

of the law should be changed, with evidence that those changes would help achieve the goal sought, will leave the reader wondering what more can be done and how.

Endnotes

1. Of course, climate change is an existential challenge to the planet and its people. However, inequality drives the corporate and governing entities that hold the power to accelerate or address its consequences.
2. Felix B. Chang, “How Should Inheritance Law Remediate Inequality?” *97 Wash. L. Rev.* __ (forthcoming 2022), at p. 2.



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ARTICLE: “**Endorsing After Death**,” 63 *William & Mary Law Review* 1531 (2022)

Most of us are likely aware of some of the postmortem activities of our favorite deceased celebrities. In fact, as the author highlights, 2020 was a banner year for deceased celebrities. Whitney Houston promoted an international hologram tour; Tupac Shakur, Bob Marley, Bob Ross and Jimi Hendrix actively promoted branded COVID-19 face masks through their official Instagram pages; and Amy Winehouse, Marilyn Monroe, Muhammad Ali, Elvis Presley, The Notorious B.I.G., John Lennon and Kobe Bryant participated in #BlackoutTuesday in support of Black Lives Matter. Many legal professionals might also be aware of some of the legal issues surrounding these postmortem activities, including those rooted in state laws concerning the rights of publicity, who controls these rights and for how long. However, this article doesn’t focus on and goes beyond the legal issues dealing with the right of

publicity and instead addresses something that I never thought clearly about: the postmortem “right of endorsement,” which is grounded in federal trademark and unfair competition laws.

It’s one thing for Whitney Houston or Michael Jackson to perform a fun and exciting holographic concert, but it’s quite another for consumers to be confused and misled by deceased celebrities endorsing products, projects, political candidates and movements that weren’t even in existence at the time the celebrity was living. Marilyn Monroe is one of the highest paid celebrity endorsers today even though she died almost 60 years ago. The body of law dealing with postmortem endorsement rights is sparse, which, according to the author, has led to serious issues, including misleading consumers into thinking the deceased celebrity or their heirs actually stand behind and support the endorsed product or message. In fact, many of the companies that own these deceased celebrity endorsement rights have zero personal connection to the celebrity or to their estate. Companies such as CMG Worldwide, The Authentic Brands Group and Primary Wave Music have purchased the rights to many deceased celebrities, including Elvis Presley, Muhammad Ali and Prince, from their estates in this growing and profitable area of commerce. Furthermore, dignitary problems frequently occur that pose harm to the deceased celebrities (or to their memories) when they’re associated with products or movements that they truly would have no interest in endorsing or perhaps even stand against what they would have believed in.

In this engaging article, the author not only explains the practical and legal issues regarding celebrity endorsements but also explores the psychological and emotional reasons as to why consumers are actually swayed by the words and the opinion of a celebrity that they know wasn’t living at the time the movement or product originated and clearly didn’t personally endorse the product. In dealing with the legal issues on this topic, the author also suggests legislative changes that he feels would solve some of the misperceptions, confusions and dignitary concerns that exist today due to the sparse laws in this area. His primary suggested change would require that only a legal steward, akin to a trustee

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or executor, with duties to preserve and protect the correct image of the celebrity, would have the legal rights to control the endorsement rights, but a third-party commercial owner wouldn't have those rights. While I don't think this approach would be practical or feasible for a long period of time after the celebrity is deceased, much like special purpose trusts typically run their course after a period of time, it's an idea to at least ponder.

While most of us probably don't represent any celebrity clients, the article is still an enjoyable and worthwhile read because estate planners will continue to deal with important postmortem legal issues in greater frequency, including the rights to the likenesses and images of the deceased. These complex and fascinating legal issues transcend the more mundane and straightforward issues of the deceased's computer passwords, medical records and Instagram accounts as technology advances and our ancestors are virtually re-created. Based on several articles that I've read in this area, many legal scholars, including the author, are strongly advocating for greater legal analysis and far more detailed legislation at both the federal and state levels to address the confusion

and lack of guidance. I suspect the legal landscape addressing postmortem rights will drastically evolve over the next few years and the legislation will eventually get there, just always several steps and a few years behind the speedier technology.



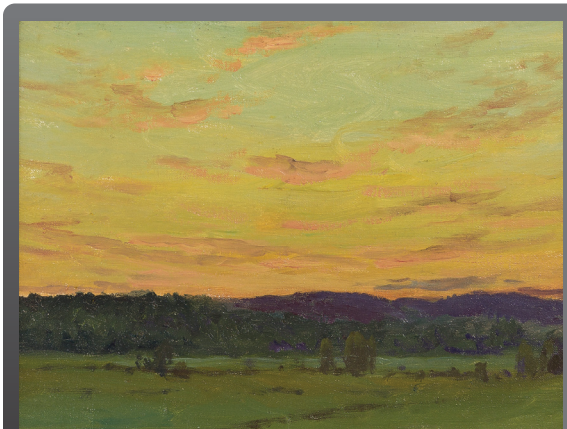
REVIEW BY: **Thomas H. Norelli**, partner in the New York City office of Kirkland & Ellis LLP

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ARTICLE: "**Dynasty 529 Plans and Structural Inequality**," 61 *Washburn Law Journal* 497 (2022)

Dynasty 529 Plans and Structural Inequality" by Professor Victoria J. Haneman is a well-written and concise article that offers both a synopsis of the mechanics of Internal Revenue Code Section 529 plans (529 plans) as well as the author's thoughts on how those mechanics fit into the broader topic of structural inequity. Further, although the author points out that the article is "more a thought piece than a polemic," she makes clear where she stands on the question of whether the rules governing 529 plans are structured in such a way that the tax benefits are equally available to individuals of all socioeconomic strata.

The article begins with an overview of 529 plans, pointing out some of their benefits as compared to other strategies that may be used to fund family members' education: they're flexible, tax incentivized, low cost, simple and don't have any limits on growth. Also, the maximum contribution limits are generous (typically between \$235,000 and \$529,000 depending on the state). The author outlines the strategy of using a "dynasty education trust" as a vehicle for holding multiple 529 plans, each for the benefit of different members of the grantor's family. Flexibility is achieved by the ability for a 529 plan to change its beneficiary or owner often with no tax consequences.



SPOT LIGHT

Day is Done

Sky Sunset Study by Charles Warren Eaton sold for \$1,188 at Swann Auction Galleries American Art auction on Sept. 22, 2022 in New York City. Eaton was an American painter primarily known for his tonalist landscapes. The tonalist technique focuses on moodier styles popularized by younger artists in Europe and often depicts intimate settings.