

CAN YOU PLACE A VALUE ON AN EDUCATION?: WHY TEXAS SHOULD TREAT A PROFESSIONAL DEGREE AS MARITAL PROPERTY*

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I. INTRODUCTION

Dan and Lily Robinson were high school sweethearts. They attended the same undergraduate university and married a week after graduation. Dan graduated with a degree in biology and became a middle school science teacher. Lily earned her degree in nursing and found her first job at the local hospital working nights in the intensive care unit. Although their hours kept them from seeing each other as much as they would like, Dan and Lily nonetheless enjoyed their new married lifestyle. Dan soon grew tired of his teaching job—finding the work to be rather dull and unchallenging. With Lily's support, he applied to medical school with the intention of becoming a surgeon. Dan enrolled in a nearby university's school of medicine, while Lily continued to work the night shift. She picked up extra hours here and there to earn extra money so she could pay the couple's living expenses, as well as the cost of Dan's tuition.

After four long years of sacrifice with little time together, Dan received his medical degree. Soon after, Dan announced to Lily that he no longer felt engaged in the marriage and wanted to make his career his sole priority—he filed for divorce. Lily felt hurt but also cheated; what about all the sacrifices she made to put him through school? She worked so hard and put all of her earnings toward Dan's education with the anticipation that his degree would translate to an enhanced standard of living for the couple. Would she ever be able to get back any of the contributions she made? As it turns out, the answer depends on the state in which the couple is divorcing.

Texas has not formally addressed the issue of whether a professional degree is marital property.¹ Unlike other states, the Texas legislature has yet to enact a statute that provides the answer and, as of this date, the Texas Supreme Court has not made a ruling on the issue.²

This comment will explain the different methods states have used to deal with professional degrees acquired during marriage. This comment will discuss the aspects of distribution and valuation of professional degrees, and additionally suggest a solution of how Texas should handle professional degrees in divorce. Part II will discuss how property other than a professional degree is typically handled during a divorce.³ Part III will examine the one occasion on which this issue arose in Texas, and the manner in which the court ruled.⁴ Part IV will examine the states that follow the majority approach: that professional degrees cannot be divided as marital property.⁵ Part V will discuss the states that treat a professional degree as marital property, which can be

1. *Frausto v. Frausto*, 611 S.W.2d 656, 658 (Tex. Civ. App.—San Antonio 1980, writ dismissed) (“There are no Texas cases directly in point.”).

2. *Id.*

3. *Infra* discussion Part II.

4. *Infra* discussion Part III.

5. *Infra* discussion Part IV.

valued and distributed in a divorce.⁶ Part VI explains how the states that do not consider professional degrees to be marital property will value these advanced degrees allowing spousal reimbursement for any contributions.⁷ Finally, Part VII proposes legislation that Texas should consider adopting to create a uniform position regarding the treatment of a professional degree at the time of divorce.⁸

II. EQUITABLE DISTRIBUTION OF PROPERTY DURING DIVORCE

In a division of assets during a divorce, the trial court generally has discretion to divide property equitably between the parties.⁹ Because distribution need not be equal, courts have discretion to consider facts specific to each case to ensure an equitable division.¹⁰ There are a number of factors the court may consider when determining what property should go to each party.¹¹ For example, a court may consider fault in the breakup of the marriage.¹² Courts may also take into account the comparative financial circumstances and obligations of each spouse.¹³ This may include dissimilar earning capabilities or income,¹⁴ business opportunities of one spouse that the other will not share following divorce,¹⁵ and extra financial burdens on the spouse making the child support payments.¹⁶

In addition to these considerations, trial courts will also consider the type of property system used in that state.¹⁷ The majority of states follow a separate property system.¹⁸ In the event of a divorce in a separate property state, the court will return any property acquired during the marriage to the spouse who acquired it.¹⁹ Conversely, for a divorce in a community property state, like Texas, courts treat property acquired during the marriage as belonging to each spouse equally.²⁰ Essentially, this means that each spouse holds a one-half

6. *Infra* discussion Part V.

7. *Infra* discussion Part VI.

8. *Infra* discussion Part VII.

9. *See Ex parte Moore*, 873 So. 2d 1161, 1166 (Ala. 2003).

10. *See Seherr-Thoss v. Seherr-Thoss*, 141 P.3d 705, 716 (Wyo. 2006).

11. 39 ALOYSIUS A. LEOPOLD, TEX. PRAC. SERIES: *Marital Property and Homesteads* § 20.14 (1993).

12. *Davey v. Davey*, 308 N.W.2d 468, 469 (Mich. Ct. App. 1981) (holding that “fault is still one of many valid considerations in matters of property division and a trial judge’s consideration of fault in determining a property division will not be disturbed absent an abuse of discretion”).

13. *Kenyon v. Kenyon*, 690 N.W.2d 251, 263 (Wis. 2004) (determining that once a party can show a change in financial circumstances, a modification can be made as to the original judgment of the divorce).

14. *Chafino v. Chafino*, 228 S.W.3d 467, 473 (Tex. App.—El Paso 2007, no pet.).

15. *Id.*

16. *Curtis v. Curtis*, 773 So. 2d 185, 193–95 (La. Ct. App. 2000).

17. *See* 1 WILLIAM B. ROBERTS, TASO M. MILONAS & EDWARD F. KONEN, EST. TAX & PERS. FIN. PLAN.: *Community Property* § 10:8 (2011).

18. ALBERT MELONE & ALLAN KARNES, *THE AMERICAN LEGAL SYSTEM: PERSPECTIVES, POLITICS, PROCESSES, AND POLICIES* 462 (2d ed. 2008).

19. *See id.*

20. *Id.*

interest in the property obtained during the time the couple was married.²¹ This division of the assets is generally straightforward for tangible property, such as the money in a bank account, a house, or a car, which all can be easily appraised.²² What about things acquired during marriage that cannot be easily valued, such as a professional degree?²³

There is a division amongst courts on how to treat a professional degree for divorce purposes.²⁴ Some courts have held that degrees might be marital property.²⁵ In many of these cases, one spouse worked while the other attended classes toward a professional degree, meaning the working spouse contributed more to the household expenses.²⁶ In many instances, the working spouse was also the source of tuition and other educational expenses of the student spouse.²⁷ If the divorcing couple lives in a state that considers a degree to be divisible as marital property, the court will place a value on the degree based on the amount of money put into acquiring the degree and the return expected from the degree's benefits.²⁸ After the court determines the value, it will divide the proceeds between the parties.²⁹

Other courts have held that degrees are personal property rights that cannot be divided; however, the student spouse may be forced to repay the contributions provided by the supporting spouse.³⁰ Courts recognize the speculative and unquantifiable aspect of placing a value on a professional degree based on the immeasurable future benefits.³¹ A court can derive a monetary value based on the amount of financial contributions put into the degree because the supporting spouses can typically come up with an estimate of how much she put toward the educational costs during the marriage.³² Based on the facts of the particular case, a court may order the student spouse to pay contributions back to the working spouse through reimbursement or by a spousal maintenance award.³³

The third approach taken by courts is the majority approach: professional degrees cannot be divided as marital property.³⁴ Courts have reasoned that not only are professional degrees impossible to give a precise monetary value, but

21. *See id.*

22. *Id.*

23. *See, e.g.,* Washburn v. Washburn, 677 P.2d 152, 155 (Wash. 1984).

24. Inman v. Inman, 578 S.W.2d 266, 267 (Ky. Ct. App. 1979).

25. *See, e.g.,* O'Brien v. O'Brien, 489 N.E.2d 712, 715 (N.Y. 1985).

26. *See, e.g.,* Chamberlain v. Chamberlain, 24 A.D.3d 589, 594 (N.Y. App. Div. 2005).

27. *See, e.g.,* O'Brien, 489 N.E.2d at 714.

28. *Id.* at 718.

29. *See* N.Y. DOM. REL. LAW § 236 (McKinney 2010).

30. *See In re* Marriage of Thornley, 838 N.E.2d 981, 988 (Ill. App. Ct. 2005).

31. *See* Wehrkamp v. Wehrkamp, 357 N.W.2d 264, 266 (S.D. 1984).

32. Hodge v. Hodge, 486 A.2d 951, 953-54 (Pa. Super. Ct. 1984), *aff'd*, 520 A.2d 15 (1986).

33. *See, e.g.,* Thornley, 838 N.E.2d at 988.

34. Johnson v. Johnson, 855 P.2d 250, 253 (Utah Ct. App. 1993).

they also do not fit into the definition of what can be considered “property.”³⁵ Although it may seem unfair to disregard the contributions of the supporting spouse, courts have held that attempting to place a value on a professional degree is entirely too speculative.³⁶ Courts consider the attempt to estimate the future earning capacity of a spouse with a professional degree impractical, even though the supporting spouse may be anticipating some return on investment when she was contributing to her spouses’ education.³⁷ For these reasons, the majority of states follow the approach that professional degrees are not marital property.³⁸

III. HOW TEXAS HAS TREATED A PROFESSIONAL DEGREE DURING DIVORCE

Unlike other states, Texas does not have a statute that indicates the appropriate procedure for how to treat a professional degree acquired during the marriage in a divorce settlement.³⁹ Furthermore, the Supreme Court of Texas has yet to make a ruling on this issue and, as of today, there is only one Court of Civil Appeals of Texas case addressing the subject.⁴⁰ Although this appellate decision may indicate how Texas courts would address the question in the future, the reasoning in the case might be outdated—given it is already over thirty years old.⁴¹

In *Frausto v. Frausto*, the San Antonio Court of Civil Appeals noted that no cases addressed the issue of how to treat a professional degree in Texas.⁴² The court formed its decision by examining other community property jurisdictions’ adopted policies.⁴³ After considering the precedents set forth in California and Colorado, the court held that “a professional education acquired during marriage is not a property right and is not divisible upon divorce.”⁴⁴ The court further concluded that the reimbursement award granted by the trial

35. *Id.* at 252. “Property can be bought, sold and devised. Bona fide degrees cannot be bought; they are earned. They cannot be sold; they are personal in nature to the named recipient.” *Id.* (quoting *Peterson v. Peterson*, 737 P.2d 237, 240 (Utah Ct. App. 1987)).

36. *In re Marriage of Goldstein*, 423 N.E.2d 1201, 1204 (Ill. App. Ct. 1981).

37. *See, e.g.,* *Woodworth v. Woodworth*, 337 N.W.2d 332, 334 (Mich. Ct. App. 1983) (holding that the husband’s law degree was “the end product of a concerted family effort [because b]oth parties planned their family life around the effort to [obtain the husband’s] degree”).

38. *See* *Guy v. Guy*, 736 So. 2d 1042, 1043 (Miss. 1999) (noting that “eighteen jurisdictions have held that a spouse’s degree has was not a marital asset,” as opposed to “the minority approach followed by some courts in three jurisdictions . . . that a professional degree is marital property”).

39. *Cf.* N.Y. DOM. REL. LAW § 236 (McKinney 2010); KY. REV. STAT. ANN. § 403.200 (West 1972) (listing states that, unlike Texas, have a specific statutory provision dealing with professional degrees during divorce).

40. *See* *Frausto v. Frausto*, 611 S.W.2d 656, 657 (Tex. Civ. App.—San Antonio 1980, writ dismissed).

41. *Id.*

42. *Id.* at 658.

43. *Id.*

44. *Id.* at 659.

court to the supporting spouse constituted error and was an abuse of discretion.⁴⁵

In *Frausto*, both spouses agreed that the husband would enter medical school.⁴⁶ The wife continued to work, and a considerable portion of her income went toward the couple's expenses.⁴⁷ Once the husband became a doctor, he sustained injuries that led to an erratic employment record.⁴⁸ This, combined with his heavy spending tendencies, kept the couple from experiencing the increase in wealth that is typically expected from the addition of a professional degree.⁴⁹ The trial court concluded that because Texas is a community property state, the husband's medical degree should be similarly treated as any other asset acquired during the marriage, and should be subject to equitable division at divorce.⁵⁰ Because a professional degree does not possess an appraisable market value, the court considered the amount of financial contributions made by the wife and awarded her a reimbursement of \$20,000.⁵¹ On appeal, the husband asserted the following two points of error: (1) that the trial court improperly held that his "education preparing him for the practice of medicine was community property and a property right divisible on divorce";⁵² and (2) his wife "was [not] entitled to such sum as reimbursement for her share of the community expense for appellant's education."⁵³ The appeals court looked to California and Colorado for examples of how those community property states addressed this particular issue.⁵⁴

One California case, *Todd v. Todd*, held that a court could not consider a professional degree as marital property because the court could not properly give the education a monetary value, which would enable the degree to be divided between the spouses.⁵⁵ A Colorado court affirmed this rule in *In re Marriage of Graham*, a case in which the court held that a legal education could not be community property.⁵⁶ The Colorado court reasoned that if it were to consider a professional degree as marital property and divisible between the parties, the reimbursement would be coming from the earnings of the student spouse following the divorce.⁵⁷ Additionally, the court reasoned that money earned post-divorce was separate property, so it would not be appropriate to

45. *Id.* at 660.

46. *Id.* at 658.

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.* at 657.

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.* at 658.

55. *Id.* (citing *Todd v. Todd*, 78 Cal. Rptr. 131, 134 (Cal. Ct. App. 1969)).

56. *Id.* at 658-59 (citing *In re Marriage of Graham*, 555 P.2d 527, 529 (Colo. Ct. App. 1976), *aff'd*, 574 P.2d 75 (1978)).

57. *Id.* at 658 (citing *In re Marriage of Aufmuth*, 152 Cal. Rptr. 668, 680 (Cal. Ct. App. 1979)).

order that some of this money go to the supporting spouse.⁵⁸ The court in *Graham* similarly held that a professional degree was not property and thus not divisible.⁵⁹ However, the court considered the professional education to be one of the several factors taken into account when creating an equitable division of property and determining maintenance and child support.⁶⁰

The *Frausto* court next contrasted these holdings with *Inman v. Inman*, a Kentucky case in which the court held that one spouse has a property interest in their spouse's professional degree.⁶¹ The *Frausto* court distinguished the contradictory holding of *Inman* by noting that Kentucky is a common law state, not a community property state.⁶²

While no Texas cases outside of *Frausto* have ruled on how to treat a professional degree during divorce, the *Frausto* court used reasoning similar to another Texas case regarding whether professional goodwill was an asset divisible upon divorce.⁶³ In *Nail v. Nail*, the Texas Supreme Court determined that professional goodwill—the skills, reputation, and experience of the doctor—could not be considered marital property.⁶⁴ The court concluded, “it cannot be said that the accrued good will in the medical practice of Dr. Nail was an earned or vested property right at the time of the divorce or that it qualifies as property subject to division by decree of the court.”⁶⁵ Furthermore, the court acknowledged that, much like a professional degree, professional goodwill does not have the properties that divisible assets generally hold.⁶⁶ A degree, much like professional goodwill, does not have a value separate from the person who earned the degree and it is not something that can live past that person's death or sale of practice.⁶⁷

Finally, after concluding that a professional degree was not marital property divisible at the time of divorce, the *Frausto* court looked to the issue of reimbursement.⁶⁸ Initially, the trial court granted the wife an award of \$20,000 in an attempt to compensate her for her share of the community expenses toward her husband's education.⁶⁹ According to the court of appeals, however, the language of the decree indicates that this award is not a typical reimbursement.⁷⁰ Rather than using separate property to add to the couple's community property, the wife's contributions toward the couple's expenses were coming from community property—her income acquired during the

58. *Id.* (citing *In re Aufmuth*, 152 Cal. Rptr. at 679).

59. *Id.* (citing *In re Graham*, 555 P.2d at 529).

60. *In re Graham*, 555 P.2d at 529.

61. *Inman v. Inman*, 578 S.W.2d 266, 270 (Ky. Ct. App. 1979).

62. *Frausto*, 611 S.W.2d at 659 (citing *Inman*, 578 S.W.2d at 270).

63. *Id.* (citing *Nail v. Nail*, 486 S.W.2d 761, 764 (Tex. 1972)).

64. *Nail*, 486 S.W.2d at 764.

65. *Id.*

66. *Id.*

67. *Id.*

68. *Frausto*, 611 S.W.2d at 660.

69. *Id.* at 658.

70. *Id.* at 660.

marriage.⁷¹ In addition to this disparity, the court also noted that there were no pleadings seeking reimbursement.⁷² Ordinarily, the court would not have considered a reimbursement under the circumstances.⁷³ For these reasons, the court of appeals found that there is no justification for an award of reimbursement.⁷⁴ The court concluded that awarding the wife a sum of \$20,000 was in error and therefore an abuse of the trial court's discretion.⁷⁵ Following this ruling, the court of appeals ordered a reversal and remanded the case to determine what portion of the estate belonged to the husband and what portion belonged to the wife.⁷⁶

IV. THE MAJORITY APPROACH: PROFESSIONAL DEGREES ARE NOT MARITAL PROPERTY TO BE DIVIDED UPON DIVORCE

The majority of states that have spoken on the issue of how to treat a professional degree acquired during marriage at the time of the divorce have held that the degree does not constitute marital property.⁷⁷ In reaching this conclusion, legislatures and courts have provided several different justifications.

A. Future Earning Capacity Does Not Fit Within the Legally Accepted Understandings of "Property"

Typically, property is considered to be something tangible, which usually makes division fairly simple.⁷⁸ Because a professional degree does not share many of the same characteristics of what is generally considered property, courts typically hold that a degree is not divisible amongst the divorcing parties.⁷⁹

Property can be bought, sold, and devised. Bona fide degrees cannot be bought; they are earned. They cannot be sold; they are personal to the named recipient. Upon the death of the named recipient, the certificate commemorating award of the degree might be passed along and treasured as a family heirloom, but the recipient may not, on the strength of that degree, practice law or medicine.⁸⁰

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. *See, e.g.,* Stevens v. Stevens, 492 N.E.2d 131, 135 (Ohio 1986); Joachim v. Joachim, 942 So. 2d 3, 4 (Fla. Dist. Ct. App. 2006); Wilcox v. Wilcox, 365 N.E.2d 792, 795 (Ind. Ct. App. 1977).

78. *See* Johnson v. Johnson, 855 P.2d 250, 252 (Utah Ct. App. 1993).

79. *See id.*

80. *Id.* (quoting Peterson v. Peterson, 737 P.2d 237, 240 (Utah Ct. App. 1987)).

1. Pennsylvania's Approach

In *Hodge v. Hodge*, the Supreme Court of Pennsylvania explained that a professional degree does not fit into the definition of property.⁸¹ The court looked to the state's divorce code to determine whether or not a husband's medical license fit within the state's definition of "marital property."⁸² After determining that marital property included all property acquired during marriage, the court next addressed the question of whether the husband's medical license was "property."⁸³ To assist in this analysis, the court used the same method used by other courts, following the precedent established in *In re Marriage of Graham*.⁸⁴ The court in *Graham* determined that an educational degree earned during marriage does not fit within the definition of property.⁸⁵ An educational degree does not have an exchange value, it cannot be sold, and it is not inheritable.⁸⁶ Instead, a degree is "simply an intellectual achievement that may potentially assist in the future acquisition of property."⁸⁷

In *Hodge*, the Pennsylvania court applied this reasoning to the facts of the case and held that because "a professional license does not have the attributes of property, it cannot be deemed 'property' in the classical sense."⁸⁸ Additionally, the state's divorce code did not disclose any legislative intent to give the term property a distinctive meaning outside of its customary definition.⁸⁹ Therefore, the court determined that it must construe the language according to its everyday usage.⁹⁰ Consequently, a professional degree is not marital property under the state's divorce code.⁹¹

2. Mississippi's Approach

The Supreme Court of Mississippi used a similar reasoning when it determined that a professional degree is not marital property in its 1999 case *Guy v. Guy*.⁹² The case presented an issue of first impression for this court; therefore, the court looked for guidance from another decision from the Supreme Court of Mississippi on a related topic.⁹³ In *Ferguson v. Ferguson*, the court dealt with the issue of equitable division of marital property and determined that when calculating the division of marital assets, the court would

81. *Hodge v. Hodge*, 520 A.2d 15, 17 (Pa. 1986).

82. *Id.* at 16.

83. *Id.* (citing 23 PA. STAT. ANN. § 401(e) (West 1984)).

84. *Id.*

85. *Id.* at 17.

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. *Guy v. Guy*, 736 So. 2d 1042, 1044 (Miss. 1999).

93. *Id.* at 1043.

consider contributions made by a supporting spouse toward the attainment of a degree.⁹⁴ In *Guy*, however, the majority of the judges interpreted this holding to mean that because “a professional degree [is not listed] as marital property to be equitably divided,” the court can consider only contributions made by the supporting spouse toward the attainment of the other spouse’s degree.⁹⁵ In the end, the court decided that it would be appropriate to issue an order for lump-sum alimony to be paid, so long as the husband could show evidence proving he spent the amount that he was claiming on his wife’s education.⁹⁶

One judge, Judge McRae, dissented.⁹⁷ While he agreed with the results reached in the decision, he did not believe that the majority was correct in its interpretation of the previous holding in *Ferguson*.⁹⁸ Rather, Judge McRae argued that the *Ferguson* decision actually held that education was “a marital asset, not an issue of alimony.”⁹⁹ His reasoning stemmed from the language in *Ferguson* indicating that alimony and marital assets “are distinct legal entities.”¹⁰⁰ The court created a dual characterization, which will make it difficult, if not impossible, to classify an educational degree at the time of divorce by its simultaneous treatment of an educational degree as a divisible marital asset and as justification for alimony.¹⁰¹

B. Future Earnings are Too Speculative to Calculate

If a court decides that a professional degree does fit within the category of marital property, it would next need to address the problem of valuation.¹⁰² The supporting spouse usually anticipates sharing in the benefits of the increased earnings and enjoying the higher standard of living that typically follows from the attainment of an advanced degree.¹⁰³ This indicates that courts should use the future earnings of the degree-earning spouse to determine the value of the degree for purposes of division during divorce.¹⁰⁴ In the South Dakota case, *Wehrkamp v. Wehrkamp*, the court recognized that determining the future earning potential was not feasible because there were a number of elements that could influence any anticipated monetary value.¹⁰⁵ “The factors and variables

94. *Id.* (citing *Ferguson v. Ferguson*, 639 So. 2d 921, 928 (Miss. 1994)).

95. *Id.*

96. *Id.* at 1046.

97. *Id.* at 1047. Judge McRae wrote his own opinion in which he concurred in part and dissented in part. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.* at 1048.

102. *See Wehrkamp v. Wehrkamp*, 357 N.W.2d 264, 266 (S.D. 1984).

103. *See, e.g., Woodworth v. Woodworth*, 337 N.W.2d 332, 334 (Mich. Ct. App. 1983) (holding that the husband’s law degree was “the end product of a concerted family effort. Both parties planned their family life around the effort to attain [the husband’s] degree.”).

104. *See, e.g., In re Marriage of Francis*, 442 N.W.2d 59, 62 (Iowa 1989).

105. *Wehrkamp*, 357 N.W.2d at 266.

involved in such a consideration are simply too speculative and could only act to turn the possibility of inequity on the one hand into a probability of such on the other.”¹⁰⁶

1. Wisconsin's Approach

In the case of first impression for Wisconsin, *DeWitt v. DeWitt*, the court of appeals agreed that it could not calculate the future earning capacity because all of the other previously established valuation methods used by other jurisdictions were wholly speculative.¹⁰⁷ The court recognized that a prediction of the success of the degree holder in his chosen field might show no relationship to the reality that follows the divorce.¹⁰⁸ The court reasoned, “[a] person qualified by education for a given profession may choose not to practice it, may fail at it, or may practice in a speciality [*sic*], location or manner which generates less than the average income enjoyed by fellow professionals.”¹⁰⁹ Establishing a figure of anticipated future earnings based on statistical averages could be completely inaccurate, which would be inherently unfair for one spouse or the other, depending on the outcome.¹¹⁰ Therefore, courts cannot be equitable by attempting to place a value on something so intangible like a professional education or degree.¹¹¹

Unlike alimony awards, which a court may modify over time, an award of future earnings is a final settlement, similar to other property awards.¹¹² If the degreed spouse changes careers or is not able to succeed in the degree profession, “his or her spouse will have been awarded a share of something which never existed in any real sense.”¹¹³ The *DeWitt* court applied this reasoning to conclude that the trial court abused its discretion in placing a value on the husband’s law degree.¹¹⁴ Instead, the court of appeals determined that it could not consider the husband’s law degree or legal education an asset of the marital estate to be divided upon divorce.¹¹⁵

C. Future Earnings Should Not be Awarded to Spouse Because This Income Is Earned Outside of the Marriage

In addition to being a speculative figure, some courts have held that courts cannot define future earnings as marital property because the spouse did not

106. *Id.*

107. *DeWitt v. DeWitt*, 296 N.W.2d 761, 768 (Wis. Ct. App. 1980).

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.* at 767.

112. *Id.* at 768.

113. *Id.*

114. *Id.* at 765.

115. *Id.* at 769.

earn the money during the marriage.¹¹⁶ Courts base the division of property on “a just and equitable share of the property accumulated as a result of their joint efforts.”¹¹⁷ Unquestionably, the spouse does not acquire the future earnings during the marriage, supporting the theory that such income should not be considered marital property.¹¹⁸

The Supreme Court of New Jersey followed this analysis in *Mahoney v. Mahoney*.¹¹⁹ Here, the court held that the trial court was incorrect in deciding that the husband’s master of business administration degree was a property right and in allowing the wife a partial reimbursement for the degree.¹²⁰ The court noted that the value of the degree is only the prospect of enhanced earnings and similarly agreed with other courts that this figure is purely speculative.¹²¹ The court further reasoned that because the husband’s income following the divorce would be property acquired after, rather than during marriage, the contributions have “no logical connection to the value of the degree.”¹²²

V. FEW STATES HAVE CONSIDERED PROFESSIONAL DEGREES TO BE MARITAL PROPERTY

In contrast to the majority of states that do not consider a professional degree marital property, one state definitively takes the opposite approach—New York.¹²³

A. New York’s Approach

In a leading case on the topic, a New York court held that a license to practice medicine obtained during a marriage was “marital property subject to equitable distribution.”¹²⁴ The Equitable Distribution Law, created by the New York Legislature, influenced the court of appeals’ decision.¹²⁵ The Equitable Distribution Law has a section of statutes devoted to Domestic Relations Law, which contains a definition of property.¹²⁶ This section only indicates two classes of property: separate property and marital property.¹²⁷ Marital property

116. See, e.g., *In re Marriage of Francis*, 442 N.W.2d 59, 62 (Iowa 1989); *Hodge v. Hodge*, 486 A.2d 951, 953 (Pa. Super. Ct. 1984), *aff’d*, 520 A.2d 15 (1986).

117. *In re Francis*, 442 N.W.2d at 62 (citing *In re Marriage of Hitchcock*, 309 N.W.2d 432, 437 (Iowa 1981)).

118. *Id.*

119. *Mahoney v. Mahoney*, 453 A.2d 527, 529 (N.J. 1982).

120. *Id.* at 536.

121. *Id.* at 532.

122. *Id.* at 533.

123. See *Johnson v. Johnson*, 855 P.2d 250, 252 (Utah Ct. App. 1993).

124. *O’Brien v. O’Brien*, 489 N.E.2d 712, 713 (N.Y. 1985).

125. *Id.* at 715.

126. *Id.*

127. *Id.*

is considered “all property acquired by either or both spouses during the marriage and before the execution of a separation agreement or the commencement of a matrimonial action, regardless of the form in which title is held.”¹²⁸ The court in *O’Brien* reasoned that the word “all” and the language “regardless of the form in which title is held” indicated that the New York Legislature intentionally “went beyond traditional property concepts when it formulated the Equitable Distribution Law.”¹²⁹ Although other states have reasoned that a professional degree could not be marital property because a degree does not possess the same characteristics as typical, tangible property, this court recognized that its state legislature intended the term “property” to be construed much more broadly.¹³⁰ This court determined that “traditional common law property concepts do not fit in parsing the meaning of ‘marital property.’”¹³¹

The intent of the New York Legislature to leave the definition of property open to broad interpretation gives courts the freedom to determine what interests fit within the language of the statute.¹³² Section 236 of the Domestic Relations Law stipulates the factors that a court should take into account when it is deciding how to distribute the marital property equitably.¹³³

[T]he court shall consider: . . . any equitable claim to, interest in, or direct or indirect contribution made to the acquisition of such marital property by the party not having title, including joint efforts or expenditures and contributions and services as a spouse, parent, wage earner and homemaker, and to the career or career potential of the other party [and] . . . the impossibility or difficulty of evaluating any component asset or any interest in a business, corporation or profession¹³⁴

In applying the language of the statute to the *O’Brien* facts, the court of appeals held that the husband’s medical degree fit within the meaning of marital property.¹³⁵ In this case, while the husband acquired his degree, the wife worked and contributed all of her income toward the family’s expenses, which included her husband’s educational costs.¹³⁶ She was also able to demonstrate to the court that she had plans for her own continuing education, and that she put those plans on hold solely to allow her husband to pursue his

128. *Id.* (citing N.Y. DOM. REL. LAW § 236(B)(1)(c) (McKinney, 2010)).

129. *Id.*

130. *Id.*

131. *Id.* (citing Florescue, Market Value, *Professional Licenses and Marital Property: A Dilemma in Search of a Horn*, 1982 N.Y. ST. BAR ASSN. FAM. L. REV. 13 [Dec.]).

132. *See id.* at 715.

133. *Id.*

134. *Id.* at 715–16 (citing what is now N.Y. DOM. REL. LAW § 236(B)(5)(d)(7), (10) (McKinney, 2010)) (emphasis added).

135. *Id.* at 720.

136. *Id.* at 716.

advanced degree.¹³⁷ This included relocating to Guadalajara, Mexico, for three and one-half years while her husband attended medical school there.¹³⁸ Based on both her personal and financial sacrifices and the unrealized expectation of a later increase in their standard of living, the court concluded that the wife was entitled to an equal share of the earnings resulting from the husband's medical degree.¹³⁹ Following expert testimony on the difference between the anticipated income of a general surgeon—which was the husband's occupation—and someone with only a bachelor's degree, the court awarded the wife payments in the form of installments over a ten-year period.¹⁴⁰ Guided by this decision, courts in New York followed this precedent for subsequent cases on the topic.¹⁴¹

B. Michigan's Approach

Courts in Michigan have also held professional degrees to be marital property on occasion.¹⁴² In *Daniels v. Daniels*, the husband and wife married at a young age and decided at the outset that the husband would finish his college education and continue through dental school while the wife worked to support them.¹⁴³ Once he was employed as a dentist, the wife would then be able to return to school and fulfill her dream of becoming an attorney.¹⁴⁴ Once the husband began working as a dentist, however, the couple divorced.¹⁴⁵ The trial court failed to award the wife any portion of the husband's dental degree and the wife raised this issue on appeal, claiming this was an abuse of discretion.¹⁴⁶

In considering this issue, the court of appeals looked to previous Michigan cases on the topic.¹⁴⁷ One case, *Woodworth v. Woodworth*, determined that an advanced degree is a marital asset that the court should distribute at the time of divorce.¹⁴⁸ However, subsequent cases held that a degree is not necessarily a marital asset, but the court should consider the degree when calculating an award of alimony.¹⁴⁹ The *Daniels* court acknowledged this inconsistency and

137. *Id.*

138. *Id.*

139. *Id.* at 720.

140. *Id.*

141. *See, e.g.,* *Allocco v. Allocco*, 578 N.Y.S.2d 995, 999 (N.Y. Sup. Ct. 1991); *Freyer v. Freyer*, 524 N.Y.S.2d 147, 150 (N.Y. Sup. Ct. 1987); *Mayeri v. Mayeri*, 632 N.Y.S.2d 833, 834 (N.Y. App. Div. 1995); *DeStefano v. DeStefano*, 501 N.Y.S.2d 419, 420 (N.Y. App. Div. 1986).

142. *See, e.g.,* *Daniels v. Daniels*, 418 N.W.2d 924, 927 (Mich. Ct. App. 1988); *Woodworth v. Woodworth*, 337 N.W.2d 332, 334 (Mich. 1983).

143. *Daniels*, 418 N.W.2d at 925.

144. *Id.*

145. *Id.* at 926.

146. *Id.* at 927.

147. *Id.*

148. *Woodworth v. Woodworth*, 337 N.W.2d 332, 334 (Mich. 1983).

149. *See* *Olah v. Olah*, 354 N.W.2d 359, 361 (Mich. 1984); *Wilkins v. Wilkins*, 386 N.W.2d 677, 682 (Mich. 1986).

decided to look to the specific facts of the case to reach its decision.¹⁵⁰ The court concluded that the degree was the most significant property acquired during the time of the marriage and that the wife had sacrificed for eight years, putting her aspirations on hold to support those of her husband.¹⁵¹ In the end, the court determined that “[i]t is clear that attainment of the degree was a joint effort, not defendant’s individual project.”¹⁵² For that reason, the court decided that the trial court’s failure to provide the wife with an award worth half of the husband’s dental degree was, in fact, an abuse of discretion.¹⁵³

VI. ALTHOUGH NOT MARITAL PROPERTY, SOME STATES HOLD THAT
SOME FORM OF REIMBURSEMENT MAY BE APPROPRIATE FOR A
PROFESSIONAL DEGREE

Courts have held that an equitable resolution is to provide a type of compensation or reimbursement to the supporting spouse.¹⁵⁴ This type of reasoning by the courts created a middle-ground approach for how to treat a professional degree acquired during marriage at the time of divorce.¹⁵⁵ Recognizing that placing a value on future earnings is speculative at best, some courts prefer to base awards on how much the supporting spouse actually contributed during the marriage.¹⁵⁶ This way, the supportive spouse is compensated according to the amount she put into the education, and the value of supportive spouse’s contribution is much easier to calculate than anticipated future earnings.¹⁵⁷ “[T]here is . . . clear agreement that the contributing spouse should be entitled to some form of compensation for the financial efforts and support provided to the student spouse in the expectation that the marital unit would prosper in the future as a direct result of the couple’s previous sacrifices.”¹⁵⁸

Although maintenance or alimony payments are forms of repayment, those methods can be disproportionate and have led courts to lean toward reimbursement, which is more straightforward.¹⁵⁹ One concern with allowing a maintenance award is the issue of remarriage.¹⁶⁰ If the ex-spouse that is receiving maintenance-type awards were to get married again during the time she was receiving the maintenance, she would no longer be able to collect those payments.¹⁶¹ In effect, the spouse would be punished for remarrying, which

150. *Daniels*, 418 N.W.2d at 927.

151. *Id.*

152. *Id.*

153. *Id.*

154. *See, e.g., DeLa Rosa v. DeLa Rosa*, 309 N.W.2d 755, 759 (Minn. 1981).

155. *Id.*

156. *See, e.g., id.*

157. *Id.*

158. *In re Marriage of Weinstein*, 470 N.E.2d 551, 557 (Ill. App. Ct. 1984).

159. *See O’Brien v. O’Brien*, 489 N.E.2d 712, 717 (N.Y. 1985).

160. *Id.* at 717.

161. *Id.* at 714.

may deter her from doing so.¹⁶² Furthermore, the fear that the supporting spouse may never be fully compensated for her contribution generally serves to deter courts from choosing a maintenance award over a reimbursement award.

A. Oklahoma's Approach

Oklahoma does not identify an educational degree as property that may be divided in a marital dissolution proceeding.¹⁶³ For example, in *Forristall v. Forristall* the Oklahoma Court of Civil Appeals held that the wife was entitled to restitution alimony because of the contributions she provided while her husband was in medical school.¹⁶⁴ Acknowledging the dilemma that often takes place when a divorce occurs shortly after the procurement of a degree, the court felt that it was reasonable to reimburse the wife for her contribution.¹⁶⁵ She, like many others, was not able to experience any of the benefit she anticipated receiving following her investment toward her husband's education.¹⁶⁶

Although the wife argued in favor of an award based on her husband's future earnings, the court was quick to hold that this possibility would not even be considered based on Oklahoma's policy of "not recogniz[ing] an educational degree as property subject to division in a marital dissolution proceeding."¹⁶⁷ The court recognized, however, that it would be unfair to disregard her contribution entirely.¹⁶⁸ Rather than awarding an amount based on the husband's future income, the court used evidence of her contributions over the years to provide her reimbursement.¹⁶⁹ "[T]he [c]ourt concluded equity required an alimony award to prevent unjust enrichment to the professional spouse. Otherwise, the professional spouse would reap all of the benefits of an investment made by both parties."¹⁷⁰

B. West Virginia's Approach

In a case of first impression for West Virginia, the Supreme Court of Appeals of West Virginia in *Hoak v. Hoak* similarly decided that a professional degree, earned during the marriage, was not marital property.¹⁷¹ In its analysis, the court reasoned that, "a degree of any kind results primarily from the efforts of the student who earns it. Financial and emotional support are important, as

162. *Id.*

163. *See Forristall v. Forristall*, 831 P.2d 1017, 1019 (Okla. Civ. App. 1992).

164. *See id.* at 1020.

165. *See id.* at 1019.

166. *See id.*

167. *Id.*

168. *See id.* at 1020.

169. *See id.* at 1019.

170. *Id.*

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

are homemaker services, but they bear no logical relation to the value of the resulting degree.”¹⁷² In spite of this belief, the court still acknowledged that the contributions were worthy of some form of reimbursement,¹⁷³ and that to disregard this compensation would not be fair or equitable.¹⁷⁴ The court agreed with the approach of valuing the contributions put into the degree, rather than attempting to value the professional degree itself.¹⁷⁵ Citing the Supreme Court of New Jersey’s decision of *Mahoney v. Mahoney*, the court in *Hoak* valued the amount of contributions so that the judge need not “guess about future earnings, inflation, the relative values of the spouses’ contributions, etc.”¹⁷⁶ Although the court in *Hoak* had numerous persuasive cases from other jurisdictions to base a decision on, the court decided this case of first impression in a broad manner.¹⁷⁷ In the end, the court decided that each instance arising on this subject was unique and would best be resolved on a case-by-case basis.¹⁷⁸ The court stated, “[t]he trial court, if it concludes that reimbursement is merited, should try to make a fair and reasonable award based on whatever method it deems appropriate.”¹⁷⁹

To justify its reasoning, the court explained there were a number of different factors that would affect whether the supporting spouse would be entitled to receive a reimbursement award.¹⁸⁰ For example, a supporting spouse of a lengthy marriage is deserving of compensation at the time of divorce.¹⁸¹ Conversely, the court stated that for instances in which there is no expectancy of a higher standard of living, the supporting spouse should not be reimbursed for her contributions.¹⁸² Based on the high number of variations among cases, the court in *Hoak* determined that each would need to be determined on an individualized basis.¹⁸³

VII. WHY TEXAS SHOULD CHANGE ITS POLICY TO CONSIDER A PROFESSIONAL DEGREE MARITAL PROPERTY

Texas currently has no formal position on how to treat a professional degree earned during the marriage in the event of a divorce.¹⁸⁴ However, the San Antonio Court of Appeals explored this issue in 1980 and concluded that a

172. *Id.* at 477.

173. *Id.*

174. *Id.*

175. *Id.*

176. *Id.*

177. *Id.* at 479.

178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.*

183. *Id.*

184. *Frausto v. Frausto*, 611 S.W.2d 656, 658 (Tex. Civ. App.—San Antonio 1980, writ dismissed) (“There are no Texas cases directly in point.”).

professional degree did not constitute marital property.¹⁸⁵ The court explained that the trial court abused its discretion in awarding a maintenance value to the supporting spouse, which was intended as compensation for the wife's contributions toward her husband's education expenses.¹⁸⁶ The court made its final ruling for this case over thirty years ago.¹⁸⁷ Therefore, the decisions the court looked to for guidance are even older.¹⁸⁸ Since then, this topic has become more widespread, and subsequent decisions have placed more emphasis on factors such as fairness and equality, leading to a shift in the courts' analysis.¹⁸⁹ This shift needs to be reflected in a Texas policy, and rather than looking to outdated decisions from other states, Texas should consider the type of property system in the state as well as basic principles of fairness.

A. The Link Between Property System and How to Treat a Professional Degree

The type of property system that exists in a state determines the divisibility of marital property in the event of divorce.¹⁹⁰ Because Texas is a community property state, courts treat property acquired during marriage as belonging to each spouse equally.¹⁹¹ As explicitly stated in the Texas Family Code, "[p]roperty possessed by either spouse during or on dissolution of marriage is presumed to be community property."¹⁹² For one spouse to argue against this presumption, he or she must prove the property in question is separate property by a standard of clear and convincing evidence.¹⁹³ Texas should apply this standard to professional degrees so that courts will presume the degrees to be community property until the student spouse can show clear and convincing evidence otherwise.

The majority of states hold that professional degrees are not divisible as marital property; it is important to note that a majority of states also follow a separate property system.¹⁹⁴ The distinction between states' property systems is important to consider when determining how to treat a professional degree.¹⁹⁵ Because Texas follows a community property system, it would be inconsistent for Texas to follow the reasoning from courts in states that utilize a separate property system when determining how to treat a professional degree.¹⁹⁶

185. *Id.* at 659.

186. *Id.*

187. *See id.* at 656.

188. *See id.* at 658.

189. *See, e.g., In re Marriage of Olar*, 747 P.2d 676, 680 (Colo. 1987).

190. *See ROBERTS ET AL.*, *supra* note 17.

191. MELONE & KARNES, *supra* note 18.

192. TEX. FAM. CODE ANN. § 3.003(a) (West 2006).

193. *Id.* at § 3.003(b).

194. *Johnson v. Johnson*, 855 P.2d 250, 252 (Utah Ct. App. 1993).

195. *See generally* Frausto v. Frausto, 611 S.W.2d 656, 658 (Tex. Civ. App.—San Antonio 1980, writ dismissed).

196. *See generally* ROBERTS ET AL., *supra* note 17.

B. Why a Professional Degree Should Be Considered "Property"

Texas courts interpret the term "property" broadly.¹⁹⁷ The term is most often used to define either physical objects or rights and interests.¹⁹⁸ While paper degrees are technically physical objects, the value of the degree is actually contained in the rights gained by its holder.¹⁹⁹ Possessing a degree enables the graduate to say that they possesses certain qualifications and entitles the graduate to advanced career opportunities.²⁰⁰ The Texas Constitution provides its own interpretation of the meaning of separate and community property of husband and wife.²⁰¹ The broad explanation specifies how to determine whether property is separate or community based on the type of property and when the parties acquired it.²⁰² When discussing the term property itself, the constitution only characterizes property as including both real and personal property.²⁰³ By considering such a broad definition of property, it is reasonable to conclude that a Texas court would consider a degree property in the state of Texas.²⁰⁴ Decisions from other states largely rely on their own statutes and their underlying legislative histories to determine the definition of property.²⁰⁵ Therefore, in Texas if these precedential decisions were limited to a stricter definition of property, it would be inconsistent with the Texas Constitution.²⁰⁶

While many other states cite the difficulty of valuation as a reason not to consider a professional degree to be property, this justification is inadequate.²⁰⁷ The issue of calculating a speculative award is not unique to this problem.²⁰⁸ Calculating tort damages in the event of a wrongful death and determining the amount of diminished earning capacity following an injury are examples of other everyday scenarios in which courts must determine projected compensation awards.²⁰⁹ Placing a value on a professional degree differs only slightly from "valuing a professional practice for purposes of a distributive award, something the courts have not hesitated to do."²¹⁰ Additionally, the fact that valuation is difficult does not mean that the spouse's contribution should be neglected entirely.²¹¹

197. See, e.g., *Weaver v. Aquila Energy Mktg. Corp.*, 196 B.R. 945, 951 (S.D. Tex. 1996).

198. *Id.* (citing what is currently 73 C.J.S. *Property* § 1 (2011)).

199. See, e.g., *Hoak v. Hoak*, 370 S.E.2d 473, 475–77 (W. Va. 1988).

200. *Id.*

201. TEX. CONST. art. XVI, § 15 (amended 1999).

202. *Id.*

203. *Id.*

204. See generally *id.*

205. See generally *O'Brien v. O'Brien*, 489 N.E.2d 712, 715 (N.Y. 1985).

206. *Id.*

207. See, e.g., *id.* at 718.

208. *Id.*

209. *Id.*

210. *Id.*

211. See *id.* at 717.

C. Shifting Past Precedent

The reasoning most often cited that supports the majority view, that a professional degree is not marital property, comes from the case *In re Marriage of Graham*.²¹² The court in *Graham* held that the husband's masters of business administration was not property that could be divided and that the supporting spouse's contributions could only be taken into account when maintenance is sought.²¹³ The rationale most frequently quoted from this decision by other courts is the language explaining that a professional degree cannot be considered property because it does not possess the typical characteristics of property.²¹⁴ Professional degrees cannot be sold or traded and do not have an economic value.²¹⁵ Rather, a professional degree is "simply an intellectual achievement" that may assist its holder in the potential attainment of property.²¹⁶

Other courts have cited the majority's reasoning in *Graham*.²¹⁷ However, the trouble with this popular language is that the *Graham* holding was disapproved by a subsequent decision in the same court.²¹⁸ *In re Marriage of Olar* held that supporting spouses not receiving any kind of reimbursement or restitution from their contributions toward their spouse's education is inherently unjust.²¹⁹ While *Graham* specified that an award of maintenance is not proper unless the supporting spouse can demonstrate a need for financial support, the same court reversed the supporting spouse's denial of maintenance because "the trial court's holding does not adequately address the unfairness which results when one spouse sacrifices his or her own educational goals to support his or her spouse."²²⁰

As it exists today, the issue of how to deal with professional degrees acquired during marriage must take into account that *Graham*, the most frequently cited case to support the majority of states' views, has been disapproved.²²¹ Additionally, the *Graham* decision is over thirty years old.²²² Since that time, there has been a shift in policy on the topic as courts look beyond the technical language of their state statutes and instead put more of an emphasis on traditional notions of fairness.²²³ One major reason for a shift in

212. See *Hoak v. Hoak*, 370 S.E.2d 473, 475 (W. Va. 1988) (citing *In re Marriage of Graham*, 555 P.2d 527, 529 (Colo. Ct. App. 1976), *aff'd*, 574 P.2d 75 (1978)).

213. *In re Graham*, 555 P.2d at 529.

214. *Hoak*, 370 S.E.2d at 475.

215. *Id.*

216. *Id.* at 476.

217. E.g., *In re Marriage of Olar*, 747 P.2d 676, 676 (Colo. 1987).

218. See *id.*

219. *Id.* at 682.

220. *Id.* at 680.

221. See *id.* at 681.

222. See *In re Marriage of Graham*, 555 P.2d 527, 529 (Colo. Ct. App. 1976), *aff'd*, 574 P.2d 75 (1978).

223. See, e.g., *In re Olar*, 747 P.2d at 680.

the way professional degrees are treated is the dramatic increase in the number of people earning these degrees.²²⁴

Data from the U.S. Census Bureau shows that there has been a substantial change not only in the number of people receiving degrees from higher education, but also a considerable increase in the number of females receiving the degrees.²²⁵ In the short amount of time between 2001 and 2010, there was a 24% increase in the number of married students over the age of 25 who received a master's degree, professional degree, or doctorate degree.²²⁶ Moreover, the number of female married students over the age of 25 receiving one of those degrees increased 34% from 2001 to 2010.²²⁷ This data shows that there is a much greater possibility today that at least one spouse will seek a professional degree during their marriage.²²⁸

D. How Texas Can Adopt a Policy that Reflects Current Needs

With more of the population obtaining some type of professional degree, there is a higher likelihood of a couple encountering the dilemma of how to treat a professional degree acquired during marriage at the time of divorce.²²⁹ Because this issue is becoming a more prevalent dilemma in today's society, it is important for states to update outdated policies by placing more consideration on remedying the inherent unfairness to the supporting spouse by considering a professional degree an asset of the marriage. This way, the supporting spouse can be compensated through reimbursement of past contributions and be granted an award of compensation, which is intended to reflect an anticipated higher future standard of living.²³⁰

There are two measures for Texas to employ in addressing this growing problem. First, when this issue arises in Texas trial courts, the courts should defer to the state constitution and state statutes to adhere to Texas's established broad definition of property as well as the presumption of community property. Second, the Texas Legislature needs to adopt an official stance on the issue so that the problem does not require litigation each time it develops in a divorce proceeding, which would effectively eliminate the need for the above-mentioned measure.²³¹ Texas should enact legislation under Chapter 7 of the Texas Family Code.²³² Specifically, a statute regarding how to treat a

224. See generally *Current Population Survey Data on Educational Attainment*, U.S. CENSUS BUREAU, <http://www.census.gov/hhes/socdemo/education/data/cps/index.html> (last visited Apr. 5, 2012).

225. See *id.*

226. *Id.*

227. *Id.*

228. See generally *id.*

229. *Id.*

230. See, e.g., *In re Marriage of Francis*, 442 N.W.2d 59, 62 (Iowa 1989).

231. *Frausto v. Frausto*, 611 S.W.2d 656, 658 (Tex. Civ. App.—San Antonio 1980, writ dismissed) (“There are no Texas cases directly in point.”).

232. TEX. FAM. CODE ANN. §§ 7.001–.006, .008 (West 2006); TEX. FAM. CODE ANN. § 7.007 (West 2006 & Supp. 2011) (West 2006); TEX. FAM. CODE ANN. § 7.009 (West Supp. 2011).

professional degree would fit under § 7.002, which is entitled “Division and Disposition of Certain Property Under Special Circumstances.”²³³ This new statute should use language similar to the following:

In a decree of divorce or annulment, the court shall confirm as community property the amount invested in educational expenses when a degree of higher education was obtained by one or both spouses during the marriage, in addition to anticipated earnings which would result from such advanced degree, with the amount of these anticipated earnings calculated in a manner that the court deems just and right.

After examining the dilemma in light of Texas’s status as a community property state and the need to resolve the issue of injustice toward the sacrificing spouse, it should be clear that Texas must consider a professional degree to be marital property. Furthermore, Texas should give courts the freedom to award reimbursement or maintenance to the supporting spouse according to the specific facts of the case.

by Elizabeth Morse

233. TEX. FAM. CODE ANN. § 7.002.