upon the conduct of the parties during the marriage as it related to the disposition of their property. Thus, the court affirmed the pre-*Luedke* abuse of discretion standard as a means to review a trial court's decision.⁹⁶ Another case decided during the survey period, however, indicated that the appellate court's standard of review is not totally toothless. In *Schnarr v. Schnarr*,⁹⁷ the court of appeals overturned the trial court's decision that had awarded the wife ninety-six percent of the marital assets in spite of the fact that both spouses had identical training in the operation of a business and the same work experience. The court rejected the lower court's reasoning that the future earnings ability of the husband supported an award in the wife's favor in accordance with Indiana Code section 31-1-11.5-11(c)(5).⁹⁸

Luedke essentially did not change the state of the law in Indiana regarding property distribution upon marriage dissolution. While the contributions of a homemaking spouse like Shari Luedke will not be unrecognized in a property distribution, such a spouse also cannot assume an automatic right to one-half of the marital property. Due to the fact-sensitive nature of each dissolution action, Indiana trial judges have been vested with broad discretion in determining such issues. As long as the bench and bar remain cognizant of the policies behind equitable distribution and seek to implement them in their decisions, it should not be too detrimental that a trial judge is not required to begin with a fifty-fifty division of the property when determining a property distribution case.

⁹³*Id.* at 367.

⁹⁴LaCayo, *supra* note 11, at 55, col. 1; *see also* Middleton, *supra* note 74, at 31, col. 1 (the author also raised concerns regarding how equitable distribution laws are being applied, quoting Judge Young's opinion in *Baker*).

⁹⁵478 N.E.2d 1251 (Ind. Ct. App. 1985).

⁹⁶In another case decided during the survey period, *Neffle v. Neffle*, 483 N.E.2d 767 (Ind. Ct. App. 1985), the court found the lower court did not abuse its discretion in awarding the husband most of the assets but requiring him to pay a cash award. The court recognized that Indiana code section 31-1-11.5-11(b)(2) permits marital assets to be distributed in kind as well as in money. *Id.* at 768-69.

⁹⁷491 N.E.2d 561 (Ind. Ct. App. 1986).

⁹⁸*Id.* at 564-65.

III. VALUATION OF MARITAL PROPERTY: JOINTLY HELD STOCK AND PARTNERSHIP INTERESTS

Two other important cases were decided in this survey period. Both *Eyler v. Eyler*⁹⁹ and *Peddycord v. Peddycord*¹⁰⁰ dealt with the proper valuation of marital property. However, each case addressed the concept of valuation in the context of two distinct types of marital property, jointly held stock and professional partnership interests.

A. *Eyler v. Eyler: Jointly Held Stock*

The case of *Eyler v. Eyler*¹⁰¹ presents an interesting approach to the valuation of jointly held shares of stock. In this case, the husband and wife were joint owners of 90.2% of the outstanding stock in the husband's business, Superior Training Services, Inc.¹⁰² The couple subsequently divorced and the trial court was required to decide how this jointly held property should be divided in order to achieve a just and equitable result.

The trial court had determined that the husband would retain all of the couple's stock in the business and the wife would receive a money judgment equal to the value of one-half of the jointly owned stock.¹⁰³ In theory the trial court split the stock in half and awarded the wife a sum of money equal to the value of 45.1% of the stock. However, the trial court also decided that the wife's 45.1% of the stock represented a minority share of the total outstanding stock in the business.¹⁰⁴ When valuing minority shares, discounts are normally applied to the total value of the minority shares in order to compensate for the difference in real value between majority and minority shares of stock.¹⁰⁵ In this case, the value of the wife's shares of stock was discounted by 25% in order to arrive at its "true value."¹⁰⁶ The trial court decided that the 45.1% shares of stock which the wife was theoretically "selling" to her husband were worth 25% less than their "book value" because her stock represented only a minority interest in the business. Her corresponding money judgment was reduced by the equal percentage.¹⁰⁷

⁹⁹492 N.E.2d 1071 (Ind. 1986).

¹⁰⁰479 N.E.2d 615 (Ind. Ct. App. 1985).

¹⁰¹492 N.E.2d 1071 (Ind. 1986).

¹⁰²*Eyler*, 492 N.E.2d at 1073.

¹⁰³*Eyler v. Eyler*, 485 N.E.2d 657, 661 (Ind. Ct. App.), *vacated*, 492 N.E.2d 1071 (Ind. 1986).

¹⁰⁴*Id.* at 661.

¹⁰⁵*See* *Perlman v. Permonite Mfg. Co.*, 568 F. Supp. 222, 230 (N.D. Ind. 1983), *aff'd*, 734 F.2d 1283 (7th Cir. 1984).

¹⁰⁶*Eyler*, 485 N.E.2d at 661.

¹⁰⁷*Id.*

The wife appealed this decision on the basis that the trial court erred in applying a minority discount to the value of her portion of the stock.¹⁰⁸ She argued that because she had always been a joint owner of 90.2% of the outstanding shares, her stock had never been treated as a minority interest. The Indiana Court of Appeals upheld the trial court's determination with little discussion.¹⁰⁹ The court of appeals simply recognized that the wife owned 45.1% of the stock after the property was divided. This percentage was less than 50% and was, therefore, a minority share of stock subject to a minority discount.¹¹⁰

On appeal, the Indiana Supreme Court reversed the court of appeals.¹¹¹ Instead of analyzing the issue in terms of the percentage of stock owned by each spouse *after* the property division, the supreme court concentrated on the nature of the joint ownership of stock *before* the property division.¹¹² "[T]he shares constituting the 90.2% share of the business were at all . . . times held in joint ownership and not burdened by the factors which may warrant consideration of the 'minority interest' discount."¹¹³ Although the wife's share of stock was technically a minority share, her stock had always been exercised as part of a majority block and, therefore, was not worth less than any of the other stock in the business. Thus, the wife was awarded a money judgment equal to the full value of her shares of stock.

The decision of the supreme court rests upon a recognition of common law principles on the nature of joint ownership.¹¹⁴ Joint tenants own a single, unified interest in personal or real property.¹¹⁵ Each joint tenant owns an undivided share of the whole property.¹¹⁶ If the husband and wife jointly owned 90.2% of the outstanding shares, both owned a majority interest in the corporation. The court reasoned that minority discounting was not necessary because neither spouse had ever been relegated to the position of minority shareholder.¹¹⁷

¹⁰⁸*Id.*

¹⁰⁹"Candace was to receive a money judgment corresponding to the value of 45.1% of the outstanding stock in Superior Training Services, which percentage represented a minority interest. Application of a minority discount was supported by law." *Id.*

¹¹⁰*Id.*

¹¹¹*Eyler v. Eyler*, 492 N.E.2d 1071, 1074 (Ind. 1986).

¹¹²*Id.*

¹¹³*Id.*

¹¹⁴The supreme court's decision is similar to the court of appeals decision in that neither court engaged in a lengthy discussion of the nature of joint ownership.

¹¹⁵*See Duncan v. Suhy*, 378 Ill. 104, 37 N.E.2d 826 (1941); *Richardson v. Richardson*, 121 Ind. App. 523, 98 N.E.2d 190 (1951); *Clausen v. Warner*, 118 Ind. App. 340, 78 N.E.2d 551 (1948); *In re Lorch's Estate*, 33 N.Y.S.2d 157 (Sur. Ct. 1941).

¹¹⁶*Welsh v. James*, 408 Ill. 18, 95 N.E.2d 872 (1950), *rev'd*, 7 Ill. 2d 106, 129 N.E.2d 699 (1955); *Rogers v. Rogers*, 437 N.E.2d 92 (Ind. Ct. App. 1982); *Clovis v. Clovis*, 460 P.2d 878 (Okla. 1969); *Turner v. Turner*, 185 Va. 505, 39 S.E.2d 299 (1946).

¹¹⁷*Eyler*, 492 N.E.2d at 1074.

At first glance, it would appear that the supreme court was ignoring a fundamental fact of the couple's divorce. At some point the corporate stock had to be divided and would no longer be held in joint ownership.¹¹⁸ After division, the wife would have owned 45.1% of the stock, numerically a minority interest. If the wife was entitled to a money judgment equal to *her share* and numerically her share was a minority one, her money judgment should have been discounted to reflect its minority status.

However, the decision of the supreme court correctly recognized the practical reality surrounding the wife's "minority" interest. First, inherent in a trial court's power to grant a divorce is the power to determine how the marital property should be divided.¹¹⁹ A value must be placed on the marital property in order for the court to determine how an equitable and just division can be achieved. The trial court has the discretion to designate a particular date at which valuation of property will officially occur.¹²⁰ Logically, however, valuation would have to occur prior to the actual division of the property.¹²¹ Without knowing the value of a particular piece of marital property, the trial court would be unable to make a decision that is just and equitable to all parties.

In *Eyler*, the couple's marital property was valued as of the date of separation.¹²² At the date of separation, the marital property had not been divided. Although they no longer lived together, the husband and wife still owned 90.2% of the stock as joint owners. Both were still majority owners. Thus, the value of the wife's shares could not be discounted in value as minority shares because at the time of valuation, she was owner of the whole majority interest.

In addition, the Indiana Supreme Court correctly rejected the minority discount theory because of the true nature of the wife's stock. Minority shares are normally discounted because the owner lacks the power to control corporate decision making.¹²³ For this reason, minority

¹¹⁸Joint tenancies may be severed in a number of ways. Severance will normally result in the creation of a tenancy in common. See *Mann v. Bradley*, 188 Colo. 392, 535 P.2d 213 (1975), where the wife "conveyed" her share of property to her husband, the other joint holder, thus destroying the joint tenancy. See also *Jackson v. O'Connell*, 23 Ill. 2d 52, 177 N.E.2d 194 (1961).

¹¹⁹*Taylor v. Taylor*, 436 N.E.2d 56, 58 (Ind. 1982).

¹²⁰*Id.* at 58 & n.1. In *Taylor*, an issue arose as to whether the marital home should be valued at the time of separation or at the time the dissolution action commenced. The Indiana Supreme Court decided that a trial court is not "limited to a specific date of valuation." *Id.* at 59. If the property division is just and reasonable, the trial court's decision will not be overturned. *Id.*

¹²¹See Annotation, *Proper Date for Valuation of Property Being Distributed Pursuant to Divorce*, 34 A.L.R. 4th 63, 63-85 (1984), for a discussion of how different jurisdictions determine the proper date for valuation of marital property.

¹²²*Eyler*, 492 N.E.2d at 1074.

¹²³*Perlman v. Permonite Mfg. Co.*, 568 F. Supp. 222, 230-31 (N.D. Ind. 1983), *aff'd*, 734 F.2d 1283 (7th Cir. 1984), stated

shares are not worth as much as majority shares, even though they both have the same "book value."¹²⁴ Prior to the divorce, the wife exercised her shareholder rights as a majority owner. The 45.1% of the total shares designated as belonging to the wife were never "minority" shares in the sense that the owner lacked the power to direct corporate affairs. As the supreme court properly stated, the shares were "not burdened by the factors which may warrant consideration of the 'minority interest' discount."¹²⁵

For these reasons, the supreme court reached the correct decision in the *Eyler* case. Although in the pure numeric sense, the wife owned only a minority interest once the shares of stock were divided, these shares were never burdened by the deficiencies normally attributed to true minority shares, such as a stock owner's inability to control corporate decision making. Because the wife's shares were always part of a majority block of shares, subjecting her interest to a minority discount was unwarranted.

B. *Peddycord v. Peddycord: Professional Partnership Interests*

Property valuation was the subject of another recent Indiana decision, *Peddycord v. Peddycord*.¹²⁶ At the time of the husband and wife's divorce in *Peddycord*, the husband was a partner in a law firm.¹²⁷ The parties agreed that his interest in the professional partnership was a marital asset subject to division in the dissolution action.¹²⁸ In order to divide this asset, the trial court had to place a value on the partnership interest and award the wife a money judgment equal to her equitable share of the husband's interest.¹²⁹

Placing a value on a spouse's partnership interest was not a simple task. The trial court decided to use a formula found in the partnership

"A minority shareholder could not have expected to receive a proportionate share of the going concern value of the assets if he had remained a stockholder of Amnest as a going concern, unless the assets as a whole, or the company as a whole, were to be sold. As a minority stockholder, he would have had no voice in a corporate policy, and no power to influence decisions as to whether to sell and, if so, when and how. The control of these decisions is an element of value"

Id. at 231 (citing *Moore v. New Amnest, Inc.*, 6 Kan. App. 2d 461, 474-75, 630 P.2d 167, 177 (1981)).

¹²⁴*Perlman*, 568 F. Supp. at 231.

¹²⁵*Eyler*, 492 N.E.2d at 1074.

¹²⁶479 N.E.2d 615 (Ind. Ct. App. 1985).

¹²⁷*Id.* at 616.

¹²⁸*Id.*

¹²⁹*Id.*

agreement, which was used to calculate a partner's interest at the time of his death.¹³⁰ Most partnership agreements contain formulas for calculating the amount of money the partnership will give a partner in order to "buy out" his share upon his death or withdrawal from the partnership.¹³¹ According to the partnership agreement in *Peddycord*, at the time of his death the husband would be entitled to \$20,673.73, the amount of his capital account, plus a death benefit payment of \$53,630.89.¹³² From the total of these two figures, the trial court subtracted \$16,908.02 for the liabilities owed by the husband to the partnership.¹³³ The trial court arrived at a net valuation of the husband's interest totalling \$57,396.60.¹³⁴

On appeal, the husband argued that the trial court erred in using the partnership death benefit formula for calculating the value of his present interest in the partnership.¹³⁵ The husband argued that the value of his interest should be calculated according to the partnership's formula for reimbursing partners who withdraw from the firm. The Indiana Court of Appeals found that the wrong formula had indeed been used to calculate the husband's interest and reversed the trial court's decision.¹³⁶

The court of appeals began its analysis by recognizing that partnership agreements normally contain several formulas for determining the amount of money a former partner is entitled to receive upon his withdrawal from the firm.¹³⁷ This amount is different depending on whether the partner withdraws from the firm, becomes disabled, dies, or retires.¹³⁸ While recognizing that at least one other jurisdiction has used the death benefit formula for calculating a husband's present interest, the court of appeals decided that the formula used for reimbursing partners who withdraw from the firm represented the correct formula for calculating a husband's present interest in a dissolution action.¹³⁹

¹³⁰*Id.*

¹³¹Walzer, *Developing the Financial Circumstances of a Marital Community*, 1978 ECONOMICS OF DIVORCE 111, 127-33.

¹³²*Peddycord*, 479 N.E.2d at 616.

¹³³*Id.*

¹³⁴*Id.*

¹³⁵*Id.*

¹³⁶*Id.* at 616-17.

¹³⁷*Id.* at 616.

¹³⁸*Id.* See Annotation, *Evaluation of Interest in Law Firm or Medical Partnership for Purposes of Division of Property in Divorce Proceedings*, 74 A.L.R.3d 621, 621-29 (1976), for a further discussion of formulas available for valuing a partner's interest in a partnership.

¹³⁹*Peddycord*, 479 N.E.2d at 617; see also *Fonstein v. Fonstein*, 53 Cal. App. 3d 846, 126 Cal. Rptr. 264 (1975), *vacated*, 17 Cal. 3d 738, 131 Cal. Rptr. 873, 552 P.2d 1169 (1976); *Johnson v. Johnson*, 277 N.W.2d 208 (Minn. 1979); *Weaver v. Weaver*, 72 N.C. App. 409, 324 S.E.2d 915 (1985); *Holbrook v. Holbrook*, 103 Wis. 2d 327, 309 N.W.2d 343 (Wis. Ct. App. 1981).

In deciding this issue, the court drew an analogy between partnership agreements and life insurance policies.¹⁴⁰ An insurance company will pay a different amount to a life insurance policyholder depending on whether the holder dies or voluntarily cashes in his policy.¹⁴¹ The distinction between these two amounts rests on the element of volition.¹⁴² Presumably, a policyholder never voluntarily dies, while cashing in the insurance policy is a discretionary decision which rests solely within the policyholder's control. Likewise, withdrawing from a partnership is a decision a partner freely undertakes, but dying, retiring, or becoming disabled are decisions "involuntarily" imposed upon him.¹⁴³

Thus, just as "[a]n insurance policy's value, for the purposes of a marriage dissolution, is its cash value . . .," the *Peddycord* court decided that the value of a partner's interest in a marriage dissolution is determined as if the partner "cashed in" or withdrew from the firm.¹⁴⁴

The *Peddycord* decision illustrates the difficulty a court faces when valuing an interest in a professional or small partnership business arrangement. The value of most business interests is measured by the fair market value.¹⁴⁵ However, an interest in a professional partnership usually has no hypothetical outside marketplace in which its value can be determined.¹⁴⁶ Instead, it is generally more reliable to ascertain the value according to an internal marketplace which determines what the business or practice is worth to the spouse who will continue to operate in that business.¹⁴⁷ As one author has noted, there is a distinct difference between these two marketplace scenarios:

What an "outsider" is willing to pay is generally considerably less than what the practice or business will yield to its present proprietor. Many businesses and virtually all practices have a personal element that is non-transferrable. Yet, too great a dis-

¹⁴⁰*Peddycord*, 479 N.E.2d at 617.

¹⁴¹*Id.* Upon death the holder's beneficiaries receive the full proceeds owed under the insurance contract. If the holder decides to "cash in" his policy before death, he is entitled only to the present value of his policy determined by the premiums previously paid. *Id.*

¹⁴²*Id.*

¹⁴³Retiring may be seen as a voluntary decision, although it is usually tied to a factor over which an individual has no control — his age.

¹⁴⁴*Peddycord*, 479 N.E.2d at 617.

¹⁴⁵Walzer, *supra* note 131, at 128.

¹⁴⁶In the case of a law partnership, the partners must be attorneys who practice law in the partnership. Attorneys cannot form law partnerships with non-attorneys who do not practice law in the partnership. See MODEL CODE OF PROFESSIONAL RESPONSIBILITY DR 3-103 (codified at IND. CODE ANN. § DR 3-103 (Burns 1984)). For this reason, the partnership in *Peddycord* was the *only* entity that could theoretically buy out the husband's partnership interest.

¹⁴⁷Walzer, *supra* note 131, at 128.

count does not do [sic] justice to the non-proprietor spouse, generally the wife. For a divorce is not the same as a sale. The day after the divorce the husband will continue to earn what he previously earned. Some incremental value should be allowed for this continuity of earning power when determining the value of a business or professional practice.¹⁴⁸

The court of appeals correctly determined that the partnership agreement was the best source for establishing a marketplace for the husband's interest. Deciding which formula to use from the agreement is a matter of choosing which scenario most accurately represents the husband's interest at the time of dissolution. Death benefit formulas are normally funded by insurance policies.¹⁴⁹ For this reason, the value placed on the departing partner's interest is normally higher under the death benefit formula. This money, however, would not be available at the time of a couple's divorce.¹⁵⁰

Because the withdrawal formula is usually not funded by insurance, it is probably "close to pure book value—the lowest price" of all the categories.¹⁵¹ The withdrawal formula does not include any additional benefit that would normally be awarded a partner who has lost his status with the partnership under "involuntary" circumstances. Instead, the withdrawal formula represents the present value of his interest—the amount of his capital account minus liabilities owed to the partnership. Under this formula, the other spouse could not take advantage of benefits that arise from factual scenarios that may never occur—namely that the partner dies, retires, or becomes disabled while he is still a partner in the firm. For these reasons, the withdrawal formula represents the most logical formula for calculating a partner's present interest in a partnership at the time of dissolution.

IV. CONCLUSION

Indiana courts were not willing to assume that a fifty-fifty division of marital property was the proper starting point for purposes of equitable distribution. Although other states have adopted this presumption either by caselaw or by statute, Indiana preferred to give trial judges wide discretion to determine what a fair and reasonable division should be.

In the area of valuation of marital property, Indiana took an interesting approach to how to value jointly held stock and partnership interests. In refusing to allow a wife's shares of stock to be subject to

¹⁴⁸*Id.*

¹⁴⁹*Id.* at 128-29.

¹⁵⁰*Id.* at 129.

¹⁵¹*Id.*

a minority discount, the Indiana Supreme Court noted that although numerically the wife's share was a minority one, the wife and her husband at the date of separation still owned all the stock in joint tenancy. In valuating a husband's professional partnership interest, the Indiana Court of Appeals rejected the death benefit formula and decided that the withdrawal formula was the fairest and most logical way to evaluate the present interest at the time of divorce.

Indiana courts in some ways are maintaining the status quo regarding the best way to divide marital property, and are developing some trends in the area of valuation of special kinds of marital property. Practitioners and divorcing couples should be aware of the trends in marital property, considering the wide discretion given to trial judges to divide property as well as the different types of marital property that can be divided.