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Unusual Estate Issues and Fiduciary and Beneficiary Liability

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I. Secret Boyfriends, Girlfriends, and Non-married Partners

A. Today approximately 45 % of persons over 18 live in unmarried households. Marriage is no longer the norm, especially on the coasts, where a higher percentage of people reside in unmarried households.

B. *United States v. Harris*, 942 F.2d 1125 (7th Cir. 1991).

1. David Kritzik, "a wealthy widower partial to the company of young women" befriended twin sisters and, over several years, gave them each more than $500,000. In exchange the sisters supplied Kritzik with companionship and sex.

2. The government sought to bring criminal charges against the two sisters for not reporting the payments as income.

3. Kritzik died before trial but left an affidavit stating that he paid the sisters for prostitution and the transfers were not gifts.

4. The Tax Court gave little credence to the affidavit, believing that Kritzik was trying to avoid gift taxes and civil penalties.

5. The 7th Circuit held that the law concerning transfers like these was too confusing and unsettled to serve as a basis for a criminal case.

C. The Tax Court in a series of decisions between 1955 and 1992, addressed a series of similar cases, dubbed the "mistress decisions."

1. *Toms v. Comm'r*, 63 T.C.M. (CCH) 2243 (1992); *Austin v. Comm'r*, 49 T.C.M. (CCH) 520 (1985); *Jones v. Comm'r*, 36 T.C.M. (CCH) 1323 (1977); *Reis v. Com*m'r, 33 T.C.M. (CCH) 1333 (1974) *acq. recommended by In Re: Lillian Reis*, 1975 WL 38201 (IRS AOD Dec. 17, 1975); *Libby v. Comm*'r, 28 T.C.M. (CCH) 915 (1969) *acq. recommended by In Re: Louis B. Libby,et Ux*., 1969 WL 21049 (IRS AOD Nov. 5, 1969); *Starks v. Comm'r*, 25 T.C.M. (CCH) 676 (1966); *Brizendine v. Comm'r*, 16 T.C.M. (CCH) 149 (1957); *Blevins v. Comm'r*, 14 T.C.M. (CCH) 840 (1955) *aff'd*, 238 F.2d 621 (6th Cir. 1956).

2. These cases really don't clarify the law in this area. In fact, one author wrote that the only consistency in the decisions was that the Tax Court gave little credibility to the testimony of the men involved in these relationships. *See* Lefler, Debra, "Keeping Books on Romance"; The Gift Exclusion in Nonmarital Relationships. Vol. 105 No. 4, Northwestern University Law Review, 2011.

3. I have looked for cases involving gifts to boyfriends by wives and those involving same sex

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