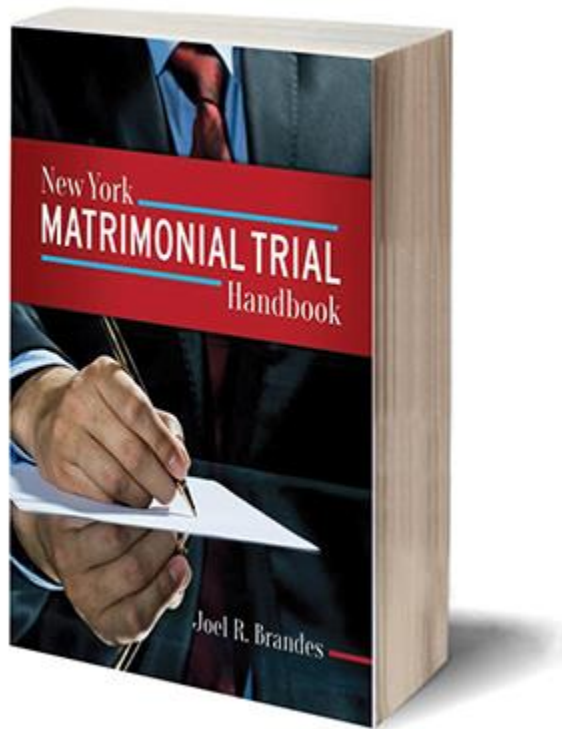


## **Taking on Matrimonial Cases Becomes Easier With This Handbook**

New York Matrimonial Trial Handbook is the ideal learning foundation for your associate, new to the matrimonial field, as well as a valuable tool for the experienced practitioner who wants to review the law and prepare for trial.

By **Bernard Dworkin** | December 21, 2017



**The Matrimonial Trial Handbook by Joel R. Brandes. BookBaby, 836 pages, \$395.00**

With the publication of The Matrimonial Trial Handbook, by Joel R. Brandes, the trilogy of Brandes books is now complete and the practitioner has available most of the written material needed to take a matrimonial case from start through trial and beyond. Along with the bible of the field, Law and the Family, Second Edition Revised (9 volumes), we also have Brandes' Law and The Family New York Forms (5 volumes). All you need now is a law school education and some experience, and you are good to go. Any

reluctance you may have about taking on a matrimonial case should disappear when you are well-armed with this new clear, complete and competent guide.

The just-published “handbook” is not a handbook in the sense applied to a small or portable book containing information useful for its owner. Rather it fits current usage of the word — as a book giving information on a particular subject, guidance in some art or occupation. This attractive 799-page hefty volume is neither small nor portable; it is a comprehensive and detailed guide to the preparation and handling of a matrimonial trial. The book measures 8” by 11” and it is 2” thick. The ample height means there is room for both text and footnotes on the same page as the issue discussed, and you will not find a page with, for example, only 3 lines of text and the rest footnotes.

Just about every statement of law is supported by up-to-date footnote citation and some commentary. The author intends to keep his work updated by supplements and an occasional reprinting of the main volume. A table of citations is not provided but would be useful if added in a revision. The 28-page Table of Contents is an excellent guide to the steps involved from pre-trial matters through trial, and it serves, by itself, as a comprehensive check-list for your preparation. The Index could be more detailed; however, the Table of Contents should lead you easily to what you are looking for. Generally, you will not find the author’s opinion on matters of law, but you will find how the courts have interpreted the law.

Considerable attention is given to valuation methodology and the substantive law relating to enhanced earnings, as represented by licenses and degrees — marital property to be equitably divided. That seems odd since, as the author points out, the Legislature amended Domestic Relations Law § 236 [B] [5] [d] [7] to eliminate enhanced earning capacity as a marital asset. “The court shall not consider as marital property subject to distribution the value of a spouse’s enhanced earning capacity arising from a license, degree, celebrity goodwill, or career enhancement...., the amendment reads. Then why are we still engaged in a fiction, originally established by the Court of

Appeals in *O'Brien v. O'Brien*<sup>[1]</sup> when that case was legislatively overruled? Without doubt, under the new law if the marital estate contained no property except an MBA degree, there could be no equitable distribution since that degree could no longer be considered marital property.

But, Brandes notes the Legislature added this: However, in arriving at an equitable division of marital property, the court shall (emphasis supplied) consider the direct or indirect contributions to the development during the marriage of the enhanced earning capacity of the other spouse...

If a wife, for example, (in a case where there is marital property other than enhanced earning capacity), wishes to establish contribution to the enhanced earnings of her husband, then, Brandes says, she must establish (1) that the husband has enhanced earning capacity attributable to a license, degree, etc., and establish (2) the value of such enhanced earning capacity. That's exactly where we were prior to the demise of *O'Brien*. Are we, then, back to the expense and complexities of bringing in our forensic accountants and going through extensive discovery, and nitpicking over whether the value of the license arose from the talent and efforts of the holder of that licensee, or from the other spouse's contributions?

The courts may determine in time that the Legislature never intended to require we still have to establish the value of enhanced earnings before the court can consider contributions to it. Until that time, it may be the safest approach to handle the element of enhanced earnings just as we had done before the amendment.

Matrimonial Trial Handbook has thousands of suggested questions and answers for the examination of witnesses, direct and cross, to establish your prima facie case for grounds for separation, divorce and annulment, for a maintenance award, child support, counsel fees, custody and many other areas. Wisely, the suggested scripts of testimony concentrate more on your direct case, rather than cross examination. As any

experienced trial attorney knows, trying to use scripts for cross-examination tends to interrupt the flow of your trial, as you try to re-find your place after the witness takes you in a direction different from what you planned.

A skilled cross examiner knows to listen carefully to the witness' answer, observe the demeanor and body language and then formulate the next question using knowledge gained from your immediate observations. Slavery to a script will cause one to lose opportunities to take advantage of a witness' weakness as exposed by observable behavior.

The broad scope of subject matter, particularly applicable to matrimonial and family law matters, makes this volume unique in the market. A chapter on evidence relates to matrimonial and Family Court proceedings and includes treatment of the burden of proof, laying a foundation for evidence, admissibility, hearsay rules. If you need to get audio or visual recordings into evidence, a common need in divorce and custody cases, you will find the rules and pitfalls and, of course, sample direct testimony for the foundation. Another chapter leads you through the conduct of a trial including opening statements, examination of witnesses, objections to evidence, and use of depositions and interrogatories.

New York Matrimonial Trial Handbook is the ideal learning foundation for your associate, new to the matrimonial field, as well as a valuable tool for the experienced practitioner who wants to review the law and prepare for trial. It is written in clear, understandable language, and in the active voice which facilitates your reading. When you are about to place the book in your library, just raise the bookshelf a notch to accommodate its height. The space it takes is not wasted.

Bernard Dworkin is a matrimonial attorney in New York for more than 50 years and a former member of the American Academy of Matrimonial Lawyers.

[\[1\]](#) O'Brien v. O'Brien (1985) 66 NY2d 576, 498 NYS2d 743, 489 NY2d 712, on remand (2d Dept) 120 App Div 2d 656, 502 NYS2d 250.

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