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DOMESTIC RELATIONS: RECOGNITION OF WIFE'S INTEREST IN PROFESSIONAL DEGREE EARNED BY HUSBAND DURING MARRIAGE—*Hubbard v. Hubbard*, 603 P.2d 747 (Okla. 1979).

INTRODUCTION

A professional education is a valuable asset, often acquired through the joint efforts of both partners to a marriage. A number of state courts¹ have recently addressed the issue whether a professional degree constitutes an asset which may be divided upon dissolution of a marriage.² Although courts have been reluctant to hold a professional degree is divisible property,³ the trend is toward recognition of the working spouse's contribution to the education of the student spouse, particularly when the marital break-up occurs before any substantial tangible assets are acquired by the couple. In such a case, the court may consider basing an award to the working spouse not upon the marital assets at the time the marriage is dissolved, but upon either the enhanced future earning potential⁴ of the non-working student spouse or upon reimbursement for the contribution to the student spouse's

1. In re Marriage of Horstmann, 263 N.W.2d 885 (Iowa 1978); Graham v. Graham, 194 Colo. 429, 574 P.2d 75 (1978); Inman v. Inman, 578 S.W.2d 266 (Ky. Ct. App. 1979).

2. Research has revealed no cases in which recovery was sought by the husband for supporting a student-wife who had received a professional degree. In all of the cases to date, it is the female spouse who has worked to support her husband through school. One commentator has suggested several possible reasons for this. For example, if both spouses wish to pursue an education, economics may dictate that the husband get his degree first, for statistically, he will earn more than his wife upon graduation. Another reason might be that husbands are more reluctant to ask for aid because society expects men to be independent, while a wife is not stigmatized if she is dependent. Also, the fact that a husband has paid his wife's educational expenses might be considered by a court in determining the wife's alimony award. Erickson, *Spousal Support Toward the Realization of Educational Goals: How the Law Can Ensure Reciprocity*, 1978 WISC. L. REV. 947, 949 n.7.

3. "[I]t is not the degree itself which constitutes the asset in question. Rather it is the increase in the husband's earning power concomitant to that degree which is the asset conferred on him by his wife's efforts." Graham v. Graham, 194 Colo. 429, 435, 574 P.2d 75, 79 (1978) (Carrigan, J., dissenting).

[T]he law degree . . . and the certificate of admission to practice law . . . do not themselves constitute an asset of the parties for court consideration in making distribution upon dissolution of the marriage. However, it is the potential for increase in future earning capacity made possible by the law degree and certificate of admission conferred upon the husband with the aid of his wife's efforts which constitutes the asset for distribution by the court.

In re Marriage of Horstmann, 263 N.W.2d 885, 891 (Iowa 1978).

4. Erickson, *supra* note 2. The concept of prospective increased future earnings has long been one of the factors which a court can consider in a traditional alimony award. H. Clark, LAW OF DOMESTIC RELATIONS § 14.5 at 443 (1968).

education.⁵ The Oklahoma Supreme Court recently addressed such an issue in *Hubbard v. Hubbard*.⁶ The *Hubbard* court was confronted with the problem of devising an equitable solution for the wife who supported her husband through medical school only to be faced with a divorce proceeding upon completion of his training.⁷

FACTS AND HOLDING

For more than twelve years, Delores Hubbard had, through her employment, contributed a major portion of the family's support, while her husband, R.O. Hubbard, attended pre-medical school and medical school and completed his internship and residency training.⁸ The couple had acquired an insubstantial amount of property due to their commitment to the husband's education. Upon the completion of R.O. Hubbard's medical training, divorce proceedings were instituted by Delores Hubbard.⁹

Delores Hubbard prevailed at trial. The trial court, noting that Dr. Hubbard was "now on the threshold of a successful professional life,"¹⁰ characterized his medical degree as a valuable property right. The court held Mrs. Hubbard had a vested interest in that property right.¹¹ Dr. Hubbard appealed, contending his medical license and his future earnings did not constitute jointly acquired property subject to division upon divorce.¹²

On appeal, the Oklahoma Supreme Court agreed in principle with Dr. Hubbard's position, holding a professional degree was "the intangible and indivisible 'property' of its holder and no other person has a vested interest therein."¹³ The court, voicing equitable concerns, further held some remedy was required to prevent injustice.¹⁴ Accord-

5. *Inman v. Inman*, 578 S.W.2d 266 (Ky. Ct. App. 1979).

6. 603 P.2d 747 (Okla. 1979).

7. *Id.* at 749.

8. *Id.*

9. *Id.* The parties had previously separated and subsequently reconciled. At the time of the final separation, Mrs. Hubbard continued to reside with her husband for a short time to aid him financially, as he had been informed that his residency contract was not being renewed.

10. *Id.*

11. *Id.* at 749-50. The trial court concluded "[t]he only means of awarding [Mrs. Hubbard] that property right is by alimony in lieu of division of property." *Id.* at 750. The award of \$100,000 permanent alimony was calculated as follows: Dr. Hubbard, the court found, could reasonably be expected to earn \$500,000 during the first twelve years of his practice of medicine, with a net income of at least \$250,000. Mrs. Hubbard's award represented 40 per cent of her husband's anticipated net income. *Id.*

12. *Id.*

13. *Id.*

14. "[T]his case presents broad questions of equity and natural justice which cannot be avoided on such narrow grounds." *Id.*

ingly, the Supreme Court upheld the trial court's determination that Mrs. Hubbard was entitled to a cash award in lieu of a property settlement. It based its holding on Mrs. Hubbard's right to be compensated for her investment in Dr. Hubbard's education, to prevent his unjust enrichment.¹⁵

ANALYSIS

While the *Hubbard* court was not willing to extend the traditional concept of "property" to include an educational degree, it reasoned Mrs. Hubbard had an equitable claim to compensation for her investment.¹⁶ This note will examine arguments adopted by courts that have denied recovery to a spouse in Mrs. Hubbard's position.¹⁷ The reasoning which persuaded the *Hubbard* court to grant relief will be analyzed.¹⁸ Finally, other theories of recovery will be suggested.¹⁹

A. Arguments Against the Recognition of an Education as Divisible Marital Property

A leading decision in which recovery was denied to the working spouse, and one factually similar to *Hubbard*, is *Graham v. Graham*.²⁰ In *Graham*, the Colorado Supreme Court surveyed reasons advanced for denying that a professional degree may constitute "property."²¹

15. *Id.* at 751. The matter of the amount of the settlement was remanded, with the instructions that the award be limited to fair compensation for Mrs. Hubbard's investment. *Id.* at 752.

16. *Id.* at 750.

17. See notes 20-43 and accompanying text *infra*.

18. See notes 44-53 and accompanying text *infra*.

19. See notes 62-72 and accompanying text *infra*.

20. 194 Colo. 429, 574 P.2d 75 (1978). Mrs. Graham had contributed 70 per cent of the family's financial support while her husband attended college and graduate school. During dissolution proceedings, the trial court had held an education obtained by one spouse during a marriage was jointly-owned property, and, thus, had awarded Mrs. Graham \$33,134, payable in monthly installments of \$100, as her share of her husband's future earnings. Upon appeal, it was held no award could be made, based upon the notion that the husband's degree constituted property. There were no other marital assets to divide, and because she was capable of self-support, Mrs. Graham was precluded by statute from receiving a maintenance award. Therefore, she was denied recovery, and left the marriage in essentially the same position in which she had entered it. Mr. Graham, on the other hand, departed the marriage enhanced by an M.B.A. degree, valued by the trial court at \$82,836. *Id.*

21. The court stated that

[a]n educational degree . . . is simply not encompassed even by the broad views of the concept of 'property.' It does not have an exchange value or any objective transferable value on an open market. It is personal to the holder. It terminates on 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

Although the court noted that previous Colorado cases had adopted a comprehensive view of "property" as embracing "anything and everything which may belong to a man and in the ownership of which he has a right to be protected by law",²² the court concluded there were limits on what could properly be considered "property". The *Graham* court adopted a definition of "property" which consisted of "that usually understood to be embodied within the term . . . 'everything that has an exchangeable value or which goes to make up wealth or estate.'"²³ Thus, despite the court's assertion that "[a]n educational degree . . . is simply not encompassed even by the broad views of the concept of 'property'",²⁴ the definition which was adopted was traditional and restrictive rather than broad.

In denying property status to an educational degree, the *Graham* court relied upon the earlier decisions of *Todd v. Todd*²⁵ and *Stern v. Stern*.²⁶ The *Todd* court considered whether a legal education preparing one spouse for the practice of law could properly be considered as community property when acquired with community funds.²⁷ It concluded an education was an intangible property right but of such a character that a monetary value could not be placed thereon.²⁸

The *Todd* court's reliance on the difficulty of placing a monetary value upon an education overlooks that future earning capacity, perhaps the most accurate measure of the quantifiable benefits of an education, can be predicted with some degree of accuracy by the use of statistical analysis.²⁹ Furthermore, in other contexts, the law recognizes and protects one spouse's interest in the other's future earning poten-

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. at 432, 574 P.2d at 77.

22. *Id.* at 432, 574 P.2d at 76 (citing *Las Animas County High School Dist. v. Raye*, 144 Colo. 367, 356 P.2d 237 (1960)).

23. 194 Colo. at 432, 574 P.2d at 77 (quoting BLACK'S LAW DICTIONARY 1382 (4th ed. 1968)).

24. See note 21 *supra*.

25. 272 Cal. App. 2d 786, 78 Cal. Rptr. 131 (1969).

26. 66 N.J. 340, 331 A.2d 257 (1975).

27. In a community property jurisdiction such as California, ownership of all property acquired during the marriage is vested in the community; that is, each spouse is entitled to one-half of all property acquired during the marriage, with certain exceptions. See generally W. DEFUNIAK & M. VAUGHN, PRINCIPLES OF COMMUNITY PROPERTY (1971).

28. 272 Cal. App. 2d at 791, 78 Cal. Rptr. at 135. At trial, Mrs. Todd had offered evidence on valuation of her husband's law degree, including life expectancy, average annual earnings, and surveys and statistics regarding the legal profession in general.

29. For a criticism of the *Todd* result, an extensive analysis of the problem, and suggested methods for ascertaining the value of a professional education, see Com-

tial.³⁰ Additionally, courts are frequently faced with the problem of placing a value upon other intangible, amorphous assets. An example is the accounting concept of goodwill,³¹ an intangible asset with an indefinite lifetime which, nevertheless, courts have frequently recognized as an asset capable of division between parties upon dissolution.³² Usually, the nonprofessional spouse is considered to have made an important contribution to the goodwill of the professional's practice. Problems involved in valuations and apportionment have not precluded courts from dividing the goodwill of a business enterprise or professional practice upon dissolution of a marriage. Although there may be problems in valuing assets such as goodwill and future earning capacity, and a certain measure of speculation may be involved, this is not a valid reason for ignoring the presence of such an asset, or for rejecting attempts to deal with the problem.

*Stern v. Stern*³³ was cited by the *Graham* court as standing for the proposition that a person's earning capacity, even when aided and enhanced by the other spouse, should not be recognized as a separate item of property for apportionment between the spouses.³⁴ This overlooks, however, that the *Stern* court accepted professional good-

ment, *The Interest of the Community in a Professional Education*, 10 CAL. W. L. REV. 590 (1974).

More accurate awards can also be obtained by determining the payments periodically and making necessary adjustments based upon the actual income of the professional. Comment, *Professional Education as a Divisible Asset in Marriage Dissolutions*, 64 IOWA L. REV. 705, 716 (1979).

30. "Thus one who tortiously destroys or impairs another's future earning capacity must pay as damages the amount the injured party has lost in anticipated future earnings." *Graham v. Graham*, 194 Colo. at 435, 574 P.2d at 79 (1978) (Carrigan, J., dissenting) (citations omitted).

31. Goodwill has been defined as "[t]he favor which the management of a business wins from the public. . . . Something in business which gives reasonable expectancy of preference in race of competition. . . . The advantage or benefit which is acquired by an establishment, beyond the mere value of the capital, stocks, funds, or property employed therein . . ." BLACK'S LAW DICTIONARY 625 (5th ed. 1979).

Goodwill is "personal in nature and not a readily marketable commodity." *Marriage of Lukens*, 16 Wash. App. 481, 484, 558 P.2d 279, 281 (1976).

32. *Lopez v. Lopez*, 38 Cal. App. 3d 93, 113 Cal. Rptr. 58 (1974); *Foster v. Foster*, 42 Cal. App. 3d 577, 117 Cal. Rptr. 49 (1974); *In re Marriage of Lukens*, 16 Wash. App. 481, 558 P.2d 279 (1976); *In re Marriage of Goger*, 27 Or. App. 729, 557 P.2d 46 (1976). *Contra*, *Nail v. Nail*, 486 S.W.2d 761 (Tex. 1972).

Relevant factors considered in valuing goodwill included the practitioner's age, health, past earning power, reputation in the community, and his comparative professional success.

See generally Comment, *Valuation of Professional Goodwill Upon Marital Dissolution*, 7 SW. U. L. REV. 186 (1975).

33. 66 N.J. 340, 331 A.2d 257 (1975).

34. 194 Colo. at 432-33, 574 P.2d at 77 (quoting from *Stern v. Stern*, 66 N.J. 340, 345, 331 A.2d 257, 260 (1975)).

will as an asset subject to division, making an award to Mrs. Stern based thereon.³⁵ Therefore, the *Graham* court's reliance on *Stern* is inapposite. *Stern* addressed the valuation and division of an established law practice,³⁶ unlike the *Graham* situation wherein there was no established practice, goodwill or other assets to divide.

Moreover, both the *Todd* and *Stern* decisions are factually distinguishable from *Graham*. The parties in *Todd* had been married for nearly eighteen years and had accumulated substantial assets which were subject to division. As the court pointed out, the assets were the result of the husband's legal education and accordingly the wife realized the benefits of that education in a property division award exceeding \$111,000.³⁷ The *Stern* divorce occurred after twenty-six years of marriage³⁸ during which a successful law practice was established and, as in *Todd*, substantial assets were acquired. The *Stern* court, while holding that earning capacity did not constitute a separate item of property, nonetheless recognized earning capacity as a factor to be considered in distributing other marital assets, holding it relevant to an award of alimony.³⁹ It upheld trial court awards of \$36,000 annually as alimony and \$4,000 per year as child support, in addition to a share in the established law practice of Mr. Stern.⁴⁰ Neither the *Todd* nor the *Stern* court was foreclosed from reaching an equitable solution by holding that an educational degree did not constitute an item of property,⁴¹ because there were other assets available for distribution and

35. 66 N.J. at 346, 331 A.2d at 261.

Valuation of goodwill was simplified in *Stern* by the use of a formula in the partnership agreement for calculating a partner's interest in the event of his death. "[A] fixed sum appearing . . . on a schedule appended to the partnership agreement . . . is obviously intended to reflect those elements of partnership worth other than the member's capital account." *Id.* at 346, 331 A.2d at 260. That sum, \$167,000, plus the value of the capital account, could be used as the "presumptive value of defendant's partnership interest" in the absence of evidence to the contrary. *Id.* at 346, 331 A.2d at 261. (emphasis deleted).

36. The *Graham* court cited *Nail v. Nail*, 486 S.W.2d 761 (Tex. 1972) as authority for the proposition that the accrued goodwill of a medical practice was not marital property. 194 Colo. at 433, 574 P.2d at 77. This is clearly contrary to the holding in *Stern*.

37. 372 Cal. App. 2d at 791, 78 Cal. Rptr. at 135. Mrs. Todd was also awarded \$500 monthly for child support and alimony.

38. S.C. v. A.C., 123 N.J. Super. 566, 568, 304 A.2d 202, 203 (1973). The case was designated by the parties' initials in the trial court, but the New Jersey Supreme Court felt this was unnecessary. 66 N.J. at 343 n.l., 331 A.2d at 259 n.l.

39. 66 N.J. at 345, 331 A.2d at 260.

40. *Id.* at 344, 331 A.2d at 259.

41. Some courts avoid the issue whether to classify earning capacity as an asset, particularly where the couple has acquired substantial marital property. Krauskopf, *Marital Property at Marriage Dissolution*, 43 MO. L. REV. 157, 167 (1978), citing as an example *In re Marriage of Vanet*, 544 S.W.2d 236 (Mo. App. 1976), in which the court

traditional maintenance awards could be made. These remedies were not available to Anne Graham.⁴² Precisely for this reason the court held "equity demands that courts seek extraordinary remedies to prevent extraordinary injustice."⁴³

B. Recognition of a Spouse's Interest in a Professional Education: the Hubbard Decision

Although the *Hubbard* court agreed in principle with the *Graham* resolution of the "property" issue,⁴⁴ the *Hubbard* majority was persuaded by the equitable considerations advanced in a dissenting opinion in *Graham*,⁴⁵ and later adopted by the Kentucky Court of Appeals in *Inman v. Inman*,⁴⁶ to compensate Mrs. Hubbard for her investment in her husband's education and training. The *Graham* dissent forcefully argued that traditional, narrow concepts of "property" should not render courts impotent to provide a remedy when injustice is the result,⁴⁷ criticizing the majority's focus upon the concept of a degree as property. It was the earning power concomitant to the degree, rather than the degree itself, which the dissenters considered an asset for distribution upon divorce.⁴⁸ Classifying the earning capacity as the marital asset circumvents many of the problems cited by the *Graham* majority as reasons for not classifying the degree itself as property.⁴⁹

approved a property division resulting in 26 per cent of the marital property being awarded to the husband, and 74 per cent to the wife, based upon the wife's financial contribution to the husband's legal education. *Id.* at 241.

42. See note 20 *supra*.

43. 194 Colo. 429, 574 P.2d 75, 78 (1978) (Carrigan, J., dissenting).

44. 603 P.2d at 750.

45. 194 Colo. 429, 574 P.2d 75, 78 (1978) (Carrigan, J., dissenting).

46. 578 S.W.2d 266 (Ky. Ct. App. 1979).

47. 194 Colo. 429, 574 P.2d 75, 78 (1978) (Carrigan, J., dissenting).

48. *Id.* at ____, 574 P.2d 79 (Carrigan, J., dissenting). The notion that future earning potential of one spouse can be considered in an award to the other spouse upon divorce is neither new nor novel.

Alimony need not be limited by the husband's income as of the time of the trial. If he is not earning as much as he might . . . alimony may be calculated on the basis of what the court thinks he could and should earn. Likewise his future prospects for increased earnings may be considered in arriving at alimony. Caution should be exercised in estimating his future earnings, however, since hardship to the husband may result from an over-estimate.

Clark, *supra* note 4, § 14.5 at 443.

The *Graham* majority had left open the possibility that a spouse's contributions to the education of the other could be considered in a traditional property division or maintenance award, and noted that Anne Graham had sought no maintenance. However, the controlling Colorado statute presumably would preclude an award of maintenance, for it restricts such an award to a spouse who is incapable of self-support. 194 Colo. at ____, 574 P.2d at 78-79 (citing COLO. REV. STAT. § 14-10-114 (1973)).

49. See notes 29-31 and accompanying text *supra*.

In *Inman v. Inman*,⁵⁰ the Kentucky Court of Appeals relied upon the logic and reasoning of the *Graham* dissent, holding Dr. Inman's license to practice dentistry⁵¹ constituted marital property in which Mrs. Inman had an interest. The court expressed reservations about extending the category of marital property to include a professional license. It noted, though, that such an extension was the only way to avoid the "grossest inequity" in the rather common situation in which one spouse has put the other through school, only to be faced with dissolution proceedings before any tangible marital assets are acquired.⁵² The *Inman* court did, however, strictly limit Mrs. Inman's recovery to the extent of her monetary contribution toward Dr. Inman's earning capacity as a dentist.⁵³

The wife's recovery in *Hubbard* was similarly limited. The *Hubbard* court held Mrs. Hubbard had a right to be compensated for her investment in Dr. Hubbard's education and training, as measured by her contributions to his "direct support and school and professional training expenses, plus reasonable interest and adjustments for inflation."⁵⁴ Thus, it is apparent that the court applied the doctrine of quasi-contract or restitution⁵⁵ in the remedy adopted.⁵⁶ The advantages

50. 578 S.W.2d 266 (Ky. Ct. App. 1979).

51. *Id.* The court did not distinguish whether it was the degree itself or the increased earning capacity attendant to that degree which constituted the asset for distribution between the parties. *Id.* at 270.

52. *Id.* at 268. The court noted that different considerations would apply when "a sizeable marital estate is built up over the course of a long marriage. In such instances, it might be inequitable to award . . . a 'property' interest in the other's professional degree *in addition* to considerable property which is in substantial part the fruit of the increased earning capacity." *Id.* (emphasis in original).

53. "Thus the amount spent for direct support and school expenses during the period of education, plus reasonable interest and adjustments for inflation, should be apportioned to the spouse who provided support. . . ." *Id.* at 269.

54. 603 P.2d at 752.

55. "[W]e limit the factors determining that award to fair compensation for her past investment, rather than a 'vested interest' in his future earnings." *Id.*

56. A *quasi* or constructive contract rests upon the equitable principle that a person shall not be allowed to enrich himself unjustly at the expense of another. In truth it is not a contract or promise at all. It is an obligation which the law creates, in the absence of any agreement, when and because the acts of the parties or others have placed in the possession of one person money, or its equivalent, under such a circumstance that in equity and good conscience he ought not to retain it. . . .

Erickson, *supra* note 2, at 970 (quoting *Miller v. Schloss*, 218 N.Y. 400, 113 N.E. 337 (1916)).

However, since the principle against unjust enrichment is central to a restitution claim, a court could hold that this theory was inapplicable, reasoning that although the husband was enriched, the enrichment was not unjust because the wife's contributions were in the nature of a gift. Erickson, *supra* note 2, at 970.

of such an approach are evident. The court avoids the difficulties inherent in ascertaining the value of an educational degree and apportioning it between the parties, a factor upon which the *Graham* decision relied heavily in denying recovery.⁵⁷ Therefore, the award is not speculative; it is determined by the actual monetary contributions of the supporting spouse. Finally, the court can compensate the supporting spouse without expanding the concept of marital property or infringing upon the personal nature of an education.⁵⁸

Despite the advantages of such an approach, the restitution theory is also susceptible to criticism. Restitution does not purport to measure the future earning capacity of the student spouse, and fails to assign to the supporting spouse any portion of the education's potential economic value.⁵⁹ Thus, the *Hubbard* award did not reflect Mrs. Hubbard's true interest in Dr. Hubbard's medical degree. By limiting the award to a mere return of her investment, the court overlooked Mrs. Hubbard's expectation of future benefits⁶⁰ which formed the basis for her contributions. Perhaps a more appropriate approach would have been to value the degree or the future earning capacity of Dr. Hubbard, and base the award upon Mrs. Hubbard's proportionate investment.⁶¹

C. Other Theories Upon Which Recovery Could be Based

The concept of rehabilitative alimony⁶² was not considered as a theory upon which to base recovery in *Hubbard* or the other cases

57. See notes 21-25 and accompanying text *supra*.

58. The trend towards recognizing the contributions of the supporting spouse was continued in *Moss v. Moss*, 80 Mich. App. 693, 264 N.W.2d 97 (1978), in which a couple married for seven years had acquired only one substantial asset: the husband's medical degree. The supporting spouse, the wife, was awarded \$15,000 alimony in lieu of a property settlement, which, the court held, "fairly represents the wife's contribution to the acquisition of that asset." *Id.* at 694, 264 N.W.2d at 98.

59. Note, *Divorce After Professional School: Education and Future Earning Capacity may be Marital Property*, 44 MO. L. REV. 329, 335 (1979).

60. "[D]uring the more than twelve years that [Mrs. Hubbard] worked and helped defendant obtain his medical degree and train to be a doctor, she could look forward to the time when she would enjoy the prestige and position, as well as the financial comfort, of a doctor's wife." 603 P.2d at 749.

61. Note, *The Effect of a Spouse's Professional Degree on a Division of Marital Property and Award of Alimony*, 15 TULSA L.J. 378, 388 (1979). This is similar to the approach taken by the trial court. See note 11 *supra*.

62. "'[R]ehabilitative alimony' contemplates sums necessary to assist a divorced person in regaining a useful and constructive role in society through vocational or therapeutic training or retraining and for the further purpose of preventing financial hardship on society or individual during the rehabilitative process." BLACK'S LAW DICTIONARY 1157 (5th ed. 1979).

Although a spouse in the position of Mrs. Hubbard or Mrs. Graham is capable of

discussed above, but it may present an equitable alternative to the usual forms of recovery.⁶³ In contrast to a traditional alimony award,⁶⁴ rehabilitative alimony would provide support for the recipient spouse for a limited time, thus providing that spouse with a comparable opportunity to pursue educational goals.⁶⁵ Such an award would be particularly appropriate where one spouse had foregone educational plans to assist the other's academic pursuits. Rehabilitative alimony could prove beneficial to both parties because the recipient is provided with the means of acquiring the skills necessary for financial independence and a lifestyle approximating that of the professional, while the payor spouse is released from what might otherwise be a prolonged and unreasonable support award.

Citing the drawbacks inherent in the presently available remedies of property division,⁶⁶ alimony awards,⁶⁷ and restitution,⁶⁸ one commentator has suggested a new cause of action for "educational debts."⁶⁹ It is proposed that an addition be made to the Uniform Mar-

self-support, the concept of rehabilitative alimony is still applicable, for the award would enable such a person to narrow the gap between his or her modest earning power and the much greater earning potential of the professional spouse.

63. See *In re Marriage of Beeh*, 214 N.W.2d 170 (Iowa 1974) (award of rehabilitative support enabled wife to obtain master's degree); *Brown v. Brown*, 26 Or. App. 239, 552 P.2d 265 (1976) (wife awarded rehabilitative support which enabled her to attend nursing school but was denied additional support to acquire master's degree). See generally Comment, *Rehabilitative Spousal Support: In Need of a More Comprehensive Approach to Mitigating Dissolution Trauma*, 12 U.S.F.L. REV. 493 (1978).

64. [I]f a wife has put her husband through school, she is *entitled* to be repaid, but alimony has never been considered a matter of entitlement. No other debt is dependent for its repayment on the creditor's lifestyle or moral behavior or the debtor's income, and no other debt can be annulled or modified retroactively. Nor does liability for a debt usually depend on the creditor's subsequent marital status. As long as alimony continues to be treated dissimilarly from other debts in these respects, alimony will not be an effective way to repay a wife for putting her husband through school.

Erickson, *supra* note 2, at 959-60.

65. *Morgan v. Morgan*, 81 Misc. 2d 616, 366 N.Y.S.2d 977 (1975), *modified*, 52 A.D.2d 804, 383 N.Y.S.2d 343 (1976), is such a case. The wife helped to support her husband while he finished college and attended law school. Shortly after he became associated with a prominent Wall Street law firm, the parties divorced. Mrs. Morgan returned to college as a pre-med student. The trial court awarded her \$100 per week until the completion of her schooling to provide her with the means to acquire an education comparable to that she had financed for her husband, even though she was capable of self-support as a secretary or technician. On appeal, the award was reduced to \$75 per week, which is still a substantial sum for a person fully capable of supporting herself.

66. See notes 21-25 and accompanying text *supra*.

67. See note 64 *supra*.

68. See notes 59-61 and accompanying text *supra*.

69. Erickson, *supra* note 2, at 972.

riage and Divorce Act (U.M.D.A.)⁷⁰ establishing the court's authority to grant recovery for educational debts, likening the contribution to the spouse's education to a gift conditioned on continuation of the marriage.⁷¹ A person who has supported a spouse through school expects to share in the ultimate benefits of that education.

If the condition fails because of divorce, then the gift should be returned to the donor, regardless of who was 'at fault' for the dissolution of the marriage, regardless of whether the 'donor' is 'needy,' and regardless of whether the 'donor' intends to use the funds she is awarded in order to put herself through school.⁷²

CONCLUSION

The *Hubbard* case exemplifies a situation which faces domestic relations courts with increasing frequency, i.e., marital dissolution

70. Erickson states that the statute might read as follows:

Education Debts

(a) In a proceeding for dissolution of marriage, legal separation, or education debts following a decree of dissolution of the marriage by a court that lacked personal jurisdiction over the absent spouse, the court must grant an order for education debts for either spouse if it finds that the spouse seeking such order contributed in any way to the furtherance of the education of the spouse from whom such an order is sought.

(b) The order for education debts shall be in such an amount as the court shall determine after considering all contributions by the spouse seeking such an order to the furtherance of the education of the spouse from whom such an order is sought, including:

- (1) Payment of or loans for the payment of
 - (a) tuition
 - (b) fees
 - (c) books and other supplies
 - (d) living expenses
 - (e) any other expenses reasonably related to attainment of the educational goal

(2) research, tutorial, and/or clerical assistance

(3) housework and maintenance of the home and family in excess of the contributing spouse's equitable share

(4) any other contribution that the court determines to be reasonably related to the attainment of the educational goal.

(c) If both spouses seek an order for education debts, the court may determine that their respective contributions are substantially equal and that both requests should be denied or the court may make an order in favor of the spouse whose contributions were substantially greater.

(d) It shall be a valid defense to a request for an order for education debts that the spouse seeking such an order has waived his or her rights under this section by written agreement, acknowledged or proved in the form required to entitle a deed to be recorded.

Id. at 972-73. (footnotes omitted).

71. *Id.* at 974.

72. *Id.*

after one spouse has provided most of the family's support while the other spouse has earned a professional degree but before the fruits of the education have been realized. Clearly, a valuable asset has been obtained by the joint efforts of both spouses. If the marriage had dissolved after Dr. Hubbard was established in his medical practice and the couple had accumulated tangible property, Mrs. Hubbard would have had her contributions considered in a division of that property. Courts are responding to the inequity that prevails when one spouse retains the only valuable asset acquired during the union, his professional education, and the other spouse has neither a return on her investment nor an earning capacity which has been similarly enhanced. The first steps have been taken toward recognition of the supporting spouse's interest, and whether courts utilize traditional forms of recovery or attempt to fashion new remedies, there is a need to progress further and to balance the competing interests so that equitable results may be had.

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