University of Baltimore Law Review

Volume 11
Issue 3 *Spring 1982*

Article 9

1982

Casenotes: Domestic Relations — Doctrine of Necessaries — Court of Appeals of Maryland Abrogates Common Law Doctrine of Necessaries and Declares Statutory Duty of a Husband to Be Liable for Necessaries Supplied to His Wife Invalid. Condore v. Prince George's County, 289 Md. 516, 425 A.2d 1011 (1981)

Nancy Kabara Dowling
University of Baltimore School of Law

DOMESTIC RELATIONS — DOCTRINE OF NECESSARIES — COURT OF APPEALS OF MARYLAND ABROGATES COMMON LAW DOCTRINE OF NECESSARIES AND DECLARES STATUTORY DUTY OF A HUSBAND TO BE LIABLE FOR NECESSARIES SUPPLIED TO HIS WIFE INVALID. *Condore v. Prince George's County,* 289 Md. 516, 425 A.2d 1011 (1981).

I. INTRODUCTION

In *Condore v. Prince George's County,*[1] the Court of Appeals of Maryland held that the necessaries doctrine, predicated upon a husband's unilateral duty to support his wife,[2] reflected a sex-based classification which is unconstitutional under the Equal Rights Amendment (ERA)[3] and, therefore, is no longer part of the common law of Maryland.[4] The court further indicated that article 45, section 21 of the Married Women's Property Act,[5] relating to a husband's liability for his wife's necessaries, is invalid.[6] Thus, neither husbands nor wives are liable, absent an express or implied contract, for necessaries supplied to the other. The strong dissent in *Condore* advocated an extension of liability to credit-worthy spouses, thus protecting unemployed, homemaking spouses from liability for the other spouse's debts and yet enabling them to pledge their spouse's credit to obtain the necessities of life.[7] This casenote examines the rationale supporting the duty of either spouse to be liable for necessaries supplied to the other and suggests that the appropriate legislative response is an extension of that obligation to both spouses.

II. THE FACTS

Mr. Condore was admitted as a patient in a county hospital.[8] Pursuant to regular admission procedures, the hospital provided a standard form which designated areas for both the signature of the patient

1. 289 Md. 516, 425 A.2d 1011 (1981).
2. *Id.* at 531, 425 A.2d at 1019.
3. MD. CONST., DECL. OF RIGHTS art. 45. Article 45 of the Maryland Constitution, Declaration of Rights states: "Equality of rights under the law shall not be abridged."
4. 289 Md. 516, 532, 425 A.2d 1011, 1019 (1981).
5. Section 21 provides:
   > Nothing in this article shall be construed to relieve the husband from liability for the debts, contracts or engagements which the wife may incur or enter into upon the credit of her husband or as his agent or for necessaries for herself or for his or their children; but as to all such cases his liability shall be or continue as at common law.

   MD. ANN. CODE art. 45, § 21 (1980).
6. 289 Md. 516, 530, 425 A.2d 1011, 1018 (1981). Although the court of appeals declared section 21 invalid, at trial, "[t]he matter of the constitutionality of the law was not raised by demurrer or answer or by motion to strike by either party." Brief for Appellant at 13 n.5, Condore v. Prince George's County, 289 Md. 516, 425 A.2d 1011 (1981).
7. 289 Md. 516, 541, 425 A.2d 1011, 1023-24 (1981) (Rodowsky, J., dissenting).
8. *Id.* at 518, 425 A.2d at 1012.

and the signature of the person responsible for the payment of hospital charges. Mr. Condore did not place his signature on the line marked for that of the patient but rather on the line assigned to the person responsible for the payment of the charges.[9] Although Mrs. Condore did not sign this form, written reference was made on the form to her place and length of employment.[10]

Mr. Condore died while a patient in the hospital. His insurance carrier paid for all hospital services except those which were recorded on the hospital bill as having been rendered on dates after Mr. Condore's death. The county sued his widow for the unpaid amount.[11]

III. BACKGROUND

At common law, a husband's general duty to support his wife has been described as both a moral obligation and a legal duty.[12] This duty is owed not only to the wife but also to the state under the rationale that the wife should not become a public charge on the state treasury.[13] One mechanism for enforcing the husband's duty is an action by a creditor for necessaries furnished to the wife.[14]

While the United States Supreme Court, in *Bowen v. Chase,*[15] implicitly recognized a wife's right to procure necessaries, it has been the state courts that have explicitly held that the wife, while cohabiting

---

9. Brief for Appellant, Record Extract at E.12, Condore v. Prince George's County, 289 Md. 516, 425 A.2d 1011 (1981).
10. *Id.*
11. *Id.* at E.31. The trial court granted summary judgment to the county after rejecting defendant-wife's challenge to the accuracy of the billing statement, questioning the fact that certain charges were made after the husband's death. The court accepted the plaintiff's affidavit that posting on days after the charge was actually incurred was routine billing practice. The trial court held the wife liable for her husband's medical expenses because women must accept the "burdens as well as the benefits" of equality. *Id.* at E.33.
12. Fry v. National Sav. & Trust Co., 289 F. 589, 592 (D.C. Cir. 1923) (husband normally bound to provide home for wife and cannot lay claim at law or in equity for reimbursement from her); Sparks v. United States, 153 F. Supp. 909, 912 (D. Vt. 1957) (widow's insurance benefits under Social Security Act stem from the fact that husband is under a legal duty to support his wife).
13. Department of Mental Hygiene v. O'Connor, 246 Cal. App. 2d 24, 27, 54 Cal. Rptr. 432, 435 (1966).
14. H. CLARK, THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES 189-92 (1968).
15. 94 U.S. 812 (1876). A trust created in order to give a married woman the separate and exclusive use of land, free from control of her husband, was sustained with the effect that the wife could use the rents and profits from the land as she should "think fit, at her own free will and pleasure, and not subject to the control or interference of her present or future husband." *Id.* at 815. To merge that trust in the legal estate would have had the effect of placing the property in the husband's control by virtue of his marital rights, defeating the purpose of the trust.

In United States v. Robbins, 269 U.S. 315 (1926), the Court explicitly commented on the obligation of a husband to provide for his wife's necessaries as incident to the marriage relation itself and distinguished this unique duty from any obligations arising out of the concept of community property. *Id.* at 317.

with her husband, may bind him when she contracts for necessaries with third persons.[16] Such liability is based on the concept of restitution[17] and, frequently, the wife's ability to pay is considered irrelevant.[18]

Currently, liability is generally imposed on the husband not only for basic needs such as food and shelter but also for things necessary and suitable to the rank and condition of the wife and the style of life adopted.[19] State courts have recognized that medical expenses are to be included within the purview of necessary expenses.[20] Furthermore, the doctrine has served as a basis for recovery by the husband for his wife's medical expenses when she was injured by a third party.[21]

There are instances in which the wife is responsible for debts for necessaries. Although at common law no duty has been placed upon the wife for her husband's necessaries, some courts have held that equitable claims may be enforced against her estate if the husband is unable to pay.[22] Some states, such as California, have imposed liability for the husband's necessaries by statute.[23] Finally, when a wife uses her own funds to pay for necessaries, she may compel reimbursement from the husband only where he has promised such reimbursement, either expressly or by implication of fact or law.[24] If it can be proven that the wife pledged her own credit and not that of her husband, she will be held solely liable.[25]

Early Maryland decisions followed the weight of authority regarding the necessaries doctrine.[26] The wife's right to support sprang from

16. *E.g.,* Jones v. Gutman, 88 Md. 355, 364, 41 A. 792, 794 (1898).
17. Section 113 of the *Restatement of Restitution* provides:
> A person who has performed the noncontractual duty of another by supplying a third person with necessaries which in violation of some other duty the other had failed to supply, although acting without the other's knowledge or consent, is entitled to restitution therefor from the other if he acted unofficiously and with the intent to charge therefor.

RESTATEMENT OF RESTITUTION § 113 (1937).
18. Bennett v. Bennett, 27 Ill. App. 2d 24, 169 N.E.2d 172 (1960).
19. *E.g.,* Leo v. Leo, 280 Ala. 9, 189 So. 2d 558 (1966); Evans v. Evans, 263 Ark. 291, 564 S.W.2d 505 (1978); Gimbel Bros., Inc. v. Pinto, 188 Pa. Super. 72, 78, 145 A.2d 865, 869 (1959).
20. *E.g.,* Heym v. Julasz, 45 Ohio App. 571, 68 N.E.2d 119 (1943).
21. Old Dominion Freight Line v. Martin, 153 Ga. App. 135, 264 S.E.2d 585 (1979); Boland v. Morrel, 275 Minn. 496, 148 N.W.2d 143 (1967); Kenelia v. Glen Falls Ins. Co., 171 N.J. Super. 144, 408 A.2d 144 (1979); Vaca v. Whitaker, 86 N.M. 79, 519 P.2d 315 (1974); Kohls v. Brak, 57 Wis. 2d 141, 203 N.W.2d 666 (1973).
22. *E.g.,* Bowen v. Dougherty, 168 N.C. 242, 84 S.E. 265 (1915).
23. CAL. CIV. CODE § 5121 (West Supp. 1981). Section 5121 provides:
> The separate property of a spouse is liable for the debts of the spouse contracted before or after the marriage of the spouse, but is not liable for the debts of the other spouse contracted after marriage; provided, that separate property of the spouse is liable for the necessaries of life.

24. Manufacturers Trust Co. v. Gray, 110 Ohio App. 502, 16 N.E.2d 373 (1938).
25. Charron v. Day, 288 Mass. 305, 117 N.E. 347 (1917).
26. Stonesifer v. Shriver, 100 Md. 24, 59 A. 139 (1904).

the marital relation itself and not from her inability to support herself.[27] The wife could forfeit her right by deserting her husband.[28] In such an instance, the wife's suppliers had to determine whether the credit of the husband had been pledged.[29] Additionally, the General Assembly enacted a series of statutes known as the Married Women's Property Act.[30] Section 5 of the Act provided that husbands were not liable for contracts made by the wife in her own name.[31] However, section 21 of the Act retained the husband's liability for the wife's contracts for necessaries.[32]

Prior to the adoption of Maryland's ERA, the issue of whether a wife is liable for her husband's medical bills was addressed in *Rowe v. Department of Mental Hygiene.*[33] There, the Department of Mental Hygiene attempted to recover from a wife the cost of confining her husband in a state hospital. The State argued that "unless marriage is a unilateral contract, it imposes the same degree of responsibility upon a wife to pay, if she has the ability to do so, as it does upon the husband."[34] The argument failed, however, because article III, section 43 of the Maryland Constitution protects the property of a wife from the debts of her husband.[35]

In 1972, Maryland adopted the ERA.[36] Following its adoption, the concept of the wife's unilateral rights was raised in several contexts although it was not raised in light of the necessaries doctrine until *Condore.* In *Coleman v. State,*[37] the criminal statute enforcing the husband's duty to support his wife was declared unconstitutional because it offended Maryland's ERA.[38] The legislature responded to *Coleman* by extending the criminal prohibition against non-support to all spouses.[39] The same year that *Coleman* was decided, the court of ap-

---

> At common law, the legal existence and identity of the wife was merged into that of the husband who became entitled to hold and to reduce into his possession all her personal estate, and as a consequence the law cast upon him the duty of supplying her with necessaries suitable to their station in life.

Id. at 30, 59 A. at 141.

27. McFerran v. Goldsmith-Stern Co., 137 Md. 573, 576, 113 A. 107, 108 (1921).
28. Kerner v. Eastern Dispensary Cas. Hosp., 210 Md. 375, 381, 123 A.2d 333, 338 (1956).
29. *Id.* at 382, 123 A.2d at 338.
30. Law of April 9, 1898, ch. 457, §§ 1-20, 1898 Md. Laws 1085 (current version at MD. ANN. CODE art. 45, §§ 1-21 (1980 & Supp. 1981)).
31. MD. ANN. CODE art. 45, § 5 (1980).
32. *Id.* § 21.
33. 247 Md. 542, 233 A.2d 769 (1967).
34. *Id.* at 546-47, 233 A.2d at 772.
35. MD. CONST. art. III, § 43.
36. Law of May 26, 1972, ch. 366, 1972 Md. Laws 1226 (ratified as MD. CONST., DECL. OF RIGHTS art. 46).
37. 37 Md. App. 322, 377 A.2d 553 (1977).
38. *Id.* at 329, 377 A.2d at 557.
39. MD. ANN. CODE art. 27, § 88 (Supp. 1981).

peals in *Rand v. Rand*[40] also relied on the mandate of the ERA to extend the parental obligation of child support to both parents.[41] The General Assembly likewise rendered the Maryland alimony statute gender-neutral.[42] But in *Kline v. Ansell,*[43] a criminal conversation case, the court of appeals opted to void the property right of a husband in the body of his wife rather than to extend a corresponding right to the wife.[44]

Courts in other jurisdictions have addressed the effect of the passage of the ERA on the necessaries doctrine. In *United States v. O'Neill,*[45] the United States District Court for the Eastern District of Pennsylvania held that a wife can be liable for the costs of necessaries provided to her husband so long as it can be shown that she is capable of bearing the financial burden.[46] In so holding, the court justified the extension of liability by analogizing to *Conway v. Dana*[47] in which the Supreme Court of Pennsylvania interpreted the ERA to mandate an extension of liability for the necessaries of minor children to both spouses.[48]

Two state courts have dealt squarely with the issue of whether, after the passage of the ERA, a wife is liable for the necessaries of her husband. The Supreme Court of New Jersey in *Jersey Shore Medical Center-Fitkin Hospital v. Baum*[49] extended liability to wives who are credit-worthy. The court in *Jersey Shore* did not impose liability on homemaking wives who had established no credit in order to avoid "equality with a vengeance."[50] The court also held that income and property of one spouse should not be exposed to satisfy debts incurred by the other unless assets of the spouse who incurred the debt are insufficient, thereby holding the wife secondarily liable.[51]

The District Court of Appeals of Florida for the Second District,

---

40. 280 Md. 508, 374 A.2d 900 (1977).
41. The court in *Rand* held that the duty of both spouses was to be "in accordance with their respective financial resources." *Id.* at 517, 374 A.2d at 905.
42. MD. ANN. CODE art. 16, § 1 (1981) (amending MD. ANN. CODE art. 16, § 3 (1973 & Supp. 1974)).
43. 287 Md. 585, 414 A.2d 929 (1980).
44. *Id.* at 593, 414 A.2d at 933. Maryland's position in *Kline* was contrary to that of most other jurisdictions. 10 U. BALT. L. REV. 205, 207 (1980). Protection of the sanctity of the marital relationship is most often cited as the justification for continued recognition of the tort. *Id.* at 209.
45. 479 F. Supp. 852 (E.D. Pa. 1979).
46. *Id.* at 854.
47. 456 Pa. 536, 318 A.2d 324 (1974).
48. *Id.* at 539, 318 A.2d at 326.
49. 84 N.J. 137, 417 A.2d 1003 (1980).
50. *Id.* at 149, 417 A.2d at 1009.
51. *Id.* at 146-48, 417 A.2d at 1008. Ultimately, the *Jersey Shore* court reiterated the reasoning of Orr v. Orr, 440 U.S. 268 (1979), that women are no longer "destined solely for the home and the rearing of the family" and the Supreme Court's conclusion in *Orr* that "the common law has an inherent capacity to adapt to changes such as the movement of married women toward economic equality." *Id.* at 280.

in *Manatee Convalescent Center, Inc. v. McDonald,*[52] also held that there was a gender-neutral burden of support. The court based its reasoning on the fact that the legislature had already imposed such a burden by amending the state's divorce statute to provide that the court could award alimony to either party. Contrary to *Jersey Shore,* however, the court in *Manatee* imposed liability regardless of whether the wife was capable of bearing the burden.[53]

IV. THE COURT'S HOLDING

In *Condore v. Prince George's County,*[54] the Court of Appeals of Maryland noted that the necessaries doctrine is based on the husband's entitlement to the wife's services and on the inability of the wife to contract in her own name.[55] The court also noted that, at common law, the wife's property was subject to the claims of the husband's creditors.[56] The court then discussed the history of the Married Women's Property Act,[57] which changed the common law.[58] The court held, however, that it could rely neither on the Act nor on *Rowe v. Department of Mental Hygiene*[59] because the subsequent passage of the Maryland ERA mandated that such gender-based classifications are now untenable.[60] Thus, the court not only abrogated the common law doctrine of necessaries but also declared the statutory duty of the husband to be liable for the wife's necessaries invalid.

The court rejected *Jersey Shore*'s holding even though it adopted its definition of a modern marriage as one of "interdependence."[61] It reasoned that since the Maryland legislature failed to address the issue effectively,[62] it would not extend the duty to both spouses as that would create a new cause of action where none existed before. The court indicated that such a holding is consistent with *Rand*'s extension of the parental support obligation since there the mother was already secondarily liable for the child's support.[63] Finally, Maryland's highest court concluded that the ERA does not require either extension of the duty to

52. 392 So. 2d 1356 (Fla. Dist. Ct. App. 1980).
53. *Id.* at 1359.
54. 289 Md. 516, 425 A.2d 1011 (1981).
55. *Id.* at 521, 425 A.2d at 1013.
56. *Id.*
57. MD. ANN. CODE art. 45, §§ 1-21 (1980).
58. 289 Md. 516, 521-22, 425 A.2d 1011, 1014 (1981).
59. 247 Md. 542, 233 A.2d 769 (1967).
60. 289 Md. 516, 521-27, 425 A.2d 1011, 1015-19 (1981).
61. *Id.* at 531, 425 A.2d at 1019.
62. *Id.* at 532 n.8, 425 A.2d at 1019 n.8.

> Amendments to art. III, § 43 of the Maryland Constitution were proposed in 1974 and 1975 to insulate any "person" from liability for the debts of that person's spouse and in 1976 to provide that "persons" are liable for the debts of the spouses "only as to necessaries." None of these proposed amendments was [*sic*] approved by the legislature.

Id.
63. *Id.* at 531, 425 A.2d at 1019.

both spouses or curtailment of the duty of the husband. Rather than create a new liability for the wife, the court indicated that a matter of such fundamental policy should be resolved by the legislature.[64]

The dissent challenged the majority's position on several points.[65] According to Judge Rodowsky, the legislature had already indicated that a wife has a duty to support her husband:

> Because the willful failure of a wife to support her husband is subject to criminal sanction, there is necessarily an underlying duty of support running from a wife to her husband. Consequently, a decision in the instant case to expand the doctrine to embrace necessaries furnished the male spouse will not be imposing a duty of support on the female spouse. The duty is already there, at least by statute.[66]

A second reason given by the dissent for extending liability focuses on the fact that such an extension would not automatically bind the non-contracting spouse for necessaries supplied to the other.[67] Rather, liability depends on whether the credit of the non-contracting spouse has been pledged.[68] Judge Rodowsky argued that the determination of whose credit was pledged is a question for the fact finder.[69] Such a determination on the facts of each case, the dissent reasoned, would protect those homemaking wives or husbands who had established no credit because nonexistent credit could neither be pledged nor relied upon by the supplier.[70]

The dissenting opinion advocated following the lead of other states, such as Florida and New Jersey, which have opted to extend liability to both spouses. Furthermore, the dissent pointed out, the Maryland General Assembly has already recognized the viability of the necessaries doctrine in retail credit legislation adopted after the passage of the state's ERA.[71]

V. ANALYSIS: EXTENSION OR CURTAILMENT?

It appears that by adopting a view toward a modern marriage in

64. *Id.* at 532, 425 A.2d at 1019.
65. Judge Rodowsky dissented with Judge Davidson concurring in part.
66. 289 Md. 516, 544, 425 A.2d 1011, 1019 (1981) (Rodowsky, J., dissenting).
67. *Id.* at 533, 425 A.2d at 1020 (Rodowsky, J., dissenting).
68. *Id.* at 535, 425 A.2d at 1021 (Rodowsky, J., dissenting). The majority ignored the question of whose credit was pledged. Judge Rodowsky noted in *Condore* that the husband's credit had been pledged since he signed on the "person responsible" line rather than on the line provided for the patient's signature. *Id.* at 539, 425 A.2d at 1023 (Rodowsky, J., dissenting). In *Condore,* it is arguable that the County Hospital did consider the wife's credit since information concerning her place and length of employment was elicited. *Id.* (Rodowsky, J., dissenting).
69. *Id.* at 540, 425 A.2d at 1023 (Rodowsky, J., dissenting).
70. *Id.* at 541, 425 A.2d at 1024 (Rodowsky, J., dissenting).
71. *Id.* (Rodowsky, J., dissenting); *see* MD. COM. LAW CODE ANN. § 12-705(5) (Supp. 1981).

which a financially non-contributing spouse is hardly envisioned, the *Condore* court is removing from dependent spouses a protection that fostered the interdependence of the family unit. The majority failed to adopt *Jersey Shore*'s reasoning that many but not all women have shed their traditional dependence and that expenditures, even if incurred by only one spouse, ultimately benefit the family unit.[72]

At least one commentator disagrees with the majority's philosophy that courts should not resolve the issue: "As courts become increasingly willing to invalidate laws on equal protection grounds, they will have to re-formulate laws to make them nondiscriminatory. It is not enough to find constitutional violations; the courts must determine the effects of, and fashion remedies for, the constitutional defects."[73] One framework for determining whether to curtail or extend a statutory right once it has been found unconstitutional includes an examination of the underlying public policy considerations.[74]

The public policy considerations supporting a continuing liability of one spouse for the necessaries of the other is at least as strong as the policy considerations in cases in which rights were extended. For example, conscientious objector status was extended to include ethical objectors in *Welsh v. United States*[75] because elimination of the status for all objectors would be contrary to the intent of the original exemption. A continuing liability would also be consistent with other decisions where benefits were extended to families with dependent children when a mother was unemployed,[76] where income tax deductions for dependents were extended to single men,[77] and where a presumption of economic dependence was extended to widowers.[78] In the instant situation, the extension of liability for necessaries to both spouses would both correct the incongruity of holding spouses criminally but not civilly liable for each other's support and further the policy that the contracting spouse should not become a charge on the public treasury.

Preliminary legislative response to *Condore* consisted of the introduction of bills in both the House and the Senate during the 1981 ses-

72. 11 SETON HALL L. REV. 343, 345 (1980).

73. Abrams, *The Effects of Invalidating a Law on the Grounds of Equal Protection,* 8 HASTINGS CONST. L.Q. 29, 45 (1980).

74. *Id.* at 31. Another question to be considered is whether the decision rendering the law unconstitutional should be applied retroactively. Factors to be weighed include "the purpose of the new ruling or of the constitutional principles at issue, . . . the reasonableness and extent of reliance on the overturned law, and . . . the effect on the administration of justice of a retroactive application of the new ruling." *Id.* at 36.

75. 398 U.S. 333 (1970).

76. Califano v. Westcott, 443 U.S. 76 (1979).

77. Moritz v. Commissioner, 469 F.2d 466 (10th Cir. 1972), *cert. denied,* 412 U.S. 906 (1973).

78. Wengler v. Druggists Mut. Ins. Co., 601 S.W.2d 8 (Mo. 1980) (presumption of dependency extended to widowers as well as to widows for purposes of workmen's compensation death benefits).

sion of the General Assembly. The House bill proposed to amend article 45, section 21 of the Married Women's Property Act to acknowledge a corresponding duty of the wife to be liable for her husband's necessaries or for debts which the husband may enter into on the credit of the wife.[79]

The Senate bill advocated a secondary liability concept similar to the holding of *Jersey Shore*.[80] However, the language of this bill would not protect from liability a homemaking spouse whose contributions to the marriage have been real but who has earned no income. This language does not recognize, as does the dissent in *Condore,* that a pledge of existent credit of the non-contracting spouse is fundamental to the doctrine of necessaries.

Potentially inequitable results can be forestalled only by recognizing the dissent's view that the basis of the doctrine is that the credit of the non-contracting spouse is pledged. This approach was partially adopted during the 1982 session of the General Assembly by House Bill 160, which provides:

> (A) This article may not be construed to relieve the husband from liability for the debts, contracts or engagements which the wife may incur or enter into upon the credit of her husband or as his agent or for necessaries for herself or for his or their children. As to all such cases his liability shall be or continue as at common law.
> (B) This article may not be construed to relieve the wife from liability for the debts, contracts, or engagements which the husband may incur or enter into upon the credit of his wife or as her agent or for necessaries for himself or for her or their children. As to all such cases her liability shall be the same as that of a husband or father at common law.[81]

However, the inclusion of the language "upon the credit of the spouse" before "for necessaries" in both subsections of this bill would serve to protect the homemaking spouse who earns no income on which to establish credit and thus provide a satisfactory resolution to the problem created by the *Condore* decision.

VI. CONCLUSION

The complete abrogation of both the common law doctrine of necessaries and the statute rendering the husband liable for the necessaries of the wife withdraws economic protection from homemaking or

79. H.D. 1866, Md. Gen. Assembly, 1981 Sess.
80. Senate Bill 1069 provides: "If the income or assets of a husband or wife are insufficient to meet the cost of necessaries, his or her spouse is liable for the debts, contracts, or engagements which the husband or wife may incur or enter into for necessaries for himself or herself, or their children." S. 1069, Md. Gen. Assembly, 1981 Sess.
81. H.D. 160, Md. Gen. Assembly, 1982 Sess.

dependent spouses of either sex and thus constitutes a detriment to the family unit. An appropriate legislative response would include the enactment of an amendment to the Married Women's Property Act which adopts both the secondary liability concept and the recognition that the necessaries doctrine is based on the assumption that the credit of the non-contracting spouse is pledged. Such a law would serve the legitimate governmental objective of protecting the unemployed, homemaking spouse while completely satisfying the mandate of the Maryland Equal Rights Amendment.

Nancy Kabara Dowling