

SPOUSAL INTEREST IN PROFESSIONAL DEGREES: SOLVING THE COMPENSATION DILEMMA

When faced with the problem of a marriage dissolution in which the couple's only notable marital asset consists of a professional degree, courts disagree over the proper treatment of this asset.¹ The situation usually involves a wife² putting her husband through professional school by providing financial, emotional and domestic support, and foregoing her own career goals to further her spouse's educational goals.³ Dissolution of the marriage occurs just prior to, or fairly soon after, the student spouse obtains the degree, frustrating the supporting spouse's expectations of a higher standard of living.⁴

Due to the high cost of the education pursued, the couple, upon divorce, has few marital assets aside from the degree.⁵ The problem is that the working spouse is, by definition, capable of self-support and may be left without compensation upon divorce.⁶ If the marriage is of a relatively long duration in which the contributing spouse has enjoyed the higher standard of living from the professional degree for many years, most courts have agreed that considering the contribution to the degree is not proper. These courts reason that the contributing spouse has already reaped the benefits of the support, and the higher standard of living will be reflected in alimony payments.⁷ When the marriage is of a short duration, however, the working spouse has presumably not benefited from his or her contribution.

¹ See generally, Freed & Walker, *Family Law in the Fifty States: An Overview*, 19 FAM. L.Q. 331 (1986).

² An overwhelming majority of the cases on point involve the male as the professional degree holder. But see *Taylor v. Taylor*, 736 S.W.2d 388 (Mo. 1987) (en banc); *Geer v. Geer*, 84 N.C. App. 471, 353 S.E.2d 427 (1987); *St.-Pierre v. St.-Pierre*, 357 N.W.2d 250 (S.D. 1984).

³ *Olar v. Olar*, 747 P.2d 676, 678 (Colo. 1987).

⁴ *Id.*

⁵ Comment, *The Equity/Property Dilemma: Analyzing The Working Spouse's Contributions To The Other's Educational Degree At Divorce*, 23 Hous. L. Rev. 991, 993 (1986) [hereinafter Comment, *The Equity/Property Dilemma*].

⁶ *Id.*

⁷ See, e.g., *Wilson v. Wilson*, 294 Ark. 194, 201-02, 741 S.W.2d 640, 645 (1987); *Sweeney v. Sweeney*, 534 A.2d 1290, 1292 (Me. 1987); *Davey v. Davey*, 415 N.W.2d 84, 87-88 (Minn. Ct. App. 1987); *Gardner v. Gardner*, 748 P.2d 1076, 1081 (Utah 1988).

This note focuses on the issue of spousal interest in professional degrees for spouses who have contributed to attaining the degree but who have not yet reaped any of the benefits. Section one of this note discusses the case law that has developed on this issue,⁸ and the possible alternative solutions that courts have used when faced with the problem of compensating the supporting spouse.⁹ Section two of this note then analyzes recent cases that have been decided regarding the issue of a spouse's interest in the other's professional degree.¹⁰ The note concludes, in section three, with a recommendation that the best solution to the problem is to recognize that the degree should not be considered marital property. Rather, the supporting spouses should be reimbursed for their efforts by receiving the amount of support contributed to the attainment of the degree plus interest, and also possibly a rehabilitative award to compensate the working spouse for viable lost opportunity costs.¹¹

I. THEORIES OF COMPENSATION

The majority of states that have decided the issue have determined that a professional degree or license¹² is not marital property¹³ for the court to distribute upon dissolution of the marriage.¹⁴ Courts have also maintained, however, that equity demands some compensation to the supporting spouse.¹⁵ Many courts have relied on the nonproperty characteristics of an educational degree in making their determination.¹⁶

⁸ See *infra* notes 12-23 and accompanying text.

⁹ See *infra* notes 24-85 and accompanying text.

¹⁰ See *infra* notes 86-131 and accompanying text.

¹¹ See *infra* notes 132-150 and accompanying text.

¹² This note uses the terms "license" and "degree" interchangeably.

¹³ See *infra* note 98 and accompanying text for a discussion of the difference between classifying something as "marital property" and the awarding of alimony.

¹⁴ See, e.g., *Olar v. Olar*, 747 P.2d 676, 680 (Colo. 1987); *In re Marriage of Graham*, 194 Colo. 429, 432, 574 P.2d 75, 77 (1978); *In re Marriage of Weinstein*, 128 Ill. App. 3d 234, 470 N.E.2d 551, 559 (1984); *Archer v. Archer*, 303 Md. 347, 357, 493 A.2d 1074, 1080 (1985); *Drapek v. Drapek*, 399 Mass. 240, 246, 503 N.E.2d 946, 950 (1987); *Davey v. Davey*, 415 N.W.2d 84, 88 (Minn. Ct. App. 1987); *Mahoney v. Mahoney*, 91 N.J. 488, 505, 453 A.2d 527, 536 (1982); *Stevens v. Stevens*, 23 Ohio St. 3d 115, 120, 492 N.E.2d 131, 135 (1986); *Pacht v. Jadd*, 13 Ohio App. 3d 363, 469 N.E.2d 918, 921 (1983); *Hodge v. Hodge*, 513 Pa. 264, 268, 520 A.2d 15, 17 (1986); *Martinez v. Martinez*, 754 P.2d 69, 75 (Utah Ct. App. 1988), *cert. granted*, 765 P.2d 1277 (Utah 1988); *Hoak v. Hoak*, 370 S.E.2d 473, 474 (W. Va. 1988); *Grosskopf v. Grosskopf*, 677 P.2d 814, 822 (Wyo. 1984).

¹⁵ *Drapek v. Drapek*, 399 Mass. 240, 246-47, 503 N.E.2d 946, 950 (1987); *Martinez v. Martinez*, 754 P.2d 69, 79 (Utah Ct. App. 1988); *Hoak v. Hoak*, 370 S.E.2d 473, 477 (W. Va. 1988).

¹⁶ See *In re Marriage of Graham*, 194 Colo. 429, 432, 574 P.2d 75, 77 (1978). The *Graham* court stated that:

Only one state's highest court, New York, has determined that the professional degree is marital property.¹⁷ In *O'Brien v. O'Brien*, the New York Court of Appeals held that a license to practice medicine, acquired during marriage, was marital property subject to equitable distribution.¹⁸

Courts that have determined that the degree is not marital property have nevertheless held that the student spouse must compensate the supporting spouse for his or her efforts.¹⁹ The question remains, however, as to what form this compensation should take. Courts have recognized a variety of compensatory alternatives,²⁰ including compensation by alimony,²¹ compensation by restitution,²² and compensation through reimbursement.²³

A. Compensation Through Traditional Alimony Payments

Although courts generally determine spousal maintenance awards based on monetary need and not to "achieve financial parity" between the spouses, many courts have used alimony to compensate

An educational degree, such as an M.B.A., is simply not encompassed even by the broad views of the concept of "property." It does not have an exchange value or any objective transferrable value on an open market. It is personal to the holder. It terminates upon death of the holder and is not inheritable. It cannot be assigned, sold, transferred, conveyed, or pledged. An advanced degree is a cumulative product of many years of previous education, combined with diligence and hard work. It may not be acquired by the mere expenditure of money. It is simply an intellectual achievement that may potentially assist in the future acquisition of property. In our view, it has none of the attributes of property in the usual sense of that term.

Id.

¹⁷ *O'Brien v. O'Brien*, 66 N.Y.2d 576, 489 N.E.2d 712, 498 N.Y.S.2d 743 (1985). For lower courts that have also held that the professional degree is marital property, see *Daniels v. Daniels*, 165 Mich. App. 726, 731, 418 N.W.2d 924, 927 (1988); *Thomas v. Thomas*, 164 Mich. App. 618, 620, 417 N.W.2d 563, 565 (1984); *Woodworth v. Woodworth*, 126 Mich. App. 258, 261-62, 337 N.W.2d 332, 334 (1983).

¹⁸ *O'Brien*, 66 N.Y.2d at 580-81, 489 N.E.2d at 713, 498 N.Y.S.2d at 744.

¹⁹ See *supra* note 15 and accompanying text for a discussion of compensation to the supporting spouse.

²⁰ See Gailor & McGill, *The Equitable Distribution of Professional Degrees Upon Divorce In North Carolina*, 10 CAMPBELL L. REV. 69, 72 (1987).

²¹ *Id.* at 82 (citing 1985 *Survey of Family Law*, 11 FAM. L. REV. 3015, 3017-18 (1985)) (23 States have allowed "rehabilitative maintenance"). See *e.g.*, *Hoak v. Hoak*, 370 S.E.2d 473, 478 (W. Va. 1988).

²² See, *e.g.*, *Pyeatte v. Pyeatte*, 135 Ariz. 346, 357, 661 P.2d 196, 208 (1982); *Bold v. Bold*, 374 Pa. Super. 317, 542 A.2d 1374, 1379 (1988).

²³ See, *e.g.*, *DeLa Rosa v. DeLa Rosa*, 309 N.W.2d 755, 759 (Minn. 1981); *Mahoney v. Mahoney*, 91 N.J. 488, 503, 453 A.2d 527, 535 (1982); *Hoak*, 370 S.E.2d at 478.

a working spouse who has helped the student spouse obtain a professional degree.²⁴ Courts may award either reimbursement or rehabilitative alimony. Reimbursement alimony may be awarded to a spouse who has given financial support to his or her partner to obtain a professional degree with the expectation of deriving future benefits for both partners.²⁵ Conversely, some state courts have granted alimony for rehabilitation only, not reimbursement.²⁶ Rehabilitative alimony is support given to a spouse who may have postponed a career or foregone the pursuit of an education.²⁷ The award is "intended merely to enable that spouse, through further education and training, to re-enter the job market and become independent."²⁸

1. Reimbursement Alimony

Reimbursement is an adjustment designed to repay the supporting spouse for financial contributions made toward the attainment of the student spouse's degree.²⁹ The Supreme Court of New Jersey, in 1982, espoused the concept of reimbursement alimony in *Mahoney v. Mahoney*.³⁰ In *Mahoney*, the court introduced the concept of reimbursement (alimony) to compensate the supporting spouse who shared the mutual expectation that both parties would derive increased income and material benefits from the degree.³¹ The *Mahoney* court decided that the supporting spouse had contributed all financial support for the two years during which the student spouse obtained an M.B.A.³² Although the court concluded that the degree was not marital property subject to division,³³ the court noted that in proper circumstances, reimbursement alimony is appropriate.³⁴ The *Mahoney* court emphasized the unfairness of denying the supporting spouse the anticipated benefits from the degree while the student spouse is left not only with the degree, but with

²⁴ See Gailor & McGill, *supra* note 20, at 82.

²⁵ *Mahoney*, 91 N.J. at 503, 453 A.2d at 535.

²⁶ See *Hodge v. Hodge*, 513 Pa. 264, 272, 520 A.2d 15, 19 (1986).

²⁷ See *Hoak v. Hoak*, 370 S.E.2d 473, 479 (W. Va. 1988).

²⁸ Katz, *Equitable Distribution in Massachusetts*, 6 MASS. FAM. L.J. 25, 34 (1988).

²⁹ *Hoak v. Hoak*, 370 S.E.2d 473, 477 (W. Va. 1988).

³⁰ *Mahoney*, 91 N.J. at 503, 453 A.2d at 527.

³¹ *Id.* at 502-03, 453 A.2d at 535.

³² *Id.* at 492, 453 A.2d at 529.

³³ *Id.* at 505, 453 A.2d at 536.

³⁴ *Id.* at 503, 453 A.2d at 535.

all the monetary awards associated therewith.³⁵ The court noted that the working spouse has typically suffered a loss or reduction of support, undergone a lower standard of living during the marriage, made financial sacrifices, and finally, been deprived of a higher standard of living in the future.³⁶

All courts that have dealt with the situation agree that if the marriage is of long duration, no reimbursement is necessary because the supporting spouse has enjoyed a higher standard of living from the degree and this inevitably would be reflected in the alimony payments.³⁷ In *Gardner v. Gardner*, the Supreme Court of Utah reasoned that because the Gardners had been married for over twenty years and had other significant assets aside from the degree, it was not an appropriate situation to award the wife a property interest in Dr. Gardner's medical degree.³⁸ The court stated that this would be fair to Mrs. Gardner because she had received the benefits from the degree through higher alimony payments and through the increased property settlement.³⁹

Some courts, however, have criticized redistributing the value of the degree through alimony payments. The reimbursement alimony approach was criticized by a later New Jersey case, *Reiss v. Reiss*, because the court viewed the concepts of alimony (future support), and reimbursement (for past payments), as inconsistent and inapposite.⁴⁰ The New York Court of Appeals in *O'Brien v. O'Brien*, criticized the alimony approach to compensation because alimony payments end upon remarriage and a working spouse who remarries is penalized by having to forfeit the compensation still owed for his or her contribution to the degree.⁴¹ Despite these criticisms, courts have continued to use the reimbursement alimony theory advocated in *Mahoney* as a means of reimbursing a supporting spouse for the monetary contributions he or she made to the professional spouse's training.⁴²

³⁵ *Id.* at 500, 453 A.2d at 533-34.

³⁶ *Id.* at 500, 453 A.2d at 534.

³⁷ See *supra* note 7 and accompanying text for a similar discussion of this point.

³⁸ *Gardner v. Gardner*, 748 P.2d 1076, 1081 (Utah 1988).

³⁹ *Id.*

⁴⁰ *Reiss v. Reiss*, 205 N.J. Super. 41, 500 A.2d 24, 27 (1985). See also Gailor & McGill, *supra* note 20, at 83.

⁴¹ *O'Brien v. O'Brien*, 66 N.Y.2d 576, 587, 489 N.E.2d 712, 717, 498 N.Y.S.2d 743, 748 (1985).

⁴² *Hoak v. Hoak*, 370 S.E.2d 473, 478 (W. Va. 1988).

2. Rehabilitative Alimony

A second way of using the alimony system to compensate is to provide for rehabilitation of a contributing spouse through increased alimony payments. When the supporting spouse has foregone his or her own career opportunities or postponed his or her education, some courts have found rehabilitative alimony to be appropriate.⁴³ In *Hoak v. Hoak*, a 1988 decision, the Supreme Court of Appeals of West Virginia, although determining that a professional degree is not marital property,⁴⁴ held that Rebecca Hoak may be entitled to rehabilitative alimony.⁴⁵ The Hoaks had been married for four years, during which Bruce Hoak obtained a medical degree and Rebecca had postponed obtaining a degree in either education or accounting.⁴⁶ The Supreme Court of Appeals concluded that rehabilitative alimony is appropriate when a spouse comes into the marriage with employable skills that have deteriorated through lack of use or when the spouse could become independent through training or education.⁴⁷

The awarding of rehabilitative alimony to compensate a spouse who postpones his or her education, however, is not without its critics. The New York Court of Appeals had earlier criticized this theory as inadequate for the purpose of compensation, because of the common requirement that the alimony award be based on need.⁴⁸ By definition, the supporting spouse will have difficulty fulfilling this requirement as he or she has supported the couple for the years during which the degree was obtained and therefore has shown his or her capability of self-support.⁴⁹ In addition, the *O'Brien* court noted that the function of equitable distribution upon the termination of a marriage is premised on the notion that each spouse has a right to share in the marital assets accumulated during the marriage.⁵⁰ The share is not based on need, but on the notion that the property accumulated is the result of what was essentially a partnership.⁵¹ The *O'Brien* court reasoned that, unlike alimony,

⁴³ *Id.* at 479.

⁴⁴ *Id.* at 474.

⁴⁵ *Id.* at 479.

⁴⁶ *Id.* at 474.

⁴⁷ *Id.* at 479 (quoting *Cross v. Cross*, 368 S.E.2d 449, 451 (W. Va. 1987)).

⁴⁸ *O'Brien*, 66 N.Y.2d at 587, 489 N.E.2d at 717, 498 N.Y.S.2d at 748.

⁴⁹ See Comment, *The Equity/Property Dilemma*, *supra* note 5, at 993.

⁵⁰ *O'Brien*, 66 N.Y.2d at 587, 489 N.E.2d at 717, 498 N.Y.S.2d at 748-49 (citing *Wood v. Wood*, 119 Misc. 2d 1076, 1079, 465 N.Y.S.2d 475, 477 (1983)).

⁵¹ *Id.*

which is based on need and an obligation of the spouse for future care, the supporting spouse is entitled to a share of the proceeds from the degree earned because it is his or her "property" and neither remarriage nor lack of need should affect that ownership right.

B. *Compensation by Restitution*

Under the theory of compensation through restitution, the supporting spouse must show that the student spouse, by acquiring the degree during the marriage, was unjustly enriched at the supporting spouse's expense.⁵² The Superior Court of Pennsylvania in a recent decision, *Bold v. Bold*, espoused this viewpoint.⁵³ Richard and Nancy Bold were married in 1974, at which time Nancy had a bachelor degree and Richard had completed a few years of college.⁵⁴ From 1974 to 1976, Richard Bold attended college and from 1976 to 1979, he attended chiropractic school. While in school, Richard earned approximately \$16,000 per year at various jobs and received Veterans Administration educational benefits. During the marriage Nancy Bold earned approximately \$80,000. Although Richard was in school, the couple enjoyed a fairly high standard of living during that period, partaking in various vacations and trips.

Following the standards set forth in a previous Pennsylvania decision,⁵⁵ the court noted that marriage is not a business relationship "which requires a strict economic accounting for all financial aid rendered during its course."⁵⁶ The court stated that each spouse owes a duty of support to the other, and reasoned that a student spouse is liable to reimburse the supporting spouse only for money advanced in excess of the legal duty of support that the law imposes.⁵⁷ The court then said that in most cases this excess would be the financial amount contributed to the cost of the student spouse's education.⁵⁸ The court denied Nancy Bold restitution because she had not contributed to the cost of Richard Bold's academic degree. Although she worked and supported him during his schooling, her

⁵² See Gailor & McGill, *supra* note 20, at 89.

⁵³ 542 A.2d 1374, 1379 (Pa. Super. Ct. 1988) (wife not entitled to compensation for support contributed to husband's chiropractor degree).

⁵⁴ *Id.* at 1375.

⁵⁵ *Id.* at 1378 (citing *Lehmicke v. Lehmicke*, 339 Pa. Super. 559, 489 A.2d 782 (1985)).

⁵⁶ *Id.* at 1379.

⁵⁷ *Id.*

⁵⁸ *Id.*

contributions did not exceed that which she was lawfully required to give for the benefit of the family.⁵⁹

A minority of jurisdictions have used restitution as a form of compensation.⁶⁰ The distinction between reimbursement and restitution is that reimbursement allows a straight repayment of the financial contribution and foregone income, and restitution gives the supporting spouse the amount of his or her contribution plus interest.⁶¹

C. *The Degree as Marital Property—Compensation Through Division*

A minority of jurisdictions, New York and some Michigan appeals courts, have held that the professional degree or license is marital property subject to division upon dissolution of the marriage.⁶² These courts hold that reimbursement is not sufficient compensation and that if the degree is property, then it is more equitable for the supporting spouse to receive a portion of its value rather than "a return of funds advanced."⁶³

In *O'Brien v. O'Brien*, the New York Court of Appeals held that a license to practice medicine, acquired during marriage, was marital property subject to equitable distribution.⁶⁴ In *O'Brien*, the wife supported her husband in both completing his undergraduate degree and in obtaining a medical degree.⁶⁵ She even moved to Guadalajara, Mexico for him to pursue his medical degree.⁶⁶ Dr. O'Brien commenced divorce proceedings within two months after obtaining his license to practice medicine.⁶⁷ The court stated that the value of a professional license, as marital property, was the enhanced earning capacity it afforded the holder,⁶⁸ and the spouse who worked during the holder's schooling was entitled to an equitable portion of the license, not a return of funds advanced.⁶⁹ The court based

⁵⁹ *Id.*

⁶⁰ See Gailor & McGill, *supra* note 20, at 87. See also, *Pyeatte v. Pyeatte*, 135 Ariz. 346, 357, 661 P.2d 196, 208 (1982).

⁶¹ See Gailor & McGill, *supra* note 20, at 88.

⁶² See *supra* note 17 and accompanying text for a discussion of the professional degree as marital property.

⁶³ *O'Brien v. O'Brien*, 66 N.Y.2d 576, 588, 489 N.E.2d 712, 718, 498 N.Y.S.2d 743, 749 (1985).

⁶⁴ *Id.* at 580-81, 489 N.E.2d at 718, 498 N.Y.S.2d at 744.

⁶⁵ *Id.* at 581, 489 N.E.2d at 714, 498 N.Y.S.2d at 745.

⁶⁶ *Id.*, 489 N.E.2d at 714, 498 N.Y.S.2d at 745.

⁶⁷ *Id.*, 489 N.E.2d at 714, 498 N.Y.S.2d at 745.

⁶⁸ *Id.* at 586, 489 N.E.2d at 718, 498 N.Y.S.2d at 748.

⁶⁹ *Id.* at 588, 489 N.E.2d at 718, 498 N.Y.S.2d at 749.

its reasoning on section 236(B)(1)(6) of the New York Domestic Relations Law, which allowed the court to so determine.⁷⁰ That section provided that the court, in distributing marital property, should consider contributions made to the career of a spouse.⁷¹

In the 1988 case of *Daniels v. Daniels*, the Michigan Court of Appeals held that the trial court had erred in not awarding a portion of the degree's value to the plaintiff.⁷² In *Daniels*, the couple was married in 1974 while the defendant was in college and the plaintiff was eighteen years old.⁷³ The two agreed that the defendant would pursue his education to become a dentist while the plaintiff supported the couple, and then the plaintiff would eventually go to college and finally law school.⁷⁴ During the time the defendant was pursuing his degrees, the plaintiff worked full time. At the time of trial, the plaintiff was twenty-nine years old and had not yet attended school.⁷⁵

The Michigan Court of Appeals concluded that the plaintiff had not only worked to support the defendant in his endeavor but had foregone her own education in the process.⁷⁶ The court stated that the attainment of the degree resulted from the "joint effort" of the parties and was not the student's "individual project."⁷⁷ In rejecting the arguments set forth by the majority of courts as to why the degree should not be considered marital property, the Court of Appeals of Michigan relied on its previous holding in the 1983 case, *Woodworth v. Woodworth*, that whether a degree fits the "definition" of property is irrelevant.⁷⁸ The *Woodworth* court also said that although marriage is not intrinsically a commercial enter-

⁷⁰ *Id.* at 584, 489 N.E.2d at 715-16, 498 N.Y.S.2d at 746-47. The *O'Brien* court noted that:

Section 236 provides that in making an equitable distribution of marital property, the court shall consider: * * * (6) any equitable claim to, interest in, or direct or indirect contribution made to the acquisition of such marital property by the party not having title, including joint efforts or expenditures and contributions and services as a spouse, parent, wage earner and homemaker, and to the career or career potential of the other party [and] * * * (9) the impossibility or difficulty of evaluating any component asset or any interest in a business, corporation or profession.

Id. (quoting N.Y. DOM. REL. LAW § 236 (B)(5)(d)(6), (9) (1982)) (emphasis added by court).

⁷¹ *Id.*, 489 N.E.2d at 715-16, 498 N.Y.S.2d at 746.

⁷² *Daniels v. Daniels*, 165 Mich. App. 726, 731, 418 N.W.2d 924, 927 (1988).

⁷³ *Id.* at 728, 418 N.W.2d at 925.

⁷⁴ *Id.*

⁷⁵ *Id.* at 728, 418 N.W.2d at 926.

⁷⁶ *Id.* at 731, 418 N.W.2d at 927.

⁷⁷ *Id.*, 418 N.W.2d at 927.

⁷⁸ *Woodworth v. Woodworth*, 126 Mich. App. 258, 261-62, 337 N.W.2d 332, 337 (1983).

prise, and neither party would expect compensation for his or her efforts, the court did not need to characterize the marriage while it was still intact, but instead must distribute the assets of the marriage once it had terminated.⁷⁹

When distributing assets of a failed marriage, it is especially difficult for courts to assign a value to the professional degree. The New York Court of Appeals held, in *O'Brien*, that the value of a degree was the enhanced earning capacity it afforded the holder. The *O'Brien* court stated that although finding the present value of this figure presented problems, it is no more difficult than computing tort damages for wrongful death and diminished earning capacity.⁸⁰ The court offered some guidance to the trial courts faced with this issue by suggesting that they consider such factors as the supporting spouse's need for an immediate or even lump sum payment, the student spouse's ability to pay, and any possible tax consequences of postponing the payment period.⁸¹

The Michigan Court of Appeals offered further guidance in 1987. The Michigan Court of Appeals, in *Thomas v. Thomas*, enumerated three factors to consider in determining the percentage share of the value that should belong to the supporting spouse. These factors included the length of the marriage after obtainment of the degree, the extent of financial support given to the student spouse during his or her years in school, and the overall division of the parties' marital assets.⁸²

Criticism of the awarding of the degree as property has centered around the speculative nature of deciding a professional's future earnings.⁸³ The Supreme Court of Appeals of West Virginia, in *Hoak*, pointed out that holding that the degree is property could force a young professional into a career path he or she might not otherwise have chosen but for the financial pressure to pay half of the "value" of the degree to the spouse.⁸⁴ The *Hoak* court also observed that the efforts of the student spouse produce the degree and that the support provided by the working spouse, whether

⁷⁹ *Id.* at 265, 337 N.W.2d at 356.

⁸⁰ See *O'Brien v. O'Brien*, 66 N.Y.2d 576, 588, 489 N.E.2d 712, 718, 498 N.Y.S.2d 743, 749 (1988).

⁸¹ *Id.*

⁸² *Thomas v. Thomas*, 164 Mich. App. 618, 625, 417 N.W.2d 563, 566 (1987) (citing *Woodworth*, 126 Mich. App. at 260-61, 357 N.W.2d at 337).

⁸³ See *Hoak v. Hoak*, 370 S.E.2d 473, 476 (W. Va. 1988).

⁸⁴ *Id.* at 477 n.4.

financial, emotional or domestic, has no relation to the value of the degree.⁸⁵

II. THE MASSACHUSETTS POSITION AND OTHER RECENT CASES

A. *State of the Law in Massachusetts*

Massachusetts has followed the majority of courts in holding that a professional degree is not marital property. In 1987, the Supreme Judicial Court of Massachusetts, in *Drapek v. Drapek*, held that a professional degree and the resulting increase in earning capacity are not in themselves a marital asset of the husband's estate under the Massachusetts equitable distribution statute.⁸⁶ Mark and Celia Drapek were married for eight years.⁸⁷ During that time, Mark

⁸⁵ *Id.* at 477.

⁸⁶ 399 Mass. 240, 246, 503 N.E.2d 946, 950 (1987). MASS. GEN. L. ch. 208, § 34 (as amended 1989) provides:

Upon divorce or upon a complaint in an action brought at any time after a divorce, whether such a divorce has been adjudged in this commonwealth or another jurisdiction, the court of the commonwealth, provided there is personal jurisdiction over both parties, may make a judgment for either of the parties to pay alimony to the other. In addition to or in lieu of a judgment to pay alimony, the court may assign to either husband or wife all or any part of the estate of the other. In determining the amount of alimony, if any, to be paid, or in fixing the nature and value of the property, if any, to be so assigned, the court, after hearing the witnesses, if any, of each party, shall consider the length of the marriage, the conduct of the parties during the marriage, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties and the opportunity of each for future acquisition of capital assets and income. When the court makes an order for alimony on behalf of a spouse, said court shall determine whether the obligor under such order has health insurance or other health coverage available to him through an employer or organization or has health insurance or other health coverage available to him at reasonable cost that may be extended to cover the spouse for whom support is ordered. When said court has determined that the obligor has such insurance, said court shall include in the support order a requirement that the obligor exercise the option of additional coverage in favor of such spouse, obtain coverage for the spouse, or reimburse the spouse for the cost of health insurance. In no event shall the order for alimony be reduced as a result of the obligor's cost for health insurance coverage for the spouse. When said court has determined that the obligor has such insurance, said court shall include in the support order a requirement that the obligor exercise the option of additional coverage in favor of such spouse.

Id.

The only Massachusetts court to interpret this statute previously on this issue ruled that an orthodontia license was marital property subject to division upon dissolution of the marriage. *Reen v. Reen*, Mass Probate and Family Ct. Hampden Div. (December 23, 1981).

⁸⁷ *Drapek*, 399 Mass. at 241, 503 N.E.2d at 947.

obtained his medical degree while Celia postponed her educational and professional plans⁸⁸ to support the household and provide most of the domestic homemaking services.⁸⁹ The couple used the joint funds of the marriage to pay Mark's medical school tuition.⁹⁰ Upon divorce, Mark was a senior resident in internal medicine at University Hospital in Boston, while Celia retained temporary employment with New England Telephone as a service representative.

The trial court determined that during the marriage, Celia's financial contribution exceeded Mark's by \$8,534. The lower court judge also found that one half of the tuition, plus the amount by which Celia's financial contribution exceeded that of Mark's, constituted the excess financial contribution that she, as the supporting spouse, had contributed to the marriage. The judge found this amount to be \$22,024.50. In order for Celia to rehabilitate her job skills and also to receive appropriate compensation, the lower court judge decided that she was entitled to a portion of Mark's increased earning capacity until she became rehabilitated and self-sufficient.⁹¹ The judge, therefore, ordered Mark to pay Celia \$42,024.50; \$22,024.50 because of her excess financial contribution and \$20,000 as the value of the homemaking services she contributed.⁹² The Massachusetts Supreme Judicial Court, in reviewing the *Drapek* decision, held that Mark's medical degree and enhanced earning capacity were not part of his estate, and any assignment of such was error.⁹³ The Supreme Judicial Court also held that because they had no way of determining the effect of this error in calculating the alimony awarded, the award of alimony must be set aside and the issue remanded.⁹⁴

The *Drapek* court refused to hold that the present value of future earned income was subject to division under Massachusetts General Laws, chapter 208, section 34 because to do so would have involved too much speculation.⁹⁵ The statute authorizes the distribution of property upon divorce according to twelve mandatory and two discretionary factors.⁹⁶ The *Drapek* court reasoned that

⁸⁸ *Id.* at 248, 503 N.E.2d at 951.

⁸⁹ *Id.* at 241, 503 N.E.2d at 947.

⁹⁰ *Id.*

⁹¹ *Id.* at 242, 503 N.E.2d at 947.

⁹² *Id.*

⁹³ *Id.* at 246, 503 N.E.2d at 949.

⁹⁴ *Id.*

⁹⁵ *See id.* at 244, 503 N.E.2d at 949.

⁹⁶ *See Katz, supra* note 28, at 28.

adopting a rule that would subject the degree's value to distribution upon divorce would eliminate consideration of the effect of future events on the professional's earning capacity.⁹⁷ The *Drapek* court was concerned about the ramifications of future events because, unlike alimony, a property settlement is not subject to modification.⁹⁸

The *Drapek* court also refused to include a professional degree as a marital asset under the Massachusetts equitable distribution statute because assigning a present value to a professional degree would involve evaluating the speculative earning potential of the holder.⁹⁹ In distinguishing the conclusion of the New York Court of Appeals in *O'Brien*, the *Drapek* court pointed out that the *O'Brien* decision was based on a statute in which the New York court found a clear legislative mandate to determine that the professional degree is marital property.¹⁰⁰ The court noted that Massachusetts General Laws, chapter 208, section 34 contains no such invitation.¹⁰¹

The *Drapek* court, however, went on to say that the statute was sufficiently broad to allow consideration of the increased earning potential from the degree in determining an alimony award and the assignment of the parties' estates.¹⁰² Therefore, the court followed the majority of jurisdictions¹⁰³ by holding that, although the professional degree is not marital property subject to division, the equitable distribution statute is broad enough to consider the increased earning capacity in deciding an equitable award of alimony.¹⁰⁴ In addition, the court observed that the trial judge's awarding of money to the supporting spouse for rehabilitation was not an abuse of discretion.¹⁰⁵ The court noted that because Celia had postponed her own professional plans, the judge properly awarded her at least \$60,000 over five years in order to rehabilitate her skills.¹⁰⁶ The *Drapek* decision shows that although Massachusetts is unwilling to qualify a professional degree as a marital asset, it is

⁹⁷ *Drapek*, 399 Mass. at 244, 503 N.E.2d at 949.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 245, 503 N.E.2d at 949.

¹⁰¹ *Id.*

¹⁰² *Id.* at 246, 503 N.E.2d at 950.

¹⁰³ See *supra* notes 12-14 and accompanying text for a discussion of the majority view.

¹⁰⁴ *Drapek v. Drapek*, 399 Mass. 240, 246, 503 N.E.2d 946, 950 (1987).

¹⁰⁵ *Id.* at 248, 503 N.E.2d at 951.

¹⁰⁶ See *id.*

willing to compensate the supporting spouse through a combination of alimony and rehabilitation payments.¹⁰⁷

B. *Other Recent Cases*

In a 1988 case, the Supreme Court of Appeals of West Virginia ruled on the issue of spousal interest in a professional degree for the first time. As previously mentioned, the court determined, in *Hoak v. Hoak*, that a professional degree or license was not marital property but a supporting spouse should receive, in some circumstances, reimbursement alimony and possibly rehabilitative alimony.¹⁰⁸ The Hoaks married in August of 1980, just after Bruce Hoak completed his first year of medical school.¹⁰⁹ Rebecca Hoak had received a Bachelor degree in horticulture and had changed jobs a year later in order to make more money. She had planned to return to school for a degree in either education or accounting after Bruce had completed his medical training. Bruce admitted that his wife provided the majority of support, both financially and with regard to homemaking services, for the years 1980–1982.

After Bruce's graduation from medical school in 1983, he started a five year surgical residency in Charleston, West Virginia and from then on provided the primary support for the couple. The marriage dissolved when the parties separated in September of 1984. Bruce filed for divorce in October of 1984. In August of 1986, the Circuit Court of Kanawha County dissolved the marriage and awarded Rebecca \$250 per month in child support, plus the child's medical and dental expenses; \$500 per month in rehabilitative alimony for two years, and \$1,875 in attorney's fees. Rebecca Hoak petitioned the Supreme Court of Appeals of West Virginia, alleging that the circuit court had erred in failing to hold that Bruce's medical license constituted marital property.¹¹⁰

On appeal, the Supreme Court of Appeals concluded that the medical degree was not marital property and adopted instead the concept of reimbursement alimony to compensate a supporting spouse.¹¹¹ By ruling that the professional degree was not marital

¹⁰⁷ See *id.*

¹⁰⁸ *Hoak v. Hoak*, 370 S.E.2d 473, 474 (W. Va. 1988).

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 475.

¹¹¹ *Id.* at 474.

property, the court adopted the viewpoint of the majority of high courts deciding this issue.¹¹² The court held that determining the value of a professional degree involved too much speculation and that the characterization of a spouse's contribution to the other as an investment "demeans the concept of marriage."¹¹³

In addition, the *Hoak* court noted that a professional degree does not fall within the statutory definition of marital property because it represents money earned *after* the marriage has dissolved and not *during*.¹¹⁴ The court also noted that a degree results from the efforts of the student spouse and that, although financial and emotional support are helpful, they have no relation to the value of the degree.¹¹⁵ As the court stated:

[I]f we place a value on homemaker services in arriving at a fair ratio for distributing the value of the degree, should we also "pay" the student for his or her contributions in the way of long hours in the lab and the library? And, to the same point, how much of a medical degree is attributable to the actual years spent in medical school, as opposed to undergraduate courses in biology and chemistry, or other life experiences that contribute to making a good doctor?¹¹⁶

In spite of the *Hoak* court's obvious skepticism of the notion of dividing up the degree as property, it did observe that to deny the supporting spouse compensation would be grossly unfair.¹¹⁷ The court chose "reimbursement alimony" as a means for that compensation, noting that because reimbursement alimony is based on the actual contribution made, it does not involve a judge's speculation as to the future earnings of the degree holder, inflation, or the relative values of the spouses' contributions.¹¹⁸ The *Hoak* court, however, cautioned that reimbursement, as a rule, is neither desirable nor practical but should be used only when an unfairness has occurred.¹¹⁹ The court then left the decision of what method to use

¹¹² *Id.* at 475.

¹¹³ *Id.* at 476.

¹¹⁴ *Id.* at 477 (citing W. VA. CODE § 48-2-1(e)(1) (1986)).

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 477 n.4.

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 474, 477.

¹¹⁹ *Id.* at 478. The court noted that a judge may:

in an appropriate case award reimbursement alimony to a working spouse who contributed financially to the professional education of a student spouse, where

in determining the amount of reimbursement to the discretion of the trial court.¹²⁰

On the subject of rehabilitative alimony, the *Hoak* court ruled that this measure may be appropriate when a supporting spouse has delayed his or her education or professional career.¹²¹ The court concluded that in cases in which the working spouse had supported the family while the student obtained the degree, and postponed his or her return to school to seek a degree, both reimbursement and rehabilitative alimony might have been in order.¹²²

The Court of Appeals of Utah, in the 1988 case of *Martinez v. Martinez*, also determined that a medical degree was not property subject to valuation and distribution upon dissolution of a marriage.¹²³ In *Martinez*, the couple had been married for seventeen years and had three children.¹²⁴ At the time of marriage, each spouse had only a high school education.¹²⁵ The court noted that although the couple had been married for a long time, they had not acquired a significant amount of property during the marriage that would compensate the supporting spouse.¹²⁶

The *Martinez* court concluded that equity demands recognition of the contributions the supporting spouse makes to a student spouse's professional degree.¹²⁷ These contributions, the court noted, are not restricted to financial support, but also might be in the form of homemaking services.¹²⁸ The court said that to hold that the only value is the monetary income generated by the supporting spouse would, in effect, be saying "that the functions of mother, homemaker, and helpmate contribute nothing to the value of the family."¹²⁹ Notably, the *Martinez* court put forth a list of factors to be analyzed in deciding the amount of an award of equitable restitution.¹³⁰ These guidelines included, but were not

the contribution was made with the expectation of achieving a higher standard of living for the family unit, and the couple did not realize that expectation due to divorce.

Id. at 477.

¹²⁰ *Id.* at 479.

¹²¹ *Id.*

¹²² *See id.* at 478, 479.

¹²³ 754 P.2d 69, 75 (Utah App. 1988).

¹²⁴ *Id.* at 70.

¹²⁵ *Id.*

¹²⁶ *Id.* at 75.

¹²⁷ *Id.* at 76.

¹²⁸ *See id.* at 77.

¹²⁹ *Id.* *See also* *St.-Pierre v. St.-Pierre*, 357 N.W.2d 250 (S.D. 1984).

¹³⁰ *Martinez*, 754 P.2d at 78.

limited to, the length of the marriage, the monetary contributions and personal sacrifices made by the requesting spouse, how long these contributions and sacrifices lasted during the marriage, the resulting difference in earning capacity between the requesting spouse and the professional spouse, and the amount of property accumulated during the marriage.¹³¹

III. SOLVING THE COMPENSATION PROBLEM

In *O'Brien v. O'Brien*, the New York Court of Appeals held that the professional degree is property that courts should divide upon divorce. The *O'Brien* court based its holding on the notion that marriage is a partnership and that each spouse has a property right in assets accumulated during the marriage.¹³² In contrast, the majority of courts' determination that the degree is not divisible marital property may reflect the modern trend toward increased individual autonomy and independence within the marital relationship.¹³³ In recognizing that a professional degree is an academic achievement obtained through the efforts of an individual spouse, courts are making decisions in accordance with the "new" model of marriage and property based on the notion of individual spouses autonomously acting for their own self-realization independent of the marital relationship.¹³⁴

In *Drapek*, the Massachusetts Supreme Judicial Court expressed the majority viewpoint by deciding that although the degree is not marital property, the supporting spouse is entitled to compensation through alimony and possibly rehabilitation payments.¹³⁵ The court was correct in determining that a professional degree or increased earning capacity are not marital assets subject to distribution upon dissolution of the marriage. The court's analysis on this issue is correct for several reasons. First, for the court to have held that the medical degree was part of the husband's estate under Massachusetts General Laws, chapter 208, section 34 would have involved too much speculation on the part of the trier of fact. In addition, the court would not be able to modify the award based on future events affecting the professional's earning capacity.¹³⁶ The

¹³¹ *Id.*

¹³² See *supra* note 51 and accompanying text for a similar point about marriage as a partnership.

¹³³ M. GLENDON, *THE NEW FAMILY AND THE NEW PROPERTY* 11 (1981).

¹³⁴ *Id.* at 138.

¹³⁵ See *supra* note 107 and accompanying text for a discussion of the *Drapek* decision.

¹³⁶ *Mahoney v. Mahoney*, 91 N.J. 488, 498, 453 A.2d 527, 532 (1982).

mere fact that a person is qualified to practice a profession does not definitively determine that he or she will indeed practice it and earn a certain income.¹³⁷ Too many unforeseen events may interfere with that alleged future earning potential.¹³⁸ By awarding a portion of the value of the degree as property, the court is awarding a final remedy that may be unfair if the speculated future wealth does not materialize.¹³⁹

Second, the degree has none of the characteristics of property and is in effect simply a recognition of accomplishment on the part of the student spouse.¹⁴⁰ A professional degree reflects the obtainment of knowledge by an individual. It is not strictly an economic investment that can be bought and sold at will. The degree is obtained solely and individually through the efforts of the student spouse. Although the other spouse may have provided the means, either financial, emotional, or both, the actual work and achievement are performed by the student spouse.

Third, as the majority in *Hoak* pointed out, the division of the degree based on the future earnings of the average professional may enslave a young professional to a specialty or career path he or she might not otherwise have chosen.¹⁴¹ The obligation to pay half of what an average young lawyer earns may force the professional into, for instance, staying at a large firm where salaries are top dollar, rather than opting for a career as a public defender. Or, perhaps even more unfairly, it may force a professional into staying in a profession he or she neither likes nor is good at, simply to be able to make the assigned payments.

Finally, to decide that a professional degree is "property" is, in effect, making it seem as if a professional degree can be "purchased" for a specified sum of money.¹⁴² It entirely ignores that the degree is obtained not solely through the income contributed by the supporting spouse, but mostly through the sacrifice and perseverance of the student. In *Hoak*, the court facetiously, yet justifiably, noted that in determining the equitable portion of the value of the degree to go to each spouse, the court would then have to tally up the many hours that the student spent in the library or laboratory.¹⁴³

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ See *supra* note 16 for a discussion of the nonproperty characteristics of an educational degree.

¹⁴¹ *Hoak v. Hoak*, 370 S.E.2d 473, 476 (W. Va. 1988).

¹⁴² See *supra* note 16 and accompanying text.

¹⁴³ *Hoak*, 370 S.E.2d at 477 n.4.

Among the arguments made in favor of evaluating the degree and apportioning it between the spouses is that the supporting spouse has "invested" in the degree in the expectation that he or she will later enjoy a higher standard of living.¹⁴⁴ This argument diminishes the institution of marriage to a cold, hard business relationship and the academic endeavor of obtaining a professional degree to nothing more than a financial investment. As the *Hoak* court so aptly characterized the issue, "[m]arriage is not a business arrangement, and this [c]ourt would be loathe to promote any more tallying of respective debits and credits than already occurs in the average household."¹⁴⁵ In addition, the simple fact that the divorce has frustrated the supporting spouse's expectations is not grounds for dividing up the degree. There has been a divorce! Along with that necessarily comes a host of frustrated expectations, both financial and emotional.

On the other hand, the supporting spouse should not go uncompensated.¹⁴⁶ The supporting spouse has stuck by the student and provided emotional, financial and domestic support throughout the marriage. Reimbursement is the proper means by which to provide this compensation. However, the alimony system is not the proper vehicle through which to reimburse a contributing spouse. The concepts of reimbursement and alimony are contradictory and inapposite.¹⁴⁷ Alimony is based on the needs of the spouse seeking it and is also a reflection of the standard of living set during the marriage. Reimbursement, on the other hand, should be compensation to the supporting spouse completely separate from any payments received through the alimony system.

The supporting spouse should be reimbursed, but not through the alimony system. Because alimony is terminated upon death or remarriage, this system, as the *O'Brien* court pointed out, may force the spouse to choose between remarriage or claiming the money to which he or she is entitled.¹⁴⁸ In some instances, this may result in the supporting spouse never receiving the reimbursement he or she so much deserves. Courts should, instead, award the nonstudent spouse a reimbursement amount payable either in a lump sum or

¹⁴⁴ *Olar v. Olar*, 747 P.2d 676, 678 (Colo. 1987).

¹⁴⁵ *Hoak*, 370 S.E.2d at 478.

¹⁴⁶ *Id.*

¹⁴⁷ See *supra* note 40 and accompanying text for a similar point about alimony and reimbursement.

¹⁴⁸ *O'Brien v. O'Brien*, 66 N.Y.2d 576, 587, 489 N.E.2d 712, 717, 498 N.Y.S.2d 743, 748 (1985).

on a payment schedule, separate from the alimony award, depending on the specific facts of the case. In addition, unlike alimony, the payments would not terminate upon death or remarriage.

For reimbursement, the supporting spouse should receive the present value of the support expended. The support could include financial or homemaking services. In *Martinez*, the Utah Court of Appeals set forth some helpful guidelines that courts may use to determine an appropriate reimbursement award.¹⁴⁹ These factors will provide at least some guidance and uniformity to what must, necessarily, be determined on a case-by-case basis.

If a supporting spouse has postponed his or her educational or career goals solely for the purpose of allowing the student spouse to obtain his or her degree, the *Hoak* court correctly determined that rehabilitative payments, possibly in the form of alimony, may be appropriate to compensate a spouse for lost opportunity.¹⁵⁰ Courts should, however, be cautious in the amount and way they award this. A strong showing of proof on the part of the supporting spouse should be mandatory, and the spouse should then be required to take immediate steps toward rehabilitation. If these steps are in the form of schooling, training programs or the like, the professional spouse should provide a portion of the tuition payments in an amount that the trier of fact deems equitable.

IV. CONCLUSION

Many problems arise in determining a fair and equitable property settlement upon divorce. The situation in which a spouse has worked to support a mate who is pursuing a professional degree, with divorce following closely on the heels of graduation, presents a complicated dissolution problem. The couple rarely has any noteworthy assets, and the sacrifices of the supporting spouse are in danger of going uncompensated. Although the supporting spouse often has postponed his or her own career or educational goals for the attainment of the spouse's degree, the professional spouse has presumably achieved his or her educational goals.

Courts have attempted to remedy the situation in a variety of ways. The majority of courts have determined that the degree is not marital property *per se*, but the supporting spouse should be

¹⁴⁹ *Martinez v. Martinez*, 754 P.2d 69, 78 (Utah Ct. App. 1988).

¹⁵⁰ See *supra* note 122 and accompanying text for a discussion of alimony payments to spouses who postpone educational goals.

compensated for his or her contribution through either the traditional alimony system, a reimbursement sum or possibly a rehabilitation award. A minority of courts have determined that the degree is marital property subject to distribution, and the supporting spouse should be compensated by receiving a portion of the value of the degree in the form of the future earning capacity of the holder.

The most equitable solution to the problem is to recognize that the degree is not marital property, as it has none of the characteristics of "property," but instead, is simply an academic achievement of the degree holder. The court should then compensate the supporting spouse by awarding a reimbursement award, payable in either a lump sum or on a schedule, consisting of the present value of the support contributed. This reimbursement payment should exist independently of any alimony award. In addition, if the supporting spouse has suffered from the postponement of career or education, an award for rehabilitation may be in order.

BRENDA RUEL SHARTON