



1987

Casenotes: Family Law — a Professional Degree or License Acquired during Marriage Is Not Marital Property Subject to Equitable Distribution under the Property Disposition in Annulment and Divorce Law. *Archer v. Archer*, 303 Md. 347, 493 A.2d 1074 (1985)

Shoshana L. Katz
University of Baltimore School of Law

Follow this and additional works at: <http://scholarworks.law.ubalt.edu/ublr>

 Part of the [Family Law Commons](#)

Recommended Citation

Katz, Shoshana L. (1987) "Casenotes: Family Law — a Professional Degree or License Acquired during Marriage Is Not Marital Property Subject to Equitable Distribution under the Property Disposition in Annulment and Divorce Law. *Archer v. Archer*, 303 Md. 347, 493 A.2d 1074 (1985)," *University of Baltimore Law Review*: Vol. 16: Iss. 2, Article 8.
Available at: <http://scholarworks.law.ubalt.edu/ublr/vol16/iss2/8>

This Article is brought to you for free and open access by ScholarWorks@University of Baltimore School of Law. It has been accepted for inclusion in University of Baltimore Law Review by an authorized administrator of ScholarWorks@University of Baltimore School of Law. For more information, please contact snolan@ubalt.edu.

FAMILY LAW — A PROFESSIONAL DEGREE OR LICENSE ACQUIRED DURING MARRIAGE IS NOT MARITAL PROPERTY SUBJECT TO EQUITABLE DISTRIBUTION UNDER THE PROPERTY DISPOSITION IN ANNULMENT AND DIVORCE LAW. *Archer v. Archer*, 303 Md. 347, 493 A.2d 1074 (1985).

The parties were married while the husband was a medical student.¹ In order to support the couple and the two children born during the marriage, the wife discontinued her education and worked full-time while the husband completed his medical education.² During the marriage the husband acquired a medical degree and license, and completed two years of residency. After seven years of marriage, the couple was divorced by decree of the Circuit Court of Maryland for Prince George's County.³ The court awarded the wife \$100 per month alimony for a period not to exceed one year, but denied the wife's prayer for a monetary award based upon the value of the medical degree.⁴ The court held that neither a medical degree nor license is marital property under Maryland's Property Disposition in Annulment and Divorce Law (Act).⁵ The wife appealed the decision on two alternative theories:⁶ (1) when there is no marital property to distribute, a medical degree and license are marital property under the Act; or (2) restitution should be awarded for her contributions to her husband's acquisition of a medical degree and license. On certiorari,⁷ the Court of Appeals of Maryland affirmed and noted that restitution was unnecessary because the wife's contributions to the medical degree were considered by the trial court in making its alimony award.⁸

Forty-three jurisdictions provide for equitable distribution of marital property upon the dissolution of a marriage.⁹ Under equitable distri-

-
1. *Archer v Archer*, 303 Md. 347, 349, 493 A.2d 1074, 1075 (1985).
 2. *Id.* The husband, however, also received financial support from the Navy. While he was a medical student, the Navy paid Thomas Archer's tuition and a monthly stipend of not more than \$500. During his summer vacations, he also earned approximately \$1500 each year. *Id.*
 3. The couple was granted a divorce *a vinculo matrimonii* on July 12, 1984. *Id.* at 350, 493 A.2d at 1076.
 4. *Id.* The wife also was awarded custody of the couple's two children, and child support of \$250 per month per child. At the time of the divorce proceedings, the wife earned \$15,000 per year and the husband earned \$19,000 per year. Brief for Appellant at 2-3, *Archer v. Archer*, 303 Md. 347, 493 A.2d 1074 (1985).
 5. *Archer*, 303 Md. at 350, 493 A.2d at 1076. The Maryland Property Disposition in Annulment and Divorce Law is contained in MD. FAM. LAW CODE ANN. §§ 8-201 to -213 (1984 & Supp. 1986). The 1986 amendments to the Act do not address professional degrees. See *infra* notes 68-72 and accompanying text.
 6. Appellant's Brief at 4, *Archer v. Archer*, 303 Md. 347, 493 A.2d 1074 (1985).
 7. The Court of Appeals of Maryland granted certiorari to decide this issue of first impression prior to consideration of the issue by the Court of Special Appeals of Maryland. *Archer v. Archer*, 302 Md. 409, 488 A.2d 500 (1985).
 8. *Archer*, 303 Md. at 359, 493 A.2d at 1081.
 9. 1985 Survey of American Family Law, 11 FAM. L. REP. (BNA) 3021 (May 7, 1985). Forty-two states and the District of Columbia have adopted, either by statute or judicial fiat, a system of equitable distribution upon divorce of property acquired during marriage. The remaining eight states (Arizona, California, Idaho,

bution principles, property acquired during marriage, regardless of how it is titled, is "marital property."¹⁰ Whether a professional degree acquired by one spouse during marriage is marital property subject to equitable distribution has engendered considerable debate¹¹ and litigation¹² in what has been called the "university degree-divorce decree" case.¹³

The overwhelming majority of jurisdictions addressing this issue

Louisiana, Nevada, New Mexico, Texas, and Washington) are community property jurisdictions. *Id.* Community property is premised upon a presumption of equal contributions by both spouses to a marriage. Co-ownership of property acquired during the marriage vests in each spouse by virtue of the marital relationship. See generally Comment, *A Property Theory of Future Earning Potential in Dissolution Proceedings*, 56 WASH. L. REV. 277 (1981).

10. See, e.g., MD. FAM. LAW CODE ANN. § 8-201(e) (1984 & Supp. 1986); PA. STAT. ANN. tit. 23 § 401(e) (Purdon Supp. 1986); see *Falise v. Falise*, 63 Md. App. 574, 580, 493 A.2d 385, 388 (1985) ("Marital property is merely a term created by the legislature to describe the status of property acquired during the marriage, however titled . . . the only function of 'marital property' is to form a base for a 'monetary award'").
11. The issue has been called "the raging issue in matrimonial law." The Nat'l L.J., Nov. 28, 1983, at 1, col. 2. See, e.g., Fitzpatrick & Doucette, *Can the Economic Value of an Education Really be Measured? A Guide for Marital Property Dissolution*, 21 J. FAM. L. 511 (1982-83); Herring, *Divisibility of Advanced Degrees in Equitable Distribution States*, 19 J. MAR. L. REV. 1 (1985); Krauskopf, *Recompense for Financing Spouse's Education: Legal Protection for the Marital Investor in Human Capital*, 28 KAN. L. REV. 379 (1980); Loeb & McCann, *Dilemma v. Paradox: Valuation of an Advanced Degree Upon Dissolution of a Marriage*, 66 MARQ. L. REV. 495 (1983); Moore, *Should a Professional Degree be Considered a Marital Asset Upon Divorce?*, 15 AKRON L. REV. 543 (1982); Raggio, *Professional Goodwill and Professional Licenses as Property Subject to Distribution Upon Dissolution of Marriage*, 16, Number 2, FAM. L.Q. 147 (1982).
12. See, e.g., *In re Marriage of Graham*, 194 Colo. 429, 574 P.2d 75 (1978); *In re Marriage of Horstmann*, 263 N.W.2d 885 (Iowa 1978); *Inman v. Inman*, 648 S.W.2d 847 (Ky. 1982); *DeLa Rosa v. DeLa Rosa*, 309 N.W.2d 755 (Minn. 1981); *Hubbard v. Hubbard*, 603 P.2d 747 (Okla. 1979); *Saint-Pierre v. Saint-Pierre*, 357 N.W.2d 250 (S.D. 1984).
13. *Haugan v. Haugan*, 117 Wis. 2d 200, 206, 343 N.W.2d 796, 799-800 (1984). See also *Mahoney v. Mahoney*, 182 N.J. Super. 598, 610, 442 A.2d 1062, 1067 ("career threshold, no-asset" divorce), *rev'd*, 91 N.J. 488, 453 A.2d 527 (1982); *Stevens v. Stevens*, 233 Ohio St. 2d 115, 116, 492 N.E.2d 131, 132 (1986) ("diploma dilemma"); Raggio, *supra* note 11, at 147 ("putting hubby through syndrome").

The issue in community property states is the same, but the terminology is different; the term "marital property" is replaced by "community property." Community property states also cite equitable distribution cases for support. See *Pyeatte v. Pyeatte*, 135 Ariz. 346, 661 P.2d 196 (Ct. App. 1982) (citing equitable distribution cases from Colorado, Kentucky, Minnesota, Oklahoma, and Wisconsin). Accordingly, equitable distribution states cite community property cases for support. See *Saint-Pierre*, 357 N.W.2d 250 (citing community property cases from Arizona and Texas).

In the typical "university degree-divorce decree" case, one spouse agrees to forego education and to support the other spouse, who pursues an advanced degree. Both parties anticipate that the degree will allow them to share a higher standard of living in the future. Upon acquisition of the degree, when the student spouse is ready to realize the income from the couple's investment, the couple divorces. Because the working spouse's income was consumed by the couple's living expenses and the student spouse's educational expenses, little or no tangible marital property was accumulated during the marriage. The degreed spouse's enhanced earning ca-

hold that the degree is not marital property.¹⁴ These courts follow the leading case, *In re Marriage of Graham*,¹⁵ in which the Supreme Court of Colorado held that a professional degree is not marital property because it does not fall within the traditional definition of property.¹⁶ Unlike tangible property, a professional degree has no exchange value and cannot be assigned, transferred, or purchased.¹⁷ Its value depends, not upon mere possession, but upon the future personal efforts, motivation, and opportunities presented to the holder.¹⁸ Some courts expand upon this reasoning and assert that the degree's value is too speculative to ascertain.¹⁹ In addition, distribution of the degree's value requires a valuation

capacity is often the only valuable asset of the marriage. *Haugan*, 117 Wis. 2d at 206, 343 N.W.2d at 799-800.

The "university degree-divorce decree" case is distinguished from one where, although the professional degree is attained under similar circumstances, the marriage is of longer duration and the couple accumulates tangible marital assets that can be equitably distributed by the court. *See Wisner v. Wisner*, 129 Ariz. 333, 341, 631 P.2d 115, 123 (1981).

14. *In re Marriage of Weinstein*, 128 Ill. App. 3d 234, 239, 470 N.E.2d 551, 555 (1984). *E.g.*, *Hughes v. Hughes*, 438 So. 2d 146 (Fla. Dist. Ct. App. 1983); *Ruben v. Ruben*, 123 N.H. 358, 361, 461 A.2d 733, 735 (1983); *Mahoney*, 91 N.J. at 496, 453 A.2d at 531; *Stevens*, 23 Ohio St. 3d at 117, 492 N.E.2d at 133; *Hubbard*, 603 P.2d at 750; *Grosskopf v. Grosskopf*, 677 P.2d 814 (Wyo. 1984).
15. 194 Colo. 429, 574 P.2d 75 (1978).
16. *In re Marriage of Graham*, 194 Colo. 429, 432, 574 P.2d 75, 77 (1978). (The court split 4-3 and a strong dissent was filed.)
17. *Id.*
18. *Id.* The *Graham* court's often quoted language is:

An educational degree, such as an MBA, 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 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. The court also stated that the contribution by one spouse toward the professional degree of the other spouse is but one of several factors to be considered by the court in two situations: (1) if marital property is distributed, and (2) if maintenance is awarded. *Id.* at 433, 574 P.2d at 78. As the dissent pointed out, however, neither situation applied to the *Grahams*. Other than Mr. *Graham's* MBA degree, the couple had accumulated no assets during their marriage because their funds had been expended on their living expenses and on Mr. *Graham's* education. *Id.* (Carrigan, J., dissenting). Furthermore, the Colorado statute restricts maintenance to cases where the party is incapable of self-support: by supporting the couple during their marriage, Mrs. *Graham* demonstrated an ability to support herself; therefore, she was not entitled to alimony. *Id.* at 435, 574 P.2d at 78-79 (Carrigan, J., dissenting).

19. *Mahoney v. Mahoney*, 91 N.J. 488, 496, 453 A.2d 527, 532 (1982) ("Valuing a professional degree in the hands of any particular individual at the start of his or her career would involve a gamut of calculation that reduces to little more than guesswork."). *But see Thomas v. Thomas*, 131 Mich. App. 830, 346 N.W.2d 595 (1985)

and distribution of projected future earnings.²⁰ This violates equitable distribution principles that require distribution of property acquired *during* the marriage.²¹ Courts have also expressed concern that recognizing a professional degree as marital property will open a floodgate of litigation²² or will violate the thirteenth amendment of the United States Constitution.²³

Recently, the *Graham* court's reasoning was rejected by the New York Court of Appeals in *O'Brien v. O'Brien*.²⁴ The *O'Brien* court was influenced by the legislative history and specific provisions of its equitable distribution statute.²⁵ In particular, the court found persuasive the

(Reversing trial court that had stated, "I'll tell you what the value of a law school education is. It is zero.").

20. See *In re Marriage of Aufmuth*, 89 Cal. App. 3d 446, 461, 152 Cal. Rptr. 668, 678 (1979) ("The value of a legal education lies in the potential for increase in the future earning capacity of the acquiring spouse. . . . A determination that such an asset is community property would require a division of post-dissolution earnings to the extent that they are attributable to the law degree.").
21. *Id.*
22. See *O'Brien v. O'Brien*, 106 A.D.2d 223, 227, 485 N.Y.S.2d 548, 551 ("What kind of property are we all talking about? If it be property at common law it conjures up all kinds of problems, constitutional and otherwise. Not alone a spouse, but every judgment creditor of a debtor would be in a position to attach and execute against such property. Such a proposition is filled with indescribable mischief and cannot seriously be entertained."), *modified*, 66 N.Y.2d 576, 489 N.E.2d 712, 498 N.Y.S.2d 743 (1985); *Lesman v. Lesman*, 110 Misc. 2d 815, 817, 442 N.Y.S.2d 955, 957 (Sup. Ct. 1981) ("If a medical license in and of itself has intrinsic value, then it would follow that a license to practice law, to teach, to be a plumber, an engineer, a certified public accountant, and so on, on the theory of equal enforcement of the law, would all be subject to Equitable Distribution."), *modified*, 88 A.D.2d 153, 452 N.Y.S.2d 935 (1982); see also Comment, *For Richer or Poorer - Equities in the Career-Threshold, No-Asset Divorce*, 58 TUL. L. REV. 791, 795 (1984).
23. See *Severs v. Severs*, 426 So. 2d 992, 994 (Fla. Dist. Ct. App. 1983) ("Such an award . . . would transmute the bonds of marriage into the bonds of involuntary servitude contrary to Amendment XIII of the United States Constitution.").
24. 66 N.Y.2d 576, 583, 489 N.E.2d 712, 715, 498 N.Y.S.2d 743, 746 (1985). The court stated:

[Marital property] is a statutory creature, is of no meaning whatsoever during the normal course of a marriage and arises full-grown, like Athena, upon the signing of a separation agreement or the commencement of a matrimonial action. Thus it is hardly surprising, and not at all relevant, that traditional common law property concepts do not fit in parsing the meaning of 'marital property.'

Id. (quoting Florescue, "Market Value," *Professional Licenses and Marital Property: A Dilemma in Search of a Horn*, N.Y. ST. BAR ASS'N FAM. L. REV. 13 (Dec. 1982)). The court also stated, "whether a professional license constitutes marital property is to be judged by the language of the statute which created this new species of property previously unknown at common law Thus, whether the license fits within traditional property concepts is of no consequence." *Id.* at 586, 489 N.E.2d at 717, 498 N.Y.S.2d at 748. The court noted, however, that a professional license may be cognizable as a valuable property right outside the context of its statutory meaning; its value is reflected in the "money, effort and lost opportunity for employment expended in its acquisition." *Id.*
25. *O'Brien v. O'Brien*, 66 N.Y.2d 576, 584-85, 489 N.E.2d 712, 716, 498 N.Y.S.2d 743, 747 (1985) (citing N.Y. DOM. REL. LAW § 236[B] (McKinney 1986)).

statute's mandate that spousal contributions to the career or career potential of the other spouse be considered²⁶ when the court makes a property distribution. When the interest can not be distributed, the statute provides for a monetary award.²⁷ The court concluded that the legislature believed one spouse's contributions to the other's career "represent[s] investments in the economic partnership of the marriage and that the product of the parties' joint efforts, the professional license, should be considered marital property."²⁸ Except for New York's highest court, only lower state courts have held that a professional degree is marital property.²⁹

Nevertheless, a growing number of courts³⁰ recognize the unfairness

26. *Id.* at 584, 489 N.E.2d at 715-16, 498 N.Y.S.2d at 746-47. The statute reads in part: In determining an equitable disposition of property under paragraph c, 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

N.Y. DOM. REL. LAW § 236[B][5][d][6] (McKinney 1986).

27. *O'Brien*, 66 N.Y.2d at 584, 489 N.E.2d at 716, 498 N.Y.S.2d at 747. The statute provides in part:

In any action in which the court shall determine that an equitable distribution is appropriate but would be impractical or burdensome or where the distribution of an interest in a business, corporation or profession would be contrary to law, the court in lieu of such equitable distribution shall make a distributive award in order to achieve equity between the parties.

N.Y. DOM. REL. LAW § 236 [B][5][e] (McKinney 1986).

28. *O'Brien*, 66 N.Y.2d at 584, 489 N.E.2d at 716, 498 N.Y.S.2d at 747. Members of the legal community support the view that marriage is an economic partnership in which the working spouse invests and, therefore, should share in the "human capital" of the student spouse. See *Hodge v. Hodge*, 337 Pa. Super. 151, 167, 486 A.2d 951, 960 (1984) (Wickersham, J., concurring and dissenting); Krauskopf, *supra* note 11, at 379; Weitzman, *The Economic Consequences of Divorce: An Empirical Study of Property, Alimony and Child Support Awards*, 8 FAM. L. REP. (BNA) 4037 (1982).

29. See, e.g., *Reen v. Reen*, 8 FAM. L. REP. (BNA) 2193 (Mass. Prob. and Fam. Ct. 1981) (holding the husband's license to practice orthodontia a marital asset and subject to distribution); *Woodworth v. Woodworth*, 126 Mich. App. 258, 337 N.W.2d 332 (1983) (holding a law degree marital property). The *Woodworth* court stressed the need to reach an equitable solution in light of the substantial contribution and sacrifice of the supporting spouse and remanded for a determination of the present value of the husband's future earnings attributable to the law degree earned during the marriage. *Woodworth*, 126 Mich. App. at 263, 269, 337 N.W.2d at 335, 337; see also *Thomas v. Thomas*, 131 Mich. App. 830, 346 N.W.2d 595 (1984) (following *Woodworth*). The precedential value of *Woodworth*, however, is uncertain. See *Olah v. Olah*, 135 Mich. App. 404, 354 N.W.2d 359 (1984) ("we do not adhere to the proposition that a degree is property and therefore a marital asset"). In *Carlson v. Carlson*, 139 Mich. App. 299, 362 N.W.2d 258 (1984), the Court of Appeals of Michigan acknowledged but did not resolve this conflict.

30. E.g., *Inman v. Inman*, 648 S.W.2d 847 (Ky. 1982); *DeLa Rosa v. DeLa Rosa*, 309 N.W.2d 755 (Minn. 1981); *Mahoney v. Mahoney*, 91 N.J. 488, 453 A.2d 527 (1982); *Lehmicke v. Lehmicke*, 339 Pa. Super. 559, 489 A.2d 782 (1985); *Washburn v. Washburn*, 101 Wash. 2d 168, 677 P.2d 152 (1984); *Haugan v. Haugan*, 117 Wis. 2d

that results when the decreed spouse is permitted to leave the marriage with what is arguably its only asset.³¹ These courts agree with the *Graham* dissent that "equity demands that the courts seek extraordinary remedies to prevent [the] extraordinary injustice"³² that will result unless the supporting spouse is compensated.³³ Restitution in *quantum meruit* is an appropriate remedy because the supporting spouse's personal sacrifices and financial contributions were made with a "reasonable expectation"³⁴ that the degree would result in a higher standard of living for both spouses.³⁵ Thus, unjust enrichment to the student spouse is avoided.³⁶

When courts grant restitution, the nature of the award varies. "Reimbursement alimony," originated by the Supreme Court of New

200, 343 N.W.2d 796 (1984). See generally Brigner, *I Put Him Through School . . . Now He Says We're Finished!*, 4 ABA Fam. Advoc., Winter, 1982, at 16.

31. See *Pyeatte v. Pyeatte*, 135 Ariz. 346, 357, 661 P.2d 196, 207 (1982) ("Appellant has left the marriage with the only valuable asset acquired during the marriage - his legal education and qualification to practice law."); *Hubbard v. Hubbard*, 603 P.2d 747, 751 (Okla. 1979) ("There is no reason in law or equity why Dr. Hubbard should retain the only valuable asset which was accumulated through joint efforts, i.e., his increased earning capacity, free of claims for reimbursement by his wife."); *Lundberg v. Lundberg*, 107 Wis. 2d 1, 14, 318 N.W.2d 918, 924 (1984) ("In a sense [the husband's] medical degree is the most significant asset of the marriage. It is only fair that [the wife] be compensated for her costs and foregone opportunities resulting from her support while [her husband] was in school.")

32. *Graham*, 194 Colo. at 434, 574 P.2d at 78 (Carrigan, J., dissenting).

33. The Supreme Court of Oklahoma stated:

We have no quarrel with the *Graham* majority's resolution of the "property" question . . . This determination does not mean, however, that Ms. Hubbard is thereby precluded from receiving an award in lieu of property division, for this case presents broad questions of equity and natural justice which cannot be avoided on such narrow grounds . . . We are not rendered impotent to do equity between these parties . . .

Hubbard, 603 P.2d at 750-51. See also *Mahoney*, 91 N.J. at 500, 453 A.2d at 533-34 ("[E]very joint undertaking has its bounds of fairness. . . . It is . . . patently unfair that the supporting spouse be denied the mutually anticipated benefit while the supported spouse keeps not only the degree, but also all of the financial and material rewards flowing from it."); *DeLa Rosa v. DeLa Rosa*, 309 N.W.2d 755, 758 (Minn. 1981) ("The equities weigh heavily in favor of providing a remedy to the working spouse in such a situation . . .").

34. *DeLa Rosa*, 309 N.W. 2d at 758.

35. The Supreme Court of Arizona stated:

A benefit may be any type of advantage, including that which saves the recipient from any loss or expense. Appellee's support of appellant during his period of schooling clearly constituted a benefit to appellant. Absent appellee's support, appellant may not have attended law school, may have been forced to prolong his education . . . or may have gone deeply into debt. . . . Historically, restitution for the value of services rendered has been available . . . upon quasi-contractual grounds. . . . [A] quasi-contract is not a contract at all, but a duty imposed in equity upon a party to repay another to prevent his own enrichment.

Pyeatte, 135 Ariz. at 352-53, 661 P.2d at 202-03 (citations omitted). See also *DeLa Rosa*, 309 N.W.2d at 758; *Mahoney*, 91 N.J. at 500, 453 A.2d at 533-34; *Hubbard*, 603 P.2d at 751; *Haugan v. Haugan*, 343 N.W.2d 796, 800 (Wis. 1984).

36. *Haugan*, 343 N.W.2d at 800.

Jersey,³⁷ provides "a fair and effective means of compensating a supporting spouse who has suffered a loss or reduction of support, or has incurred a lower standard of living, or has been deprived of a better standard of living in the future."³⁸ The court, however, cautioned that reimbursement alimony is not a proper remedy in all cases.³⁹ For example, reimbursement alimony is unnecessary if sufficient property is available for distribution, or if rehabilitative alimony is appropriate.⁴⁰

Furthermore, alimony as the basis of an award is often inappropriate.⁴¹ Restrictions imposed on the alimony recipient may be deemed unacceptable.⁴² Moreover, some states prohibit an alimony award to a spouse who is capable of self-support.⁴³ For these and other reasons,⁴⁴ courts often choose to grant a supporting spouse a monetary award based on equitable principles "in the nature of recompense."⁴⁵

Courts also vary in the valuation method used when awarding restitution. Recoveries range from those limited to direct educational costs⁴⁶ to broader recoveries encompassing educational and living expenses,⁴⁷ and any other related contribution.⁴⁸ Some courts also include the degree holder's potential for increased earnings in their calculations.⁴⁹ The Supreme Court of New Jersey limited reimbursement alimony to those financial contributions made "with the mutual and shared expectation" that both spouses ultimately would reap the benefits of the professional

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

38. *Mahoney*, 91 N.J. at 501, 453 A.2d at 534. The court explained, "Marriage should not be a free ticket to professional education and training without subsequent obligations. . . . One spouse ought not to receive a divorce complaint when the other receives a diploma." *Id.* at 503, 453 A.2d at 535.

39. *Id.*

40. *Id.*

41. *Grosskopf v. Grosskopf*, 677 P.2d 814, 821 (Wyo. 1984) ("there has been a tendency away from alimony").

42. *See Hubbard*, 603 P.2d at 752 (recovery founded on alimony would force recipient "to forego remarriage and perhaps even be celibate for many years").

43. *See, e.g., DeLa Rosa*, 309 N.W.2d at 757 (citing MINN. STAT. § 518.552 (1980)); *Lehmicke v. Lehmicke*, 339 Pa. Super. 559, 567, 489 A.2d 782, 786 (1985) (citing PA. STAT. ANN. tit. 23 § 401(d)(4) (Purdon Supp. 1986)). *See also In re Marriage of Graham*, 194 Colo. 429, 435, 574 P.2d 75, 78-79 (1978) ("[T]he Colorado statute would seem to preclude an award of maintenance here, for it restricts the court's power to award maintenance to cases where the spouse seeking it is unable to support himself or herself.") (citing COLO. REV. STAT. § 14-10-114 (1973)). For a discussion of Maryland's alimony law, see *infra* notes 90, 93-99, and accompanying text.

44. *See Pyeatte*, 135 Ariz. 346, 661 P.2d 196 (alimony not an issue before the court); *Hubbard*, 603 P.2d at 751-52 ("Equity would not be served by holding . . . that Ms. Hubbard's recovery be limited to alimony for support and maintenance.").

45. *Lehmicke*, 339 Pa. Super. at 568, 489 A.2d at 787. *See also DeLa Rosa*, 309 N.W.2d 755; *Hubbard*, 603 P.2d 747.

46. *Hubbard*, 603 P.2d 747.

47. *Pyeatte*, 135 Ariz. 346, 661 P.2d 196.

48. *Mahoney*, 91 N.J. 488, 453 A.2d 527; *Lehmicke*, 339 Pa. Super. 559, 489 A.2d 782.

49. *In re Marriage of Horstmann*, 263 N.W.2d 885 (Iowa 1978); *Inman v. Inman*, 648 S.W.2d 847 (Ky. 1982); *Haugan v. Haugan*, 117 Wis. 2d 200, 343 N.W.2d 796 (1984).

training.⁵⁰ The Supreme Court of Wyoming stated that an appropriate award may be one that affords the working spouse "an opportunity to obtain the same degree under the same circumstances."⁵¹

Despite the considerable litigation, Indiana is the only equitable distribution state⁵² whose legislature specifically has addressed the issue. In 1979, the following subsection was added to the Indiana Code:

When the court finds there is little or no marital property, it may award either spouse a money judgment not limited to the property existing at the time of final separation. However, this award may be made only for the financial contribution of one [1] spouse toward tuition, books, and laboratory fees for the higher education of the other spouse.⁵³

Thus, Indiana provides an award of last resort that is limited to reimbursement, but does not allow a return on the working spouse's investment.

In Maryland, a specially appointed Commission⁵⁴ drafted the Prop-

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

51. *Grosskopf v. Grosskopf*, 677 P.2d 814, 823 (Wyo. 1984).

52. California, a community property state, also has enacted legislation that provides for reimbursement of educational expenses that have benefited primarily one of the spouses. The statute reads in part:

(b) Subject to the limitations provided in this section, upon dissolution of marriage or legal separation:

(1) The community shall be reimbursed for community contributions to education or training of a party that substantially enhances the earning capacity of the party. The amount reimbursed shall be with interest at the legal rate, accruing from the end of the calendar year in which the contributions were made.

(2) A loan incurred during marriage for the education or training of a party shall not be included among the liabilities of the community for the purpose of division pursuant to Section 4800 but shall be assigned for payment by the party.

CAL. CIV. CODE § 4800.3 (West 1984). *See also* Law Revision Commission Comment, CAL. CIV. CODE § 4800.3 (West 1984) ("Although the education, degree, or license or the resulting enhanced earning capacity is not 'property' subject to division, community expenditures for them are properly subject to reimbursement.").

53. IND. CODE ANN. § 31-1-11.5-11(d) (Burns 1980 & Supp. 1986). By contrast, Pennsylvania courts have broad discretion in fashioning an appropriate remedy. The statute provides in part:

In all matrimonial causes, the court shall have full equity power and jurisdiction and may issue injunctions or other orders which are necessary to protect the interests of the parties or to effectuate the purposes of this act, and may grant such other relief or remedy as equity and justice require against either party or against any third person over whom the court has jurisdiction and who is involved in or concerned with the disposition of the cause.

PA. STAT. ANN. tit. 23 § 401(c) (Purdon Supp. 1986). In *Lehmicke v. Lehmicke*, 339 Pa. Super. 559, 567, 489 A.2d 782, 786-87 (1985), the court construed this statute as authorizing a compensatory award to the working spouse for the financial support given the student spouse.

54. *See* REPORT OF THE GOVERNOR'S COMMISSION ON DOMESTIC RELATIONS LAWS

erty Disposition in Annulment and Divorce Law⁵⁵ (Act) to remedy the inequities inherent in the then existing title system of property distribution upon the dissolution of a marriage.⁵⁶ Under this system, the spouse vested with title retained the property.⁵⁷ A spouse who purchased property with joint funds, but titled it individually, was permitted to retain the property upon dissolution of the marriage without compensating the other spouse.⁵⁸ The title system did not recognize a homemaker's non-monetary contributions to marriage.⁵⁹ The Commission believed its proposed Bill would provide fairer treatment to both spouses because equitable distribution principles recognize both the monetary and non-monetary contributions of spouses toward the acquisition of marital property.⁶⁰

The Act does not mention professional degrees or career assets, nor does it expressly provide compensation to a supporting spouse for contri-

1 (Jan. 1978) [hereinafter COMMISSION REPORT]. The Commission's proposed Bill was enacted with only slight modification.

55. 1978 Md. Laws 2304 (codified at MD. CTS. & JUD. PROC. CODE ANN. §§ 3-6A-01 to -08, recodified at MD. FAM. LAW CODE ANN. §§ 8-201 to -213 effective October 1, 1984, amended 1986). See generally Legislation, *Property Disposition Upon Divorce in Maryland: An Analysis of the New Statute*, 8 U. BALT. L. REV. 377 (1979).

56. "The Commission, after painstaking and extensive deliberation, concluded that what was needed in fact was a definition of the rights of the parties, in the disposition of property upon divorce or annulment, which would correct those inequities that uncorrected historical development of the law has wrought . . ." COMMISSION REPORT, *supra* note 53, at 14. The purpose of the Marital Property Act is to "end the inequity in Maryland's old 'title' system of dealing with the marital property of divorcing spouses." *Harper v. Harper*, 294 Md. 54, 63, 448 A.2d 916, 920 (1982) (quoting COMMISSION REPORT at 1).

57. See Legislation, *supra* note 54, at 380 n.26. If property was titled individually in the name of one spouse, the court could neither transfer title nor grant a monetary award to the non-titled spouse. *Id.* at 380-81 nn. 26-32. Thus, under prior Maryland law the issue in *Archer* could not have been maintained because the degree was in the graduate's name.

58. See *Woodall v. Woodall*, 16 Md. App. 17, 293 A.2d 839 (1972). Although the working wife contributed all her income to either her husband or the household, she was denied a share of the value of stock purchased with money from a joint bank account because the stock was purchased by the husband and titled in only his name. *Id.*

59. See *Gebhard v. Gebhard*, 253 Md. 125, 130, 252 A.2d 171, 174 (1969). The wife was awarded one-third of stock titled in her husband's name in recognition of her services as homemaker and unsalaried secretary in her husband's business. The court of appeals reversed the award stating, "No authority exists for a division [of assets] between parties . . . because of the work efforts of the parties." *Id.*

60. COMMISSION REPORT, *supra* note 53, at 5.

The Commission does not believe that the people of Maryland today hold the view that a spouse whose activities within the marriage do not include the production of income has 'never contributed anything toward the purchase' of property acquired during the marriage. Its members believe that non-monetary contributions within a marriage are real and should be recognized in the event that the marriage is dissolved or annulled.

Id. at 3 (referring specifically to *Gebhard*, 253 Md. 125, 252 A.2d 171). See also *Harper v. Harper*, 294 Md. 54, 63, 448 A.2d 916, 919-20 (1982); *Bender v. Bender*, 282 Md. 525, 534 n.7, 386 A.2d 772, 778 n.7 (1978).

butions to the student spouse's degree.⁶¹ Under the Act, the court must determine whether property is marital property, but it is given no guidelines in making this classification.⁶² Marital property is defined as "property, however titled, acquired by [one] or both parties during the marriage."⁶³ After the property is classified as marital property, it must be valued.⁶⁴ The court may not change the title to property; in lieu of actual distribution of property, the court may grant a monetary award to either spouse "as an adjustment of the equities and rights of the parties concerning marital property."⁶⁵ Nine specific factors must be considered by the court in determining the amount and method of payment of the award.⁶⁶ In addition, the court may consider any other factor it deems necessary in order to achieve a fair and equitable award.⁶⁷

The Act was construed by the Court of Appeals of Maryland in *Deering v. Deering*,⁶⁸ to include as marital property pension benefits that accrued during marriage.⁶⁹ The court noted the "sweeping" language of the Act and the broad and comprehensive meaning of the term "property" defined as "everything which has an exchangeable value or goes to make up a man's wealth."⁷⁰ The court held that a vested pension is a form of deferred compensation and not a mere expectancy.⁷¹ The em-

61. Several bills have been proposed to the Maryland General Assembly that would have required the court, when granting a monetary award under section 8-205, to consider the contributions by one spouse toward the education or career potential of the other spouse. See S. 2, 391st Leg., 1987 Md. S. Bills; S. 14, 390th Leg., 1986 Md. S. Bills; H. 131, 390th Leg., 1986 H. Bills. These bills were all defeated and, in fact, were unnecessary. See MD. FAM. LAW CODE ANN. § 8-205(a)(10) (the court may consider any factor it deems necessary or appropriate to achieve a fair and equitable award).

62. See MD. FAM. LAW CODE ANN. § 8-203 (1984 & Supp. 1986).

63. *Id.* § 8-201(e). The statute further provides:

- (2) "Marital property" does not include property:
- (i) acquired before the marriage;
 - (ii) acquired by inheritance or gift from a third party;
 - (iii) excluded by valid agreement; or
 - (iv) directly traceable to any of these sources.

Id.

64. *Id.* § 8-204.

65. *Id.* § 8-205(a).

66. *Id.* § 8-205(a)(1)-(9); see *infra* note 90.

67. *Id.* § 8-205(a)(10).

68. 292 Md. 115, 437 A.2d 883 (1981).

69. *Deering v. Deering*, 292 Md. 115, 128, 437 A.2d 883, 890 (1981). Section 8-205 was amended in 1986 to allow the trial court to transfer "an interest in a pension, retirement, profit sharing, or deferred compensation plan" between spouses. MD. FAM. LAW CODE ANN. § 8-205 (Supp. 1986).

70. *Id.* at 125, 437 A.2d at 889.

71. *Id.* at 121-28, 437 A.2d at 890. The court adopted the reasoning of the Supreme Court of California which held as marital property a non-vested pension. *In re Marriage of Brown*, 15 Cal. 3d 838, 126 Cal. Rptr. 633, 544 P.2d 561 (1976). The *Brown* court explained that a contingent future interest is recognized at law as property, and the contingency is a valuation issue. *Deering*, 292 Md. at 128, 437 A.2d at 890 (citing *Brown*, 15 Cal. 3d at 847-88, 126 Cal. Rptr. at 638-39, 544 P.2d at 566-67).

ployee has a present property right in the pension; therefore, to the extent accumulated during marriage, it is marital property.⁷² Although the pension is titled in only the employee's name, the spouse has an interest in the amount that accrued during the marriage.⁷³

In *Archer v. Archer*,⁷⁴ the Court of Appeals of Maryland held that a medical degree or license is not marital property under the Act.⁷⁵ Restitution was unnecessary because compensation to the supporting spouse presumably was achieved under the alimony statute.⁷⁶ The court reviewed the Act's legislative history and found nothing that indicated an intent to include a professional degree within the meaning of marital property.⁷⁷ Although the word property had been construed liberally in *Deering* and other cases,⁷⁸ a professional degree or license does not possess any of the basic characteristics of property.⁷⁹ A degree is merely an intellectual achievement,⁸⁰ and represents a *future* expectancy of enhanced earnings⁸¹ that is "too uncertain and speculative"⁸² to be marital property. Therefore, a degree or license is not subject to equitable distribution through a monetary award under section 8-205 of the Act.⁸³

The *Archer* court has construed the Act correctly: its holding is dictated by the use of the word "property" to define the statutory term "marital property."⁸⁴ Because the word "property" is not defined in the Act, the court analogized to prior case law and properly distinguished

72. *Deering*, 292 Md. at 127-28, 437 A.2d at 890 (citing *Brown*, 15 Cal. 3d 838, 126 Cal. Rptr. 633, 544 P.2d 561).

73. *Deering*, 292 Md. at 128, 437 A.2d at 890.

74. 303 Md. 347, 493 A.2d 1074 (1985).

75. *Archer v. Archer*, 303 Md. 347, 357, 493 A.2d 1074, 1079 (1985). Like almost all other jurisdictions addressing the issue, the *Archer* court did not distinguish between a professional degree and the license to practice. *But see Moss v. Moss*, 639 S.W.2d 370, 374 (Ky. Ct. App. 1982) (a pharmaceutical degree may be marital property, but a license to practice may not).

76. *Archer*, 303 Md. at 359, 493 A.2d at 1081.

77. *Id.* at 357, 493 A.2d at 1079.

78. *Id.* at 356, 493 A.2d at 1079 (citing, *inter alia*, *Deering v. Deering*, 292 Md. 115, 437 A.2d 883 (1981)). *See supra* text accompanying notes 67-71.

79. *Id.* at 357, 493 A.2d at 1079 (citing *In re Marriage of Graham*, 194 Colo. 429, 433, 574 P.2d 75, 77 (1978)).

80. *Archer*, 303 Md. at 357, 493 A.2d at 1079.

81. *Id.* (emphasis added). Income earned after the marriage's dissolution is not marital property because by definition marital property is property acquired during the marriage. *Id.* at 358, 493 A.2d at 1080. *Accord Queen v. Queen*, 308 Md. 574, 521 A.2d 320 (1987) (only that part of a spouse's lump sum permanent partial disability award that compensates for loss of earning capacity *during* the marriage is marital property); *Green v. Green*, 64 Md. App. 122, 494 A.2d 721 (1985) (stock options acquired during marriage are marital property).

82. *Archer*, 303 Md. 357, 493 A.2d at 1080.

83. *Id.* The *Archer* court also acknowledged additional reasons for not holding a professional degree marital property: the degree's value is too speculative, and characterizing spousal contributions as an investment deserving recompense demeans marriage. *Id.* at 352-53, 493 A.2d at 1077.

84. *See MD. FAM. LAW CODE ANN.* § 8-201(e)(1) (defining marital property as "the property, however titled, acquired by [one] or both parties during the marriage").

Deering.⁸⁵ Unlike a pension, a professional degree has no exchange value and may not be assigned to a spouse or any other person.⁸⁶ Although both may be earned during marriage, a pension creates a present property right whereas a degree represents only an expectancy.⁸⁷ When the parties' divorce follows closely upon attainment of the degree and before the new career is embarked upon, this expectancy will not be realized until *after* the marriage's dissolution.⁸⁸ Thus, because no right to income accrues *during* marriage, the degree is not marital property.⁸⁹

Although the narrow holding of *Archer* is correct, the result is unfair and the Act's equitable purpose is not achieved. The Commission and the Legislature focused on the unfairness that resulted upon the dissolution of a marriage when nonmonetary contributions to the accumulation of property were not recognized.⁹⁰ The Act, therefore, adequately provides for property distribution upon the divorce of a "traditional" couple where one spouse supported the family financially while the other spouse contributed as homemaker.⁹¹ As *Archer* demonstrates, however,

85. *Archer*, 303 Md. at 357, 493 A.2d at 1080-81; *cf.* *Deering v. Deering*, 292 Md. 115, 437 A.2d 883 (1981).

86. *Archer*, 303 Md. at 357, 493 A.2d at 1080-81.

87. *Id.* A professional degree "does not have an assignable value nor does it represent a guarantee of receipt of a set monetary amount in the future, such as pension benefits." *Id.* at 357, 493 A.2d at 1080.

88. *Id.* at 358, 493 A.2d at 1080.

89. *Id.*

90. COMMISSION REPORT, *supra* note 53, at 3, 6; *see also* *Bledsoe v. Bledsoe*, 294 Md. 183, 189, 448 A.2d 353, 356 (1982).

91. *See* COMMISSION REPORT, *supra* note 53, at 3. If the "traditional" couple accumulated marital property during their marriage, the court may grant the homemaker spouse a monetary award "as an adjustment of the equities and rights of the parties concerning marital property, whether or not alimony is awarded." MD. FAM. LAW CODE ANN. § 8-205(a). Among the factors the court must consider in granting a monetary award are:

(1) the contributions, monetary and nonmonetary, of each party to the well-being of the family; . . .

(3) the economic circumstances of each party at the time the award is made; . . .

(8) how and when specific marital property . . . was acquired, including the effort expended by each party in accumulating the marital property . . . ; [and]

(9) any award of alimony . . . that the court has made

Id.

Whether or not a monetary award is granted, the homemaker spouse may be awarded alimony. A monetary award is a factor to be considered by the court when awarding alimony. *Id.* § 11-106(b)(11)(ii). Other factors the court must consider in granting alimony are:

(1) the ability of the party seeking alimony to be wholly or partly self-supporting;

(2) the time necessary for the party seeking alimony to gain sufficient education or training to enable that party to find suitable employment;

(3) the standard of living that the parties established during their marriage;

(4) the duration of the marriage;

the "university degree-divorce decree" case is not reached by the Act.⁹² In this case, the working-homemaker spouse is in effect penalized for providing, in addition to homemaking services, the financial support that enabled the other spouse to attend school. The student spouse acquires a degree "with the fruits of the wage earner spouse's labors"⁹³ that otherwise would have been saved or used to purchase tangible property. Had the couple accumulated savings or other assets instead of a degree, those assets would be marital property and the working-homemaker spouse could receive a monetary award under the Act.⁹⁴

The *Archer* court incorrectly concluded that an adequate remedy is available to a supporting spouse under the alimony statute.⁹⁵ The common law concept of alimony as a lifetime pension has been superseded by rehabilitative alimony that is awarded for the purpose of providing the dependent spouse an opportunity to become self-supporting.⁹⁶ Although the sacrifices and contributions made toward the other spouse's degree may be considered by the trial court in awarding alimony,⁹⁷ the court also must consider "the ability of the party seeking alimony to be wholly or partly self-supporting"⁹⁸ and the amount of time needed for that party "to gain sufficient education or training to enable that party to find suitable employment."⁹⁹ Permanent alimony may be awarded in only limited circumstances, for example, when a dependent spouse is incapable of

(5) the contributions, monetary and nonmonetary, of each party to the well-being of the family

Id. § 11-106(b). In addition, the court may award alimony for an indefinite period if:

(1) due to age, illness, infirmity, or disability, the party seeking alimony cannot reasonably be expected to make substantial progress toward becoming self-supporting; or

(2) even after the party seeking alimony will have made as much progress toward becoming self-supporting as can reasonably be expected, the respective standards of living of the parties will be unconscionably disparate.

Id. § 11-106(c).

As a result of the monetary award and alimony statutes, the court can ensure that neither spouse in the "traditional" marriage is better off after the divorce because of sacrifices and benefits conferred during the marriage. See *In re Marriage of Horstmann*, 263 N.W.2d 885, 888 (Iowa 1978).

92. Section 8-205 is inapplicable and cannot be used to compensate a spouse's contributions to marriage when no marital property exists upon which to base the award. See *Ward v. Ward*, 52 Md. App. 336, 449 A.2d 443 (1982) (a monetary award under section 8-205 may not exceed the value of the marital property). Thus, only an award payable out of future earnings will allow an equitable resolution to the "university degree-divorce decree" problem.

93. *Deering v. Deering*, 292 Md. 115, 124, 437 A.2d 883, 888 (1981).

94. See *Mahoney v. Mahoney*, 91 N.J. 488, 500-01, 453 A.2d 527, 534 (1982).

95. *Archer v. Archer*, 303 Md. 347, 359, 493 A.2d 1074, 1081 (1985).

96. *Campolattaro v. Campolattaro*, 66 Md. App. 68, 502 A.2d 1068 (1986); *Holston v. Holston*, 58 Md. App. 308, 473 A.2d 459 (1984).

97. *Archer*, 303 Md. at 359, 493 A.2d at 1081.

98. MD. FAM. LAW CODE ANN. § 11-106(b)(1).

99. *Id.* § 11-106(b)(2).

achieving financial independence.¹⁰⁰ When the spouse seeking compensation was employed during the marriage and supported the family while the other spouse pursued an advanced education, the working spouse has demonstrated a capability of self-support and arguably is not entitled to alimony under the statute.¹⁰¹ Mrs. Archer, who worked throughout the marriage to support the couple and their children, received only \$100 per month alimony for a period not to exceed one year.¹⁰² The appellate record does not disclose whether the trial judge, in awarding this amount, felt constrained by the statutory limitations.

Despite the inadequacy of a statutory remedy based upon either alimony or a monetary award, the *Archer* court apparently was unwilling to grant equitable relief. By choosing alimony as the appropriate remedy and by ignoring restitution as an alternative, the court implicitly rejected the alternative plea in equity for compensation.¹⁰³ Whether the court was influenced by the appellant's failure to fully develop this avenue of relief¹⁰⁴ or by the less than compelling facts of the case is unclear.¹⁰⁵ Because the court did not distinguish *Archer* from analogous cases in other jurisdictions where restitution was awarded,¹⁰⁶ however, it is unlikely the court would have awarded restitution under more egregious circumstances. Furthermore, the court's statement, "if public policy dictates that some economic compensation be made" to a supporting spouse,¹⁰⁷ demonstrates the court's uncertainty concerning whether resti-

100. *Id.* § 11-106(c)(1).

101. *See supra* note 42 and accompanying text.

102. *See supra* text accompanying note 4.

103. Appellant's Brief at 4, *Archer v. Archer*, 303 Md. 347, 493 A.2d 1074 (1985). The wife plead, "In the alternative, Appellant submits that she is entitled to compensation for the financial contributions and other support she provided Appellee while he earned his medical degree and worked toward satisfying his residency requirement." *Id.* The court indirectly addressed this alternative plea for compensation stating, "if public policy dictates that some economic compensation be made to a spouse who makes monetary and nonmonetary contributions to the other spouse's acquisition of a professional degree/license, equitable results can be achieved under § 11-106." *Archer*, 303 Md. at 359, 493 A.2d at 1080.

104. This alternative plea for restitution is referred to only twice in appellant's brief. *See* Appellant's Brief at 4, 9, *Archer v. Archer*, 303 Md. 347, 493 A.2d 1074 (1985). Appellant's discussion follows:

While conceding the split of authority on the issue before this Court, virtually all courts having refused to hold that a professional degree/license constitutes marital property have nevertheless ruled that equity requires the working spouse to be compensated in recognition for his or her contributions toward attaining the degree/license. These courts have generally employed three methods to compensate the contributing spouse: 1) distribution of marital assets and liabilities; 2) some form of restitution alimony; or 3) a monetary award based on equitable principles such as unjust enrichment.

Id. at 9 (emphasis added) (citations omitted). Appellant then turned to a discussion of valuation and did not refer to alternative theories of compensation again.

105. *See supra* notes 1-4 and accompanying text.

106. *See supra* text accompanying notes 30-36.

107. *Archer*, 303 Md. at 359, 493 A.2d at 1081 (emphasis added).

tution is an appropriate remedy in a "university degree-divorce decree" case.

As the Indiana legislature¹⁰⁸ and a growing number of courts have recognized,¹⁰⁹ "Marriage should not be a free ticket to professional education and training without subsequent obligations. . . . Those spouses supported through professional school should recognize that they may be called upon to reimburse the supporting spouses for the financial contributions they received in pursuit of their professional training."¹¹⁰ Restitution is an appropriate remedy in these cases because the contributions are made and accepted with the shared expectation that in the future both parties will enjoy the rewards of the training.¹¹¹ Restitution ensures a minimal measure of fairness in circumstances where it would be unjust to allow the retention of a benefit without compensating the one who conferred it.¹¹²

The narrow issue before the *Archer* court was correctly decided: a professional degree is not marital property. The case, however, depicts an inherently unfair situation that was not foreseen by the Legislature and was not addressed by the *Archer* court. Because the court appears unwilling to adopt an equitable remedy in the "university degree-divorce decree" case, the Legislature must act. Indiana's statute granting reimbursement to a supporting spouse provides a model statute for a compensatory award that should be followed in Maryland.

Shoshana L. Katz

108. See *supra* text accompanying note 54.

109. See *supra* notes 30-36 and accompanying text.

110. *Mahoney v. Mahoney*, 91 N.J. 488, 503, 453 A.2d 527, 535 (1982).

111. See *DeLa Rosa v. DeLa Rosa*, 309 N.W.2d 755, 758 (Minn. 1981).

112. See *Pyeatte v. Pyeatte*, 135 Ariz. 346, 353, 661 P.2d 196, 203 (1982).