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Dealing with Professional Degrees in Divorce Cases

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There is usually some way, under contract law, statute, or equity, to divide a professional degree in divorce cases.

A FAIRLY COMMON SITUATION in divorces these days is that the marriage terminates after one spouse has completed graduate or professional school. Courts then face the problem of deciding property and alimony arrangements. If the marriage has continued for some time after the
graduation, courts usually agree that the spouse who supported the student should be compensated adequately by dividing the accumulated assets, presumably increased as a result of the additional earning power of the advanced degree. *Watling v. Watling*, 127 Mich. App. 624, 339 N.W.2d 505 (1983). If the dissolution takes place too soon after the degree is acquired for there to be significant other assets, however, some courts have denied the supporting spouse's right to share in the future earnings of the student spouse.

While the courts are nearly unanimous in holding that the working spouse should be compensated in some manner, there is great diversity in finding a theory on which to base such awards. Differences between common law and community property state decisions are fading, since both bodies of law seek results that are equitable.

**STATUTORY GUIDELINES**

- Statutes provide guidelines for determining property division and alimony. The underlying goal of these statutes is to make the arrangements fair. These considerations can be classified generally under four basic headings:
  - Fault;
  - Need;
  - Status; and

These criteria, of course, are not mutually exclusive; several may operate at one time. Since there is usually no statutory guidance on the relative weight to be given to each category, we must look at how the courts have used these guidelines to place a dollar value on a working spouse's share of the professional spouse's degree.


**Fault**

Although fault has been the historical basis for determining alimony or property distribution, increasingly it is excluded as a consideration by statute, except for specific instances, such as fraud in inducing the marriage. There is apparently no case which has
held that a marriage was fraudulent because it was an "education-financing plan." There is an occasional reference, however, to the effort the student spouse made in "maintaining" the marriage while in school. But in actuality fault is only a minor consideration in diploma cases.

**Need**

The financial need of the supporting spouse usually operates in tandem with the other spouse's ability to pay. It can be seen as a relative matter or as an absolute. A spouse with a professional degree normally is better off financially relative to the other spouse who may, however, be able to support him or herself adequately.

**Rehabilitation Alimony**

With an increasing consciousness of not fostering dependency, need is evolving into "rehabilitation alimony." These awards are time-limited to a few years to enable the recipient to:

- Become self-supporting by finding a job;
- Obtain additional training or job experience to qualify for a better position;
- Ease child care problems by letting the children become a few years older.

Since a spouse who supported the family while the other spouse was a student is clearly able to be self-supporting, the need theory of alimony only applies if circumstances have changed significantly, or if need is considered to be relative to the earning capacity of the other spouse.

**Status**

Historically the question of need was determined by the standard of living enjoyed during the marriage, or "status." It is sometimes an issue in diploma cases that one or both partners "expected" the wife to become a fulltime mother and homemaker as soon as schooling was completed. Presumably both expected to enjoy the status of increased income and professional standing.

**Contribution or Reimbursement**

Contribution is an increasingly popular theory brought about by viewing marriage more as a partnership rather than as the historical property-contract arrangement. In other words, an attempt is made to reimburse or make restitution for contributions to the partnership.

The contribution theory is deceptively difficult to apply. For example, will it be limited to cash contributions? If not, how will in-kind contributions, which include the services of the working spouse and the efforts of the student spouse, be valued? There are at least four approaches to the contribution theory. They include:

- Market value;
- Foregone opportunities;
- Enhanced earning capacity, and

**Market Value**

Since homemaker services have not been accepted generally as having a significant and ascertainable market value in today's society these services are often undervalued or overlooked.

**Partnership**

In using the partnership approach to contribution, the same process is used as in dissolving any partnership. One court even relied on the Uniform Partnership Act to interpret the domestic relations statute. See *Conteh v. Conteh*, 117 Misc.2d 42, 457 N.Y.S.2d 363 (1982).

**Foregone Opportunities**

The concept of foregone opportunities includes postponing one's own education, moving, changing jobs, and in a woman's case, delaying having a baby while the biological clock is ticking. Foregone opportunities is a frequently used guideline in diploma cases. Schooling of the student spouse often requires the other spouse to move and give up his or her job. Sometimes new or comparable jobs are not found.

**Enhanced Earning Capacity**

Enhanced earning capacity is analogous to getting a return on an investment. The money that paid for the student spouse's education could have been invested to generate income or otherwise cause assets to appreciate. Enhanced earning capacity is probably the most frequently used basis for making an alimony or property division award to the supporting spouse.

Contribution, either specifically as foregone opportunities, enhanced earning capacity, or sometimes with just an appeal to equity without any further elaboration, is the most frequently used theoretical basis for awarding property or alimony to the supporting spouse.

**Valuation Problems**

It has always been difficult also, for example, to translate fault into dollar amounts. Similarly, how much does one "need"; what type of lifestyle is to be "maintained"?

Using a contribution approach, will only cash contributions be considered? Ruben v. Ruben, 123 N.H. 358, 461 A.2d 733 (1983). One attempt to translate contribution into a dollar value is to make an analogy to goodwill, which is calculated in other contexts, such as tax or sale of a practice. Owens v. Owens, 672 S.W.2d 67 (Ky. App. 1984) (value of law practice is marital property even though the license is not); Wisner v. Wisner, 129 Ariz. 333, 631 P.2d 115 (1981) (goodwill included in valuation of medical practice); Contra, Holbrook v. Holbrook, 103 Wis.2d 327, 309 N.W.2d 343 (1981).


**PROPERTY APPROACHES** • In order to apply guidelines for dividing property and determining alimony, it must first be determined what property the couple owns and whether the degree is part of that property.

**Not Property**

The clear weight of authority is that the degree is not property and cannot be divided. Cf. Meinholz v. Meinholz, 283 Ark. 509, 678 S.W.2d 348 (1984) ("enhanced business career" not marital property); Muckleroy v. Muckleroy, 84 N.M. 14, 498 P.2d 1357 (1972) (medical license not community property); Kutanovski v. Kutanovski, 109 A.D.2d 822, 486 N.Y.S.2d 338 (1985) (medical license not marital property). The conclusions that follow from that determination, however, vary.

The leading case holding that the degree is not property is In re Graham, 194 Colo. 429, 574 P.2d 75 (1978). Graham took the historical definition of property and applied it to the degree. This case, however, is often miscited as granting the supporting spouse no relief; in fact, Graham and the majority of the cases hold that the supporting spouse should be compensated by some other means, either by an award from other marital assets or by alimony. See, e.g., Aufmuth v. Aufmuth, 89 Cal. App.3d 446, 152 Cal. Rptr. 668 (1979); Wilcox v. Wilcox, 173 Ind. App. 661, 365 N.E.2d 792 (1977) (contribution and earning capacity); Lehmieke v. Lehmieke, 339 Pa. Super. 559, 489 A.2d 782 (1985); Hodge v. Hodge, 337 Pa. Super. 151, 486 A.2d 951 (1984); Saint-Pierre v. Saint-Pierre, 357 N.W.2d 250 (S.D. 1984); Grosskopf v. Grosskopf, 677 P.2d 814 (Wyo. 1984), Stevens v. Stevens, 23
Very few cases hold that no relief is available to the supporting spouse. *Frausto v. Frausto*, 611 S.W.2d 656 (Tex. Civ. App. 1980) (reimbursement was not considered because not pleaded); *Archer v. Archer*, 303 Md. 347, 493 A.2d 1074 (1985) (dicta suggests alimony may have been awarded had it been requested). Usually the court's concern is that future earnings are too speculative. *Wehrkamp v. Wehrkamp*, 357 N.W.2d 264 (S.D. 1984) (no request for alimony was made, although dicta suggests that none would have been awarded). *But see, Woodworth v. Woodworth*, 126 Misc. App. 258, 266-267, 337 N.W. 2d 332, 336 (1983).

In countering the argument that future earnings are too speculative, the Woodworth court pointed out, "While a degree holder spouse might change professions, earn less than projected at trial, or even die, courts have proved adept at measuring future earnings in such contexts as personal injury, wrongful death, and workers' compensation actions," *Id.* at 337 N.W.2d 336.

**Divisible Property**

A few cases hold that the degree is distributable property. In *Woodworth v. Woodworth*, 126 Mich. App. 258, 266, 337 N.W.2d 332, 336 (1983), for example, the court held: "We fail to see the difference between compensating her for a degree which she helped him earn and compensating her for a house in his name which her earnings helped him buy." *See also, Conteh v. Conteh*, 117 Misc.2d 42, 457 N.Y.S.2d 363 (1982). At least one commentator argues for a property theory. Weitzman, *The Economics of Divorce: Social & Economic Consequences of Alimony & Child Support Awards*, 28 UCLA L. Rev. 1181 (1981). Cases and commentators holding that the degree is distributable property point out that alimony may be unavailable under the terms of the statute, since one who has supported a spouse through graduate school has a demonstrated ability for self-support.

**Alimony Property**

Some courts split the difference between the property and not property approaches by determining that the degree is not divisible property, yet must be considered an asset in determining alimony. *Lovett v. Lovett*, 688

Avoidance Theory

A number of cases simply do not address the question of property but apply existing statutory guidelines to set an award of alimony or property or either. See, e.g., Reiss v. Reiss, 205 N.J. Super. 41, 500 A.2d 24 (1985) (reimbursement); Justis v. Justis, 384 N.W.2d 885 (Minn. App. 1986) (based on relative need); Roark v. Roark, 694 S.W.2d 912 (Mo. App. 1985). Other cases openly avoid the question, sometimes dismissing it as being the wrong question. The real question, they say, is not whether the degree is property, but what equity requires. Washburn v. Washburn, 101 Wash.2d 168, 677 P.2d 152 (1984).

A Kentucky court begged the question by holding that the existing alimony and property division statutes provided adequate bases for doing equity and that no new “right” need be created. See McGowan v. McGowan, 663 S.W.2d 219 (Ky. App. 1983).

Equitable Relief • The supporting spouse is not entirely without a remedy, even if the determinations regarding property division and alimony awards yield nothing. Basic equitable remedies are still available, such as unjust enrichment or quasi-contract. Pyatte v. Pyatte, 135 Ariz. 346, 661 P.2d 196 (1982); Ellesmere v. Ellesmere, 359 N.W.2d 48 (Minn. App. 1984) (equitable restitution inappropriate because husband made no sacrifices in support of wife’s education); Hubbard v. Hubbard, 603 P.2d 747 (Okl. 1979). One case even suggested that an unmarried cohabiting couple pursue a remedy under joint venture rules of law. In re Marriage of Goldstein, 97 Ill. App. 3d 1023, 53 Ill. Dec. 397, 423 N.E.2d 1201 (1981), (the schooling was during cohabitation prior to marriage).

Conclusion • Compensation in some form will almost certainly be awarded in diploma divorce cases. Claimants should provide the court with a broad basis for the claim, meaning that the pleadings should include arguments for property division, as well as claims for alimony and basic equity. Non-cash contributions should be included.

With dual career marriages and midlife career changes becoming increasingly common, these diploma divorce problems can be expected to continue. Accordingly, diploma divorce issues should be anticipated in antenuptial agreements.
For Further Study

ALI-ABA Books

Tax Consequences of Marriage, Separation, and Divorce, by Lowell S. Thomas, Jr. (3d ed. 1986).


Articles in The Practical Lawyer


The Role of Divorce Counselor in Divorce Proceedings, by Lawrence Herlick, THE PRACTICAL LAWYER, March 1979, p. 79.