

COMMUNITY REIMBURSEMENT FOR A PROFESSIONAL DEGREE UPON DISSOLUTION

In 1985, the California Civil Code was amended to require, at divorce, that the community be reimbursed for the costs of an education of training acquired during marriage. The new code provisions represent a unique response to what many have described as a basic unfairness inherent in the California community property system. This Comment will examine the new code provisions in relation to prior California case law, and the response to the issue in other states; examine the forces which provided the impetus for the passage of the provisions; discuss the practical implications of the amendments; and finally, examine the interrelationship of the reimbursement remedy with the remainder of the California community property system.

INTRODUCTION

According to California law prior to January 1, 1985, a spouse, prior to or at dissolution, had no right or interest in the professional degree of his or her marital partner, although the degree was obtained by virtue of an education or training acquired entirely during the marriage.¹ This judicially formulated doctrine stood in bleak contrast to the fundamental principle of the California community property system, which provides, with a few limited exceptions,² that each spouse has an equal interest in all property acquired during the course of the marriage.³

1. *In re Marriage of Sullivan*, 134 Cal. App. 3d 634, 184 Cal. Rptr. 796 (1984), *rev'd*, 37 Cal. 3d 762, 209 Cal. Rptr. 354, 359 (1984). *See also In re Marriage of Aufmuth*, 89 Cal. App. 3d 446, 152 Cal. Rptr. 668 (1979), *disapproved on other grounds in In re Marriage of Lucas*, 27 Cal. 3d 808, 166 Cal. Rptr. 853 (1980); *Todd v. Todd*, 272 Cal. App. 2d 786, 78 Cal. Rptr. 131 (1969).

2. CAL. CIV. CODE §§ 5107, 5108 (West 1983). These sections define as separate property any property acquired after marriage by gift, bequest, devise, or descent. There is, however, a presumption that property acquired during marriage by either spouse's work or effort is community property. *See See v. See*, 64 Cal. 2d 778, 783, 51 Cal. Rptr. 888, 891 (1966).

3. CAL. CIV. CODE § 5110 (West 1983). Upon divorce, the court must divide all community property equally between the spouses. *Id.* at § 4800(a) (West 1983).

Beginning in 1985, amendments to the California Civil Code, designed to ameliorate the harshness of prior law regarding the disposition of a professional education, became effective.⁴ The new provisions⁵ delineate a two pronged approach to the resolution of the rights of a husband or wife in the degree or license of his or her spouse.⁶ First, section 4800.3 provides that at dissolution the court must order reimbursement to the community for contributions to the education or training of a spouse which has substantially enhanced his or her earning capacity.⁷ Reimbursement may be reduced, modified, or eliminated by either an express written agreement of the parties to the contrary, or to the extent that circumstances render full reimbursement unjust.⁸ Loans incurred during the marriage for an education are not treated as a community liability, but rather are assigned to the party who received the professional degree.⁹ Second, an amendment to section 4801 requires the court to consider, in determining the amount of spousal support to be awarded, the extent to which the nonprofessional spouse contributed to the achievement of an education, license, or training of the other spouse.¹⁰

In effect, the new provisions of the Civil Code represent a complete revision of preexisting legal principles governing the treatment

4. *Id.* at §§ 4800.3, and 4801 (West Supp. 1985).

5. The changes comprise the addition of section 4800.3, the deletion of section 4800(b)(4), and the amendment of section 4801. *Id.* at §§ 4800.3, 4800, and 4801 (West Supp. 1985).

6. *Id.* at § 4800.3 (West Supp. 1985).

7. Reimbursement includes interest at the legal rate, which is calculated from the end of the calendar year in which the contributions were made. *Id.* at § 4800.3(b)(1) (West Supp. 1985).

8. *Id.* at § 4800.3(c) (West Supp. 1985). The code itself provides several examples of situations where reimbursement might be deemed unjust. First, reimbursement will not be ordered if the community has substantially benefited from the education. If the marriage ends less than ten years after the educational process, the presumption is that the community has not substantially benefited from the education; if the community contributions were made more than ten years before divorce, there is a rebuttable presumption that the community has substantially benefited from the education. Second, reimbursement will be denied if the education is offset by education or training received by the supporting spouse which is paid for with community contributions. Third, where the training enables the recipient to engage in gainful employment and substantially reduces his or her need for spousal support, reimbursement is unavailable. *Id.*

9. *Id.* at §§ 4800, 4800.3(b)(2) (West Supp. 1985). Prior to the 1984 amendments, section 4800(b)(4), relating to educational loans, read as follows: "Educational loans shall be assigned to the spouse receiving the education in the absence of extraordinary circumstances rendering such an assignment unjust." This section was deleted and replaced with section 4800 which provides that educational loans "shall not be included among the liabilities of the community . . . but shall be assigned for payment to the party [receiving the education]." *Id.* at § 4800.3(b)(2) (West Supp. 1985).

10. *Id.* at § 4801(a)(1) (West Supp. 1985). A reciprocal provision of section 4800.3 provides that nothing in the section shall limit the effect of spousal contributions or reimbursement in considering the parties' circumstances, for the purposes of determining section 4801 support payments. *Id.* at § 4800.3(d) (West Supp. 1985).

of professional degrees and licenses upon divorce.¹¹ This "revolution" in family law is the focus of this Comment, which will examine the evolution of California case law in this area prior to the enactment of the new Civil Code sections; the varied responses in other jurisdictions to the same issue; the forces which prompted and motivated the revitalization of California law in this area; the practical applications of the new law; and, finally, whether the revisions are an adequate response, in a community property system, to the issue of compensation for contributions to the education of a spouse.

PRIOR CALIFORNIA CASE LAW

Prior to the enactment of section 4800.3 and amendment of section 4801, a well established principle of California case law dictated that an education or training, even if acquired exclusively during marriage, was not a property right capable of division upon divorce.¹² In effect, an educated spouse was legally permitted to leave a marriage without compensating the community for its contributions to his or her greatly enhanced earning capacity. The nonacquiring spouse, who may have represented the primary or even exclusive source of support, thereby facilitating the educational process, was denied any interest whatsoever in the fruits of his or her sacrifices.

This strand of legal authority had its genesis in the 1945 California case of *Franklin v. Franklin*, which concerned the property status of a cause of action for the personal injuries of one spouse upon dissolution.¹³ In determining that, while money recovered during marriage for personal injuries was community property, the right to sue for such injuries was not, the court, in a single sentence of dictum, stated: "[t]he right to practice medicine and similar professions, for instance, is a property right but it is not one which could be classified as community property."¹⁴

Twenty-four years later, in the first California case to specifically address the issue of a potential spousal interest in the education or training of a marital partner, that single sentence of dictum was transformed into a majority opinion.¹⁵ In *Todd v. Todd*, the husband

11. Compare *Sullivan*, 134 Cal. App. 3d at 634, 184 Cal. Rptr. at 796, *rev'd*, 37 Cal. 3d at 771, 209 Cal. Rptr. at 359 (community has no interest in professional degree), with CAL. CIV. CODE § 4800.3 (West Supp. 1985) (community entitled to reimbursement for its contribution to education).

12. See cases cited *supra* note 1.

13. 67 Cal. App. 2d 717, 155 P.2d 636 (1945).

14. *Id.* at 725, 155 P.2d at 644.

15. *Todd*, 272 Cal. App. 2d at 786, 78 Cal. Rptr. at 131.

had obtained a law degree during marriage while his wife worked; by the time the divorce action began, however, he had been practicing fourteen years and the assets of the community were substantial.¹⁶ In rejecting Mrs. Todd's claim that the education of her husband was a community asset, the court, by reference to *Franklin*, determined that his education was an intangible property right, and was therefore incapable of having a divisible dollar value.¹⁷

A decade later, a second California appellate decision adhered to the *Todd* decision in holding that a legal education could not be considered a community asset.¹⁸ The court reasoned that to allow the community an interest in the husband's legal degree would, in effect, require a division of assets acquired after the dissolution — assets that clearly, under California law, were separate property.¹⁹ While noting that a recent Iowa Supreme Court decision had found a spousal interest in a professional degree, the court found that case "unpersuasive," and refused to follow it.²⁰

In the last case to address the issue before the California legislature became involved, an appellate court in *In re Marriage of Sulli-*

16. *Id.* at 789, 78 Cal. Rptr. at 134. Mrs. Todd worked full-time while her husband attended school, and for several years after his graduation. During the remainder of the marriage, she continued to work on a part-time basis. As a result of their mutual efforts, the community had net assets of over \$200,000 at the time of their separation, which were divided unequally between the spouses under then applicable California Civil Code section 4800. Mrs. Todd received \$111,500 in community assets; her husband \$89,100. Furthermore, Mrs. Todd was awarded \$200 per month alimony. Thus, in this instance, the supporting wife was awarded additional assets, arguably to offset her contribution to her husband's education. *Id.* at 791, 795, 78 Cal. Rptr. at 139, 143. Under the revised code, however, an unequal division of community assets is impermissible. CAL. CIV. CODE § 4800 (West 1983).

17. *Todd*, 272 Cal. App. 2d at 791, 78 Cal. Rptr. at 135.

18. *Aufmuth*, 89 Cal. App. 3d at 446, 152 Cal. Rptr. at 668, *disapproved on other grounds* in *Lucas*, 27 Cal. 3d at 808, 166 Cal. Rptr. at 853. Mrs. Aufmuth sought, on appeal, only to offset the obligation of the community for her husband's student loan by the value of his legal education. *Id.* at 460, 152 Cal. Rptr. at 677.

19. *Id.* at 462, 152 Cal. Rptr. at 678. The court reasoned that if the community was permitted to claim an interest in an education acquired during marriage it would in effect have been awarded a portion of the professional spouse's future earnings, which resulted from his or her enhanced earning capacity. *Id.* Property acquired after divorce (such as post-divorce earnings) is separate and thus nondivisible. CAL. CIV. CODE §§ 5107, 5108 (West 1983). The trial court awarded Mrs. Aufmuth a spousal support payment of \$1,000 per month for an infinite duration, which the appellate decision explicitly upheld. *Aufmuth*, 89 Cal. App. 3d at 453, 152 Cal. Rptr. at 673. Such an unusually high support award may have been partially motivated by recognition of Mrs. Aufmuth's substantial contribution to her husband's educational costs.

20. *Aufmuth*, 89 Cal. App. 3d at 461-62 n.5, 152 Cal. Rptr. at 678 n.5. In the Iowa case referred to by the *Aufmuth* court, *In re Marriage of Horstmann*, 263 N.W.2d 885 (Iowa 1978), the majority opinion held that the potential for increase in future earnings made possible by a law degree was an asset which could be considered in determining an equitable distribution of property and assets. That court also held, however, that the legal education and license themselves could not be considered assets capable of equitable distribution. *Id.* at 891.

van, upon rehearing,²¹ reversed itself in refusing to grant the community an interest in a degree. The court held, over a vigorous partial dissent, that a professional education acquired during marriage was neither community nor separate property.²² The majority determined that Mrs. Sullivan was not entitled to either a cash settlement or, as she had not demonstrated any need for financial support, any form of alimony. Hence, she received nothing to offset her contribution to the medical degree of her husband.²³ Shortly after the new Civil Code provisions became effective, the California Supreme Court, which had refrained from issuing decision on *Sullivan* for more than two years, reversed and remanded the case in light of sections 4800.3 and 4801.²⁴

California case law prior to the intervention of the California legislature, while limited, clearly stood for the proposition that a spouse could acquire no right or interest in the education of his or her partner, although the education was acquired entirely during the marriage.²⁵ Moreover, because California courts are required to divide all community assets equally,²⁶ an equitable solution giving the sup-

21. 134 Cal. App. 3d at 634, 184 Cal. Rptr. at 796, *rev'd*, 37 Cal. 3d at 771, 209 Cal. Rptr. at 359. In its initial hearing, the *Sullivan* court determined, by a 3-0 decision, that a professional education is the holder's separate property, but if the community had contributed to its enhancement, it should share in its value. 127 Cal. App. 3d at 565, *modified*, 134 Cal. App. 3d at 634, 184 Cal. Rptr. at 796, *rev'd*, 37 Cal. 3d at 771, 209 Cal. Rptr. at 359.

22. *Sullivan*, 134 Cal. App. 3d at 641-44, 184 Cal. Rptr. at 803-06, *rev'd*, 37 Cal. 3d at 771, 209 Cal. Rptr. at 359. Justice Ziebarth's dissent stressed that at least where community assets are limited, and the educated spouse has had his or her earning capacity enhanced by an education acquired during marriage, the community should be permitted a financial interest in the increased earnings. *Id.* at 664, 84 Cal. Rptr. at 826.

23. *Id.* at 642, 184 Cal. Rptr. at 804. At the time of trial, Mrs. Sullivan's earnings were estimated at \$26,400 a year. *Id.* This was the first California case to deny the nonprofessional spouse offsetting property or support arguably representing partial compensation for contributions to her marital partner's education.

24. *Sullivan*, 37 Cal. 3d at 768, 209 Cal. Rptr. at 357. The court determined that because the Sullivan's property settlement was not final as of January 1, 1985, Mrs. Sullivan was entitled to the benefit of the new amendment. *Id.*

25. *Sullivan*, Cal. App. 3d at 634, 184 Cal. Rptr. at 796, *rev'd*, 37 Cal. 3d at 771, 209 Cal. Rptr. at 359. See also *Todd*, 272 Cal. App. 2d at 786, 78 Cal. Rptr. at 131; *Aufmuth*, 89 Cal. App. 3d at 446, 152 Cal. Rptr. at 668, *disapproved on other grounds* in *In re Marriage of Lucas*, 127 Cal. 3d 808, 815, 166 Cal. Rptr. 808, 860 (1980).

26. CAL. CIV. CODE § 4800 (West 1983). In a majority of other jurisdictions, divorce courts need not effect an equal division of marital property and assets. In thirty-eight states, marital property is divided under an equitable distribution scheme. See Note, *Disposition of a Professional Degree Upon Dissolution of a Marriage: What Will Oregon's Solution Be?* 20 WILLAMETTE L.J. 141, 143 n.11 (1983). Under an earlier version of section 4800, in force at the time of the *Todd* decision, community assets could be divided unequally. *Todd*, 272 Cal. App. 2d at 791, 795, 78 Cal. Rptr. at 139, 143.

porting spouse a greater share of the community property was impossible. Finally, the determination by the court of spousal support payments could not be influenced by contributions to one spouse's education made by the nonacquiring marital partner.²⁷ Thus, at dissolution, there was no legal mechanism by which a supporting spouse might receive compensation for contributions to his or her spouse's degree.²⁸

THE TREATMENT OF SPOUSAL CONTRIBUTIONS TO PROFESSIONAL DEGREES IN OTHER JURISDICTIONS

In contrast to the position espoused by the California judiciary, courts in many other jurisdictions have endorsed various types of monetary awards to the nonacquiring spouse for support rendered during the educational process.²⁹ In the majority of cases, these courts have either ordered some type of alimony payment,³⁰ or effected an unequal property division.³¹ These methods of compensation reflect the tension between two prevalent legal doctrines: first, the notion that a professional degree is not a property right capable of valuation and division upon divorce; second, the realization that fairness compels restitution for contributions to an education which has bestowed upon the holder a greatly enhanced earning capacity.³² A small minority of courts have recently indicated their willingness to go beyond traditional doctrine and find that the enhanced earning capacity generated by an education *is* a property right susceptible of division at divorce.³³ At present, however, these decisions have not

27. CAL. CIV. CODE § 4801 (West 1983).

28. *Id.* This section does allow a divorce court to consider, in determining spousal support, any factors it deems just and equitable. *Id.* at § 4801(a)(9).

29. See generally Note, *Til Degree Do Us Part: The Community Property Interest in a Professional Degree*, 18 U.S.F.L. REV. 275 (1984); Note, *supra* note 26. In large part, judicial willingness to afford some compensation to the supporting spouse is traceable to the latitude afforded the divorce courts of other states in granting equitable property divisions and alimony awards. See *supra* note 26.

30. E.g., *Mahoney v. Mahoney*, 91 N.J. 488, 453 A.2d 527; *Mori v. Mori*, 124 Ariz. 193, 603 P.2d 85 (1979); *Stansberry v. Stansberry*, 580 P.2d 147 (Okla. 1978); *Lockwood v. Lockwood*, 354 So. 2d 1267 (Fla. Dist. Ct. App. 1978); *McAllister v. McAllister*, 345 So. 2d 352 (Fla. Dist. Ct. App. 1977).

31. E.g., *Wilcox v. Wilcox*, 173 Ind. App. 661, 365 N.E.2d 792 (1977); *In re Marriage of Varnet*, 544 S.W.2d 236, 241 (Mo. 1976); *Parsons v. Parsons*, 68 Wis. 2d 744, 229 N.W.2d 629 (1975); *Greer v. Greer*, 32 Colo. App. 186, 510 P.2d 905 (1973); *Tremayner v. Tremayner*, 116 Utah 483, 211 P.2d 452 (1949).

32. See generally Mullenix, *The Valuation of an Educational Degree at Divorce*, 16 LOY. L.A.L. REV. 227, 234-35 (1983). Under California law, in contrast, prior to the enactment of section 4800.3 and amendment of section 4801, the courts could not, absent holding that an education comprised a divisible community asset, compensate the nonacquiring spouse for contributions made to the professional partner's education. See CAL. CIV. CODE §§ 4800, 4801 (West 1983).

33. *In re Marriage of Horstmann*, 263 N.W.2d 885 (Iowa 1978); *Inman v. Inman*, 578 S.W.2d 266 (Ky. Ct. App. 1979); *Woodworth v. Woodworth*, 126 Mich. App. 258, 337 N.W.2d 332 (1983).

received widespread acceptance.³⁴

Spousal Support Awards

As noted above, many courts have indicated a willingness to take less sweeping steps in granting some relief to a nonprofessional spouse. An enhanced alimony award has been a popular tool employed for this purpose.³⁵ Recently, the New Jersey Supreme Court,³⁶ while determining that a business degree was not an asset capable of equitable distribution at dissolution, nonetheless approved an award of \$5,000 in "reimbursement alimony" to a wife who had supported her husband throughout the educational process, as an off-setting compensatory award.³⁷ Similarly, an Oklahoma court of appeals upheld an award of \$39,600 in "permanent alimony" for a wife's contribution to the increased earning capacity of a medical degree and license.³⁸ In the Michigan case of *Moss v. Moss*,³⁹ the court sustained a settlement of \$15,000 "alimony in gross" to a wife who put her husband through medical school.⁴⁰

In general, alimony given to the nonprofessional spouse has not been substantial.⁴¹ Such awards appear to be based primarily on a crude calculation of what constitutes fair reimbursement to the supporting spouse, rather than determined by reference to the actual value (perhaps measured by the professional's future income stream) of the education obtained.⁴²

34. A majority of courts have refused to find that an educational degree is property. Mullenix, *supra* note 32, at 253.

35. See, e.g., cases cited *supra* note 30.

36. *Id.*

37. *Mahoney*, 91 N.J. at 500, 453 A.2d at 534. The court determined that reimbursement alimony "should cover *all* financial contributions toward the former spouse's education, including household expenses, educational costs, school travel expenses and any other contributions used by the supported spouse in obtaining his or her degree or license." *Id.* (emphasis by the court).

38. *Diment v. Diment*, 531 P.2d 1071, 1073-74 (Okla. Ct. App. 1975).

39. 264 N.W.2d 97 (Mich. Ct. App. 1978).

40. *Id.* at 98.

41. Mullenix, *supra* note 32, at 234, 235.

42. *Id.* at 242, 248. Any attempt to place a monetary value on that part of a spouse's enhanced earning capacity which is attributable to contributions made by the supporting spouse would encounter substantial valuation problems. In part, these difficulties are due to the subjective analysis involved; it is problematic at best to determine how a professional spouse's intelligence, motivation, and the like contributed to his or her educational achievements and to his or her ability to translate the education received into a lucrative job.

In a similar vein, other courts, operating under the rubric of equitable principles, have given the nonacquiring spouse an offsetting award of property or cash as compensation for support rendered during the educational process.⁴³ In one extreme example, a court awarded the supporting wife virtually all of the marital assets, including the family residence.⁴⁴ Other jurisdictions permit restitution to the husband or wife who has expended personal earnings to finance the professional degree or license of the marital partner.⁴⁵ In one case, the restitutionary remedy was extended to encompass both living and educational expenses incurred during the acquisition of a medical degree.⁴⁶

An Education as a Property Right

A handful of courts have transcended traditional doctrine in finding that an education, or at least some of the attributes thereof, should be considered, at least at dissolution, a property right capable of valuation.⁴⁷ These courts have focused upon the greatly enhanced earning capacity that the educated spouse attained during marriage as the primary indicator of the value of such an education.⁴⁸ Upon divorce in these jurisdictions the nonprofessional spouse is entitled to an additional monetary award representing his or her interest in the license or degree of the marital partner.⁴⁹

In a 1978 case, the Iowa Supreme Court, by affirming an \$18,000 property award to a supporting spouse, became the first court in the nation to acknowledge that an increase in earning capacity could be considered a marital asset.⁵⁰ Here, the equities of the marital situation were strongly in favor of the supporting wife; during the marriage, the couple had acquired no assets of any substantial value, save the husband's medical degree.⁵¹ Thus, in this instance, finding

43. See, e.g., cases cited *supra* note 31. Some courts have awarded the supporting spouse both property and spousal support. See, e.g., *Bowen v. Bowen*, 347 So. 2d 675, 676-78 (Fla. Dist. Ct. App. 1977).

44. *Vanet*, 544 S.W.2d at 241.

45. E.g., *In re Marriage of De La Rosa*, 309 N.W.2d 755, 757-59 (Minn. 1981); *Lowrey v. Lowrey*, 633 S.W.2d 157 (Mo. Ct. App. 1982); *Hubbard v. Hubbard*, 603 P.2d 747 (Okla. 1979).

46. *De La Rosa*, 309 N.W. at 758. The court subtracted all educational costs and half of the student spouse's living expenses from the supporting spouse's contributions to the couple's living expenses, and awarded the nonprofessional spouse the subtracted amount as "restitution" for support rendered during the educational process.

47. See cases cited *supra* note 33.

48. *Horstman*, 263 N.W.2d at 885; *Inman*, 578 S.W.2d at 266.

49. See cases cited *supra* note 33.

50. *Horstman*, 263 N.W.2d at 885. The court, however, refused to hold that the educational degree itself was property capable of division at divorce. *Id.* at 891.

51. *Id.* at 890.

the enhanced earning capacity of the professional husband to be a divisible marital asset was the only alternative to the nonacquiring spouse leaving the marriage with little or nothing.

The following year, a Kentucky court concluded that a supporting spouse was entitled to an interest in the dentistry degree and license of her husband equal to her monetary investment in his education.⁵² More recently, a Michigan court of appeals held that a law degree should be considered marital property, if earned as a result of the mutual effort of both spouses.⁵³ The court remanded the case for a determination of the value of the legal education, based on the length of the marriage, the financial support contributed by the nonacquiring spouse, and the division of other marital property.⁵⁴

Clearly, the approach in other states, contrary to the approach utilized in California, has not been a wholesale rejection of any and all forms of compensation for support rendered during the educational process.⁵⁵ Many courts are favorably disposed toward employing equitable measures designed to afford the nonprofessional spouse some type of recovery for his or her contributions. Largely, this trend appears to be a function of the wide latitude afforded the majority of divorce courts in other states to achieve an equitable property division (latitude not available in California, which mandates an equal division of marital assets at divorce) and to determine spousal support payments.⁵⁶ In most instances, the result has been a form of roughly calculated reimbursement to the spouse who leaves the marriage without an enhanced earning capacity. In a few states, the courts have rejected an equitable resolution in favor of awarding the supporting partner an interest or right of reimbursement in the enhanced earning capacity or education itself.⁵⁷ These cases, while in-

52. *Inman*, 578 S.W.2d at 266. Again, the equities of the situation demanded a novel definition of what constituted marital property. At the time of the dissolution, the Inmans, due to the husband's unwise financial investments, were on the verge of bankruptcy. *Id.* at 270.

53. *Woodworth*, 126 Mich. App. at 260, 337 N.W.2d at 334.

54. *Id.* at 263, 337 N.W.2d at 337. To aid the trial court in determining the present value of the degree, the appellate court ordered it to estimate what the holder of a legal degree could expect to earn, and subtract from that figure the salary he or she could reasonably expect to earn without the degree. *Id.* at 269, 337 N.W.2d at 337.

55. Compare *Greer*, 32 Colo. App. at 189, 510 P.2d at 907; *Bowen*, 347 So. 2d at 676-78; *Horstman*, 263 N.W.2d at 885; *Inman*, 578 S.W.2d at 266; *Woodworth*, 126 Mich. App. at 258, 337 N.W.2d at 332; *De La Rosa*, 309 N.W.2d at 757-59; *Vanet*, 544 S.W.2d at 241; *Wheeler v. Wheeler*, 193 Neb. 615, 617, 228 N.W.2d 594, 596 (1975); with *Sullivan*, 183 Cal. App. 3d at 638, 184 Cal. Rptr. at 800.

56. Note, *supra* note 26, at 143, n.11.

57. See cases cited *supra* note 33.

frequent, demonstrate that the judicial community is not entirely adverse to the creation of novel property rights where a perceived injustice is presented.

THE LEGISLATIVE HISTORY OF THE CALIFORNIA CIVIL CODE AMENDMENTS

Somewhat surprisingly, the equitable measures utilized in other states to compensate a spouse for support rendered during the education of his or her marital partner do not appear to have been a significant factor in the decision of the California State Legislature to promulgate Assembly Bill 3000.⁵⁸ The impetus for this seminal bill, which mandates reimbursement for community contributions to a spouse's education or training,⁵⁹ must be largely credited to one case, *In re Marriage of Sullivan*.⁶⁰

The *Sullivan* case garnered substantial publicity during both its initial and subsequent appeals.⁶¹ The second decision, denying to Mrs. Sullivan any type of compensation for her personal financial contributions to the degree of her husband, was regarded in some political circles as a complete judicial failure to remedy a substantial injustice.⁶² As a result, Assemblyman Alister McAllister, a member of the Assembly Committee on the Judiciary, and the California Law Revision Commission⁶³ began independently examining the

58. See generally COMMUNITY PROPERTY ISSUES PRESENTED IN SULLIVAN V. SULLIVAN, ASSEMBLY COMMITTEE ON JUDICIARY, CALIFORNIA STATE ASSEMBLY (1984) (hearings of Nov. 16, 1983) [hereinafter cited as JUDICIARY COMMITTEE HEARINGS]. AB 3000 is codified at CAL. CIV. CODE §§ 4800.3 and 4801 (West Supp. 1985).

59. A.B. 3000, Cal. Leg. 1983 (codified at CAL. CIV. CODE §§ 4800.3 and 4801). No statute in any other state explicitly requires reimbursement for educational costs. An Indiana statute, however, does provide for the repayment at dissolution of monies expended by one spouse toward the tuition, books, and laboratory fees of the other spouse's higher education in the event the court finds little or no marital property to divide. IND. CODE ANN. § 31-1-11.5-11(c) (West 1980).

60. 134 Cal. App. 3d at 634, 184 Cal. Rptr. at 796, *rev'd*, 37 Cal. 3d at 771, 209 Cal. Rptr. at 359. The *Sullivan* case underscored the unfairness of situations where a marriage dissolves shortly after the graduation of the professional spouse, at a stage where few community assets have been acquired to compensate the community for its financial sacrifices in support of the educational process. Under then applicable California law, Mrs. Sullivan was awarded exactly half of the negligible community assets; no alimony was awarded as she was self-supporting. *Id.* at 638, 184 Cal. Rptr. at 800. See generally JUDICIARY COMMITTEE HEARINGS, *supra* note 58.

61. *Sullivan*, 134 Cal. App. 3d at 638, 184 Cal. Rptr. at 800, *rev'd*, 37 Cal. 3d at 771, 209 Cal. Rptr. at 359.

62. See generally JUDICIARY COMMITTEE HEARINGS, *supra* note 58.

63. The California Law Revision Commission was created by chapter 45 of the statutes of 1953. The commission consists of one Senate and one Assembly member, seven members appointed by the governor, and a non-voting legislative counsel member. CALIFORNIA LAW REVISION COMMITTEE, REPORTS, RECOMMENDATIONS, AND STUDIES 7 (Vol. 1957). The principle duties of the commission are: 1) to examine California statutes and case law for defects and anachronisms and propose reforms; 2) to receive and consider proposed changes in the laws made by other official sources; 3) to receive and consider recommendations from the legal profession and the public regarding changes in

Sullivan issue, with a view toward proposing remedial legislation.⁶⁴ Assemblyman McAllister first addressed the issue by introducing Assembly Bill 525, which would have awarded the community a percentage of the professional spouse's present and future earnings equal to the portion of earning capacity realized during the marriage.⁶⁵ The bill, however, failed to clear the Judiciary Committee by a majority vote.⁶⁶

During the course of the Judiciary Committee's hearings on Assembly Bill 525, Nathaniel Sterling, representing the California Law Revision Committee, presented testimony. The proposal of his committee avoided many difficulties believed to be inherent in Assembly Bill 525 by delineating a reimbursement scheme, coupled with the recognition of community educational contributions in spousal support awards.⁶⁷ A solution of this type was also endorsed by a substantial number of individuals who testified before the Judiciary Committee during the course of its hearings.⁶⁸

Assembly Bill 3000

Following the defeat of Assembly Bill 525, the chairman of the Judiciary Committee, Assemblyman Elihu Harris, proposed a second bill, Assembly Bill 3000, which in substance adopted the proposals of the California Law Revision Committee.⁶⁹ This bill cleared the judi-

the law; and 4) to recommend such changes as are necessary to modernize California law. CAL. GOV'T CODE § 10330 (West 1980).

64. *Id.* Assemblyman McAllister introduced an unsuccessful predecessor of AB 3000, AB 525, on the same day that the California Supreme Court heard oral arguments in the *Sullivan* case. *Id.* at 76.

65. Assembly Bill 525, Cal. Leg. 1983.

66. Note, *supra* note 29, at 295.

67. CALIFORNIA LAW REVISION COMMITTEE, RECOMMENDATION RELATING TO REIMBURSEMENT OF EDUCATION EXPENSES (1983) [hereinafter cited as LAW REVISION RECOMMENDATION]. The commission noted:

[We do] not believe it would be either practical or fair to classify the value of the education, degree, or license, or the enhanced earning capacity, as community property and to divide the value upon marriage dissolution. Classification of these items as community property would create problems involving management control, creditor's rights, taxation, and disposition at death, not to mention the complexities involved in valuation at dissolution.

Id. at 6.

68. JUDICIARY COMMITTEE HEARINGS, *supra* note 58, at 41, 43, 53, 59-60. Those who commented favorably upon a reimbursement remedy included a representative of the State Bar of California Family Law Section; a representative of the State Bar of California Estate Planning, Trust and Probate Law Section; the chairman of the San Diego County Bar Association Family Law Specialists Advisory Committee; and an adjunct professor of family law. *Id.*

69. A.B. 3000, Cal. Leg. 1983 (codified at CAL. CIV. CODE §§ 4800.3, 4801);

ciary committees of both the Assembly and Senate, as well as the full Assembly and Senate, and was sent to the governor largely intact.⁷⁰ The governor signed the bill into law on September 30, 1984. By its provisions, it became effective on January 1, 1985.⁷¹ With the exception of a few groups who believed that the legislation did not constitute adequate recognition of the supporting spouse's contributions,⁷² the new Civil Code provisions received widespread endorsement as a plausible method of giving a nonprofessional spouse some compensation for his or her financial support during the educational process.⁷³

PRACTICAL IMPLICATIONS OF THE ENACTMENT OF THE CALIFORNIA CIVIL CODE AMENDMENTS

Assembly Bill 3000, codified at California Civil Code sections 4800.3 and 4801, which mandates reimbursement to the community for contributions toward a degree or license acquired during marriage, is the first legislative enactment of its kind in the United States.⁷⁴ As promulgated by the California legislature, its twin objectives are to provide reimbursement to the community (and thus the supporting spouse) for educational costs,⁷⁵ and to offer in some

LAW REVISION RECOMMENDATION, *supra* note 67.

70. LEGISLATIVE COUNSEL'S DIGEST, ASSEMBLY COMMITTEE ON JUDICIARY, CALIFORNIA STATE ASSEMBLY (1984) [hereinafter cited as LEGISLATIVE COUNSEL'S DIGEST]. AB 3000 cleared the Assembly Judiciary Committee by a vote of eight to zero, the Assembly floor by a vote of sixty to nine, the Senate Judiciary Committee by a vote of seven to two (where a ten year limitation period for reimbursement expenses was eliminated in favor of a rebuttable presumption against community reimbursement if the expenditures were made more than ten years before dissolution, and where a requirement was added that parties who seek to deviate from the statutory reimbursement right must reduce their agreement to writing), and the Senate floor by a vote of twenty-five to nine. *Id.* at 1, 5. The final Assembly vote which sent the bill to the governor, as revised, was fifty-six to eight. The Daily Recorder, Sept. 4, 1984, at 1, col 1-3.

71. A.B. 3000, Cal. Leg. 1983 (codified at CAL. CIV. CODE §§ 4800.3, 4801).

72. The Daily Recorder, Sept. 4, 1984, at 1, col. 3. Among those who went on record as critical of the new bill was Assemblyman McAllister, the sponsor of AB 525, the unsuccessful predecessor of AB 3000. *Id.*

73. As previously noted, the reimbursement scheme was looked upon favorably by several individuals testifying to the Assembly Committee on the Judiciary. *See supra* note 68.

74. An Indiana statute does address the issue of compensation, at dissolution, for financial contributions to a professional degree. The code section provides that:

When the court finds there is little or no marital property, it may award either spouse a money judgment not limited to the existing property. 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.

IND. CODE ANN. § 31-1-11.5-11(c) (West 1980). In addition, a Wisconsin statute provides that at divorce, marital property may be divided unequally between the spouses where one party has contributed to the education, training, or increased earning power of the other. WIS. STAT. ANN. § 767.255 (West 1977).

75. A.B. 3000, Cal. Leg. 1983 (codified at CAL. CIV. CODE § 4800.3). The reim-

instances further compensation in the form of enhanced alimony payments.⁷⁶ In the wake of their enactment, however, the new code sections leave unresolved several problematic issues.

Community Contributions

One issue not clearly addressed by the addition of section 4800.3 to the California Civil Code is the question of what will specifically constitute a community contribution to the education or training of a spouse. Section 4800.3 defines such contributions only generally as "payments made with community property for education or training or for the repayment of a loan incurred for education or training."⁷⁷ Construed in a narrow, literal sense, this phraseology suggests that reimbursement be confined to costs directly attributable to the costs of schooling, such as tuition, books, and other related fees. This construction finds support in an Indiana family code section. The Indiana statute permits the divorce court, when it finds there is little or no marital property, to award either spouse a monetary judgment, not limited to existing property, for the contributions of one spouse toward the tuition, books, and laboratory fees for the higher education of his or her marital partner.⁷⁸

A more liberal construction would interpret the statutory language of section 4800.3 as encompassing indirect contributions to the educational process such as meals, lodging, transportation, and the like. Certainly an argument can be made that these types of payments are a part of the cost of an education; without them, in most instances, the professional spouse would not have been able to pursue his or her higher education.⁷⁹ Furthermore, there is a limited body of precedent which supports such an interpretation. A Minnesota court, in *In re Marriage of De La Rosa*,⁸⁰ has calculated that restitution afforded

bursment scheme includes interest, at the legal rate (currently ten percent), calculated at the end of each year in which expenses are incurred. In addition, the remedy is subject to an express written agreement of the parties differing from the statutory formula, and to reduction or modification to the extent that full reimbursement is unjust. LEGISLATIVE COUNSEL'S DIGEST, *supra* note 70.

76. A.B. 3000, Cal. Leg. 1983 (codified at CAL. CIV. CODE § 4801).

77. CAL. CIV. CODE § 4800.3(a) (West Supp. 1985).

78. IND. CODE ANN. § 31-1-11.5-11(c) (West 1980). The proposal submitted by the California Law Revision Committee also indicated that reimbursement should be limited to "money actually contributed for payment of tuition, fees, books, supplies, etc." LAW REVISION RECOMMENDATION, *supra* note 67, at 7.

79. This might be the case, for example, where the student has no independent means of support, and has relied on his or her spouse's income to finance the couple's living expenses.

80. 309 N.W.2d 755 (Minn. 1981). *Contra* IND. CODE ANN. § 31-1-11.5-11(c)

the supporting spouse for assistance during the educational process should include compensation for both living and educational expenses.⁸¹

Under an extremely broad interpretation, the language in section 4800.3 is capable of engulfing almost any payment made by the community, however tangentially related to the actual attainment of a degree or license, if made while one spouse is pursuing an education. For example, the supporting spouse might successfully argue that money paid by the community to finance a Hawaiian vacation generated reimbursable educational costs, insofar as the trip provided a necessary break from studies for the student spouse who without the break would have been unable to complete his or her education. While arguments as clearly specious as this should not pose an insurmountable obstacle to a trial court awarding reimbursement to the community, determining where to draw the line in other situations will be substantially more arduous.⁸²

Because the general guidelines promulgated by section 4800.3 provide no concrete answers for trial judges asked to engage in a subjective analysis of which community payments are reimbursable,⁸³ the courts must, at the first opportunity, delineate more precisely which contributions are compensable. In the interest of fairness to all married individuals, this new code section should not be interpreted too broadly. Payments which have had a demonstrably direct and beneficial effect on the acquisition of the education or training of the professional should be reimbursed. Those expenses with only a tangential relationship to the education, common to marriages where neither spouse acquires an advanced degree, should be excluded. In the former category, expenses such as tuition, books, fees, the cost of moving to the community where the education is pursued, and other payments which would not have been incurred but for the educational process, should clearly be reimbursed at dissolution.⁸⁴ In the

(West 1980) (restitutionary award limited to tuition, books, and laboratory fees).

81. *De La Rosa*, 309 N.W.2d at 757.

82. For example, an argument that rental or home mortgage payments made by the community were necessary to the attainment of one spouse's education might present a less clear situation, especially in instances where the student, if unmarried, could not have met such expenses.

83. Such a determination would of necessity be at least partially governed by the circumstances of each case. For instance, where a professional husband chose to divorce his supporting wife quickly after his graduation, and she had worked for years at an undesirable job to put him through school, the court might favor an expansive definition of reimbursable costs. Not surprisingly, in all of the cases thus far reported, it has been the wife, traditionally the one to leave the marriage in a poor financial condition, who has provided support while her husband went to school. See generally Mullenix, *supra* note 32, at 229. Of course, section 4800.3 makes no gender distinctions and would automatically apply to either marital partner. CAL. CIV. CODE § 4800.3 (West Supp. 1985).

84. The California Law Revision Committee, which drafted the original proposal that culminated in section 4800.3, has suggested that reimbursable costs be limited to

latter category, indirect support furnished by the nonprofessional spouse, such as rent, food and clothing—expenses common to all marriages, whether or not either spouse becomes a professional—should not be considered compensable under section 4800.3.⁸⁵

Any interpretation of this code section permitting the community to be reimbursed for indirect payments would give the minority of marriages, where one spouse gains an education, a unique and unjustifiable status in comparison to the vast majority of marriages where section 4800.3 is inapplicable. In most marital partnerships, either the community or one spouse alone finances basic necessities with no possibility of reimbursement at divorce.⁸⁶ To single out one type of marriage, and in effect, one marital (the supporting) partner as the recipient of special treatment at divorce is both unmerited and unfair.⁸⁷ Any attempt to do so defeats the very goal of equality among divorcing couples that the California legislature, by the enactment of this code section, sought to accomplish.⁸⁸

Prior to the enactment of the new code sections, the California courts refused to recognize even a limited property interest in an education. Confronted with the legislative intent of these provisions, the courts must now recognize that certain educational expenses are, at a minimum, reimbursable. The courts, are now in a position to determine the extent to which the reimbursement remedy may be utilized. Given their attitude prior to the revision of the California Civil Code, it is to be expected that where they can limit the implications of the revisions, the courts will exploit the opportunity to do so. Considering the potential abuses to which these new code sections are subject, a conservative court attitude toward their implementation would appear to be the best approach.

tuition, books, and fees. LAW REVISION RECOMMENDATION, *supra* note 67, at 7. This limitation, however, could lead to great unfairness in cases where the community has incurred unusual but substantial expenses (such as the cost of moving to the student spouse's school) that would not have arisen but for the acquisition of the education.

85. Under California law, such family expenses are presumed to have been paid with community funds and are not reimbursable. *Hicks v. Hicks*, 211 Cal. App. 2d 144, 27 Cal. Rptr. 307 (1962). Even if a party proves that separate funds were used to pay such expenses, at divorce no reimbursement is permitted. See *v. See*, 64 Cal. 2d 778, 51 Cal. Rptr. 888 (1966). Should section 4800.3 be interpreted to mandate repayment for such family expenses, the result would be directly counter to these judicial concepts, and single out one type of marriage for unique treatment.

86. See, 64 Cal. 2d at 778, 51 Cal. Rptr. at 888.

87. *Id.*

88. See LAW REVISION RECOMMENDATION, *supra* note 67, at 5.

Substantial Enhancement of Earning Capacity

Section 4800.3 also fails to define the type of education or training that more than marginally increases the earning capacity of the recipient spouse and thus qualifies as a source of reimbursable expenses at divorce.⁸⁹ The relevant subsection merely states that "the community shall be reimbursed for community contributions to education or training of a party that substantially enhances the earning capacity of the party."⁹⁰ Clearly, a painting class taken during marriage will not meet this standard; just as clearly, expenses incurred during a three year legal education will qualify for reimbursement.⁹¹ Between these two extremes, however, there are a myriad of situations where the question of whether education or training has "substantially enhanced" the earning capacity of an individual cannot easily be answered.⁹² Unfortunately, the question of what enhancement is substantial is inherently subjective.⁹³ Because the wording of this portion of the statute is unavoidably vague, the final determination of whether a particular training or educational program meets the section 4800.3 substantiality test lies within the discretion of the trial judge. If judges comply with the spirit of the new law,⁹⁴ the community will be reimbursed for payments aiding the completion of a degree which has clearly increased the student's potential salary. Thus, the uncertainty of these provisions, while not entirely curable, is not a complete bar to the restitutionary goal of the statute.⁹⁵

Spousal Support

While the reimbursement provisions of section 4800.3 may be overgenerous in scope, section 4801, as amended by the California legislature,⁹⁶ suffers from the opposite shortcoming. This section pro-

89. CAL. CIV. CODE § 4800.3(b)(1) (West Supp. 1985).

90. *Id.*

91. In the three California cases to directly address the status of an education, the husband had acquired an advanced professional degree which unarguably and substantially enhanced his earning capacity. *Sullivan*, 127 Cal. App. 3d at 656, (medical degree), *modified*, 134 Cal. App. 3d at 634, 184 Cal. Rptr. at 796, *rev'd*, 837 Cal. 3d at 771, 209 Cal. Rptr. at 359; *Aufmuth*, 89 Cal. App. 3d at 446, 152 Cal. Rptr. at 668 (law degree) *disapproved on other grounds in Lucas*, 27 Cal. 3d at 841, 166 Cal. Rptr. at 853; *Todd*, 272 Cal. App. 2d at 786, 78 Cal. Rptr. at 131 (law degree).

92. For example, a rather common situation is one in which the professional acquired a portion of his or her education before marriage.

93. The California Law Revision Committee has noted that where earning capacity is enhanced only "marginally," reimbursement should not be granted. LAW REVISION RECOMMENDATION, *supra* note 67, at 7.

94. According to the legislative counsel affiliated with AB 3000, the new code provisions attempt to "place the parties on an equal footing without generating a windfall for the working spouse or permanently impairing the student spouse's future." LEGISLATIVE COUNSEL'S DIGEST, *supra* note 70, at 3.

95. *Id.*

96. CAL. CIV. CODE § 4801 (West Supp. 1985).

vides that in determining whether to order spousal support, the court shall consider, among other factors, "the extent to which the supported spouse contributed to the attainment of an education, training, or a license by the other spouse."⁹⁷ The legislative history of the statute indicates that its introduction was motivated primarily by the desire to provide additional compensation, beyond that required by section 4800.3, for community support rendered to the educated spouse.⁹⁸ The provision as enacted, however, does nothing to alter the bald fact that only approximately fifteen percent of all dissolutions result in any type of alimony award.⁹⁹ Of that fifteen percent, a much smaller number of payees actually receive the full amount of their award.¹⁰⁰ Furthermore, alimony payments, on the whole, are not substantial and continue only for a limited time period.¹⁰¹ These statistics tend to emasculate the goal of compensation which section 4801 attempts to achieve.¹⁰²

Revised section 4801, in addition to being a largely ineffectual means of compensating the supporting spouse,¹⁰³ also suffers from some measure of inconsistency with the section 4800.3 reimbursement scheme.¹⁰⁴ If the latter code provision is limited to the reimbursement of direct educational costs, as this Comment has suggested, section 4801, inasmuch as it may provide compensation for indirect community contributions, creates a potential means of circumventing reimbursement limitations.¹⁰⁵ However, the potential for abuse of the spousal support provision is limited in two ways: first, by the fact that so few divorces actually result in alimony awards of any size,¹⁰⁶ and second, by the fact that alimony awards are usually predicated upon the inability of one spouse to support himself or her-

97. *Id.* at § 4801(a)(1).

98. According to the legislative counsel, the support provision is not intended to duplicate § 4800.3 reimbursement. LEGISLATIVE COUNSEL'S DIGEST, *supra* note 70, at 6.

99. JUDICIARY COMMITTEE HEARINGS, *supra* note 58, at 62, 67.

100. *Id.*

101. *Id.* Very broadly, spousal maintenance payments are \$200 or less per month, and are awarded for only a "rehabilitative" period of four or five years. *Id.* at 67.

102. *See supra* note 95.

103. As previously noted, approximately eighty-five percent of all divorces result in no alimony award. JUDICIARY COMMITTEE HEARINGS, *supra* note 58. Requiring contributions to be one factor of many considered in awarding alimony does not appear to be an adequate means of reversing this trend.

104. CAL. CIV. CODE § 4800.3 (West Supp. 1985).

105. Permitting spousal support awards based entirely on indirect community contributions will also, of necessity, give the supporting spouse a distinct advantage at dissolution over other divorcing individuals who have incurred the same expenses (e.g., food, clothing, rental payments), but who are ineligible for section 4801 compensation.

106. JUDICIARY COMMITTEE HEARINGS, *supra* note 58, at 62, 67.

self after divorce, due to the circumstances surrounding the marriage.¹⁰⁷ The second limitation makes it particularly unlikely that in a dissolution where one spouse has acquired an education support to the nonprofessional spouse will be awarded. In most instances, the spouse who has financed the education will have the ability to support himself or herself after the dissolution decree becomes final.¹⁰⁸

Due to the foregoing considerations, section 4801, as amended, will only have a minimal impact on dissolutions involving reimbursement for an education or training. Its usefulness appears limited to the relatively rare instances in which the supporting spouse is incapable of self-support after dissolution. In these situations, section 4801 may provide some measure of relief.¹⁰⁹ This code section, however, should not be extended to provide compensation for support claims based solely on indirect contributions made by the community toward one spouse's education. Such a result is inconsistent with both the section 4800.3 reimbursement remedy and the goals underlying the section 4801 spousal support provisions.

COMMUNITY REIMBURSEMENT FOR EDUCATIONAL COSTS WITHIN THE CALIFORNIA COMMUNITY PROPERTY SYSTEM

The ramifications of the enactment of section 4800.3 upon the California community property system should not go unmentioned. California law in this area is grounded upon the principle that all property acquired during marriage, other than that received by gift, bequest, devise, or descent, is community property¹¹⁰ and must be equally divided upon divorce.¹¹¹ Section 4800.3 is an exception to this general principle in that it limits the community interest to reimbursement for the educational costs incurred by one spouse, although his or her training was acquired entirely during the marriage.¹¹² To conceptually reconcile the treatment of educational costs with the rest of the California community property system, one must in essence concede that the legislature has determined, contrary to case law,¹¹³ that an education has the status of separate property.¹¹⁴

107. LEGISLATIVE COUNSEL'S DIGEST, *supra* note 70.

108. In the cases to date, the individuals attempting to claim some type of compensation for contributions to a spouse's education have supported both themselves and their marital partner during the acquisition of the degree. *E.g.*, *Sullivan*, 37 Cal. 3d at 766, 209 Cal. Rptr. at 356. In many instances, the nonprofessional has sufficient job skills to support himself or herself after divorce. This was the case in *Sullivan*. See *supra* note 23.

109. The justification for an alimony award in this type of situation rests not on indirect contributions by one spouse to the education of the other, but on the need for financial assistance to meet the daily living expenses of one marital partner after the marriage has ended.

110. CAL. CIV. CODE §§ 5107, 5108, 5110 (West 1983).

111. *Id.* at § 4800.

112. *Id.* at § 4800.3 (West Supp. 1985).

113. See *Sullivan*, 134 Cal. App. 3d at 637, 184 Cal. Rptr. at 799, *rev'd*, 37 Cal.

Separate property, although not divisible upon dissolution,¹¹⁵ is subject to a reimbursement claim by the community if community funds have been spent to enhance the separate estate.¹¹⁶ Difficulties surrounding this legislative determination arise because an education does not have the qualities normally attributed to separate property; most significantly, it may be acquired entirely within the scope of the marriage, with funds exclusively provided by the community.¹¹⁷ Indeed, some commentators have analogized a professional degree to intangible community property such as nonvested pension rights.¹¹⁸ Intuitively, a professional degree may appear to share the characteristics of community property; however, the adherence by the legislature to a reimbursement formula seems to necessitate its classification as the separate property of the recipient.

This apparent inconsistency in the characterization of an education as a property right can be easily harmonized with the message implicit in section 4800.3 by a judicial, or, if necessary, a legislative determination that a professional degree or license is separate property. As the legislature has by inference already decided the issue,¹¹⁹ the debate should be removed once and for all from the court system, ensuring that the new code sections regarding an education or training are effectively reconciled with the body of California community property law.

CONCLUSION

The new California Code provisions regarding the acquisition of a professional degree reflect the desire of the legislature to provide

3d at 771, 209 Cal. Rptr. at 369.

114. On its initial hearing, this was the conclusion the *Sullivan* appellate court reached. *Sullivan*, 127 Cal. App. 3d at 656, *modified*, 134 Cal. App. 3d at 637, 184 Cal. Rptr. at 799, *rev'd*, 37 Cal. 3d at 771, 209 Cal. Rptr. at 359.

115. CAL. CIV. CODE §§ 5107, 5108 (West 1983).

116. Section 4800.2, for instance, provides that "[i]n the division of community property . . . unless a written waiver is made . . . the party shall be reimbursed for his or her contributions to the acquisition of the [separate] property [of the other spouse] to the extent the party traces the contributions to a separate property source." *Id.* at § 4800.2 (West Supp. 1985).

117. Under sections 5107 and 5108, separate property is that acquired before marriage, after the marriage ends, or at any time by gift, bequest, devise or descent. CAL. CIV. CODE §§ 5107, 5108 (West 1983). There is a rebuttable presumption that all property acquired during marriage belongs to the community. *See Freese v. Hibernia Savings and Loan*, 139 Cal. 392, 73 P. 172 (1903).

118. *See generally* Note, *supra* note 29; Note, *supra* note 26.

119. Although the legislature may not have realized the full legal implications of its action, this conclusion is virtually inescapable.

some measure of compensation to a spouse who has contributed to the education or training of his or her partner. The provisions do address an issue in need of timely resolution. However, in light of the extremely limited experience nationwide with such an approach,¹²⁰ the California judiciary and the legislature, if necessary, should act to clarify issues left unresolved in Civil Code sections 4800.3 and 4801.

Specifically, the reimbursement remedy mandated by section 4800.3 should be confined to those expenses which have a direct, beneficial impact on the acquisition of an education or training. This section should not be read to encompass family expenses which are common to the vast majority of marriages; interpreting this provision in its broadest sense unfairly singles out one class of marriages for uniquely favorable treatment. In a similar manner, compensable educational or training costs should be limited to those which have a demonstrable impact on the earning capacity of an individual. The spousal support provisions should be confined to the dissolution of marriages where the nonprofessional spouse is incapable of self-support. Predicating such awards on indirect contributions to an education defeats the purpose behind both alimony awards and reimbursement for educational costs. Finally, the judicial community should explicitly endorse the implicit finding of the California legislature that a degree or license is the separate property of its holder, and thereby reconcile the new provisions with the remainder of the California community property system.

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120. See *supra* note 59.