

Memorandum 83-72

Subject: Study F-632 - Reimbursement of Educational Expenses

The Commission in the past has discussed the problem of the substantial post-dissolution discrepancy between the financial positions of husbands and wives. Among the problems the Commission has felt the law should seek to remedy is the inequity in a short-term marriage during which one spouse works and substantially contributes to the professional education, license, or other career assets of the other spouse, but at dissolution the contributing spouse realizes little or nothing for the contribution. This problem is currently under review by the California Supreme Court in the case of In re Marriage of Sullivan (hearing granted October 28, 1982).

The Commission in December 1981 considered the notion of giving the contributing spouse a property right in the enhanced earning capacity of the spouse receiving the education. However, the Commission directed the staff to devise alternative possible remedies for consideration by the Commission. Subsequently the Commission decided to give this matter low priority while it worked on other aspects of community property law.

The staff believes it is now timely to proceed in this area. The inequity is clear and the courts are struggling for a solution. It is a problem that can and should be addressed by legislation, regardless of the ultimate outcome in the Sullivan case.

Of the various approaches to this problem that look promising, the staff believes the most fair and the most workable, for the reasons set out in the attached draft of a tentative recommendation, is to give the community a reimbursement right for community expenditures for education or training that enhances the earning capacity of one of the spouses. In developing the reimbursement right concept, the staff made a number of policy decisions that the Commission should be aware of:

(1) Substantial enhancement of earning capacity required. The draft permits reimbursement only where there has been substantial enhancement of earning capacity. If reimbursement were allowed for any educational expenses regardless of their effect on earning capacity, there would be a lot of trivial litigation over minor expenditures for weekend seminars, etc. In addition, the objective of righting economic imbalances

would be lost sight of. Query: Is "substantial" enhancement too high a standard? Should "significant" enhancement be sufficient?

Also, the draft provides for reimbursement even though the spouse who received the education may be working in a lower-paying job at the time. This recognizes that the potential is still there, obtained at community expense, and also that the spouse should not be able to avoid the reimbursement obligation by lying low until the dissolution is over.

(2) Education received before marriage included. Although generally education received during marriage will be subject to the reimbursement right, there may be situations where bills are paid during marriage, or loans are paid off during marriage, for education received before marriage. The draft covers this situation by requiring reimbursement for community expenditures regardless when the education was received.

(3) Value of student's time and energy also reimbursed. Clearly, actual community expenditures are subject to reimbursement, but what about the student's time and energy, which ordinarily are supposed to benefit the community. If a spouse during marriage devotes time and energy to improving the spouse's own separate property, the devotion is held to create a community interest in the property, on the theory that the community property system requires that the fruits of the efforts of the spouse during marriage belong to the community. The reimbursement draft follows these general principles and requires that the value of the student's time, which has gone to benefit the student's own earning capacity rather than the community, should be reimbursed to the community. In essence, this is an unjust enrichment theory.

(4) Interest and appreciation not included. If the object of the reimbursement right is to make the community whole, amounts expended should be adjusted for inflation and should be returned with interest. If only actual community expenditures were being reimbursed, allowance for interest and appreciation might be appropriate. But the community is also being reimbursed for the value of the student's time, which will be a substantial amount. Moreover, computation of interest and appreciation would add to the complexity of litigation in this area, since payments for education frequently occur in small amounts--an installment on tuition here, a textbook purchase there, supplies from time to time. Trying to adjust these little expenditures for interest and inflation as they vary from week to week or from month to month over many years would be complex.

(5) Ten-year statute of limitation. The original problem sought to be cured by the reimbursement right is the dissolution of marriage shortly after the education is completed, before the community has had a chance to realize any benefit from the expenditures. As time increases between the education and the dissolution, it becomes more and more likely that the community will have received some benefit from the education. The lapse of time also makes proof of expenditures and time spent by the student more difficult and less reliable. For these reasons the staff has selected an arbitrary and mechanical 10-year statute of limitations on the reimbursement right.

(6) Ability of court to deny reimbursement. There are some obvious cases where it would not be proper to allow reimbursement. In a long-term marriage the community may already have received the benefit of its investment many times over. Both spouses may have been educated at community expense, so that an offset is proper. The education may have been received by a homemaker at the end of a long marriage that enables the homemaker to be gainfully and well employed. What about the situation where one spouse pays for the education of the other spouse but, after the other spouse receives the education he or she becomes a homemaker by mutual agreement of the spouses? Should reimbursement be required here?

In these and other situations the court should have the ability to deny reimbursement. The standard used in the draft is the standard found presently in the statute requiring educational loans to be assigned for payment to the spouse receiving the education--the court may reduce or deny reimbursement if extraordinary circumstances render reimbursement unjust.

(7) Agreement of parties controls. The reimbursement right is applied absent an agreement of the parties as to their rights. In a marriage it will be common that the spouses discuss their financial arrangements before one starts to support the other through school. They may have an express agreement, for example, that the other will support the one in turn. These agreements should be recognized. Query: These agreements are often oral; should the fact of informality be recognized, even though this may generate fabricated agreements?

(8) Retroactive effect. The draft applies the reimbursement rules to dissolution proceedings commenced after the operative date even

though the community property expenditures were made before the operative date. The staff believes that the reimbursement rule is fair and reasonable and attacks an existing problem that should be cured.

Respectfully submitted,

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STAFF DRAFT

TENTATIVE RECOMMENDATION

relating to

REIMBURSEMENT OF EDUCATIONAL EXPENSES

It is not uncommon for a married person to work to support the person's spouse while the person's spouse acquires an education, degree, or professional license. Frequently it is the wife who works to support the husband. For convenience, this report refers to the spouse who works to support the other as the wife and the spouse who receives the education or training as the husband; of course the same principles would apply if their positions were reversed.

Although there may be no express agreement between the spouses, their mutual expectation ordinarily is that after the wife puts the husband through school the husband will have higher earnings, to the benefit of the community. However, it frequently occurs that shortly after the husband completes his education and receives his degree or professional license, the marriage breaks up and the wife never realizes any benefit from the years of support for the husband. In fact, there may be no community assets for the wife to share upon dissolution, all of the community property having been diverted to the education of the husband. In effect, the community property has gone to enhance the earning capacity of the husband at the expense of the wife.

The plain inequity of this situation has generated efforts to provide some recompense for the wife. Litigants have attempted to classify the education, degree, or license obtained by the husband as "property", without success.¹ A number of commentators have suggested that the enhancement of earning capacity that results from the education, degree, or license is property subject to division.² Legislation has been enacted that an educational loan must be assigned for payment to the spouse receiving the education.³ There is currently pending before

1. Todd v. Todd, 272 Cal. App.2d 786, 78 Cal. Rptr. 131 (1969); In re Marriage of Aufmuth, 89 Cal. App.3d 446, 152 Cal. Rptr. 668 (1979).

2. See, e.g., Weitzmann, The Economics of Divorce: Social and Economic Consequences of Property, Alimony and Child Support Awards, 28 UCLA L. Rev. 1181, ___ (1981); Bruch, The Definition and Division of Marital Property in California: Towards Parity and Simplicity, 33 Hastings L.J. 769, 813-21 (1982).

3. Civil Code § 4800(b)(4) (added by 1978 Cal. Stats. ch. 1323, § 2).

the Supreme Court the case of In re Marriage of Sullivan,⁴ which involves these issues and is likely to generate further development of the law in this area.

The Law Revision Commission has reviewed these proposals and others in an effort to fashion a fair resolution to the problem. Ordinarily, discrepancies in the earning capacities of the parties are remedied by spousal support.⁵ In many cases, however, the wife does not qualify for support because her earnings, while substantially lower than the husband's future earnings, are nonetheless sufficient for self-support. While it would be possible to revise the basic support standards, the Commission deems it inadvisable to disrupt the established support scheme in order to deal with this circumscribed problem.⁶

The Commission does not believe classification and division as community property of the value of the education, degree, or license, or the enhanced earning capacity, is either practical or fair. Classification of these items as community property would create problems involving management and control, creditor's rights, taxation, and disposition at death, not to mention the complexities involved in valuation at dissolution. The complexities are exacerbated in the typical case where part of the husband's education is received before marriage and part during marriage. Moreover, to give the wife an interest in half the husband's increased earnings for the remainder of his life because of the relatively brief period of education and training received during marriage is not only a windfall to the wife but in effect a permanent mortgage on the husband's future. Such an approach would certainly discourage the husband from marriage until his education is complete. And, if the husband desired further education during marriage, such a rule could well prompt a dissolution of the marriage or would require the husband

4. Hearing granted, October 28, 1982.

5. Civil Code § 4801.

6. It is possible, within the support scheme, to require the husband to support the wife while the wife receives equivalent education. This remedy is not completely adequate because the wife may already have received the education she desires, the dissolution may occur late in life when the education is of marginal future use, or the wife simply may have no desire for further education but would rather be recompensed for the substantial benefit she has conferred on her husband with the expectation of future benefit.

and wife to arrive at a fair determination of their rights by means of a marital agreement. Such a rule that most people would think is unfair and the effect of which they would try to avoid should not be codified in the law.

All factors considered, a more equitable solution, in the Commission's judgment, is to require the husband to reimburse the community for the community expenditures for his education and training. The community expenditures consist not only of money actually contributed for payment of tuition, fees, books, supplies, etc., but also the reasonable value of the husband's time spent pursuing the education. The husband's studies during marriage that benefit his own career are analogous to a person's efforts during marriage that benefit the person's separate property.⁷

This solution in effect gives the wife the same amount the husband was given for his education. She can use the money for her own education or any other purpose. It puts the parties on equal footing without generating a windfall for the wife or permanently impairing the husband's future. It takes from the husband only what was actually given and restores to the wife only what she actually lost. It addresses the basic inequity with a minimum of disruption to the community property system.

Despite the virtues of a reimbursement right, there are a number of problems that must be resolved. The reimbursement right is appropriate in the typical situation where the husband receives education that substantially enhances his earning capacity. But in some cases the education may not enhance the husband's earning capacity, or may enhance it only marginally, or may enhance it but the husband engages in other work to which the enhancement is irrelevant. In these cases the equities change. If there is no enhancement or only a marginal enhancement of the husband's earning capacity, the basis of the reimbursement right--that the community contributed funds for the economic benefit of the husband--fails. The reimbursement right should apply only where enhancement of the husband's earning capacity is substantial. This will ensure fairness in imposing on the husband the economic burden of reimbursement and will avoid litigation over small expenditures such as weekend seminars

7. Such efforts may cause the benefited property to be classified as community. See, e.g., Lichtig, Characterization of Property in 1 California Marital Dissolution Practice § 7.27 (Cal. Cont. Ed. Bar 1981).

whose impact on the husband's earning capacity is speculative or intangible. Where enhancement of the husband's earning capacity is substantial but the husband does not take advantage of this, reimbursement should nonetheless be required. The higher earning potential is still available to the husband, who may take advantage of it in the future. The husband should not be able to avoid the reimbursement requirement simply by working at a lower-paying job until the marriage is dissolved.

Even where the husband's earnings are substantially enhanced there may be cases where reimbursement is inappropriate at dissolution of marriage. For example, the marriage dissolution may not occur shortly after the husband receives the education, degree, or license. The husband and wife may live happily married for many years, enjoying a high standard of living and accumulating substantial community assets as a result of the education. In this situation, the community may already have received many times over the anticipated benefits of the wife's support of the husband during his education.

Or, even though the husband is educated at the wife's expense, the wife in turn may have been educated and trained at the husband's expense. There is in effect an offset and it makes little sense to require each to reimburse the other.

Perhaps after a lengthy marriage during which the husband worked and the wife stayed home and raised the children, the wife receives education out of community funds that enables her to be gainfully employed. Thereafter the marriage is dissolved. In this situation it would be inequitable to require the wife to reimburse the community. In fact, if the wife had not received the education, it is likely upon dissolution of the marriage that the husband would be required to support the wife so she could receive education and become gainfully employed.

There may be other situations where the reimbursement right is simply not appropriate. To accommodate these situations, the Commission believes the reimbursement right should not be automatic in every case, but should be subject to reduction or modification by the court if extraordinary circumstances render reimbursement unjust.⁸

If the marriage endures any length of time after the husband receives the education and training, in addition to the possibility that the community will recoup its expenditures, problems of proof and computation

8. This is the standard used if an educational loan is not assigned for payment to the spouse receiving the education. Civil Code § 4800(b)(4).

become significant. Records of expenditures and their community or separate sources are unlikely to be kept, so that with the passage of time proof becomes less reliable. To address these problems, the Commission recommends that the reimbursement right should be subject to a 10-year limitation period. This will recognize that over time the community is likely to benefit from the husband's enhanced earning capacity, and will limit the potential for unreliable evidence of expenditures. The 10-year limitation is admittedly arbitrary, but is designed to achieve simplicity and justice in the ordinary case.

The Commission recommends that reimbursement not be adjusted for interest and inflation. The measure of reimbursement includes the value of the husband's time, which in the ordinary case will more than offset the actual loss to the community of educational expenditures.

The husband's education may be received totally during the marriage. In many cases, however, it will be received in part before the marriage and in part during the marriage. In other cases the education will have been received totally before the marriage. The community should be reimbursed for expenditures regardless when the education was received. If the education was received before marriage but bills are paid or an educational loan is paid during marriage with community assets, reimbursement is proper.

Ordinarily before the wife puts the husband through school the parties have discussed their expectations and may have agreed to matters such as the proportion of the costs each party is expected to bear, whether the husband in turn is expected to support the wife during her education, and possibly even their rights to recompense if the marriage dissolves. The agreement may not be in writing, and in fact will ordinarily be oral. Nonetheless, if a party can prove such an agreement, the Commission recommends that the agreement should be recognized and should prevail over the reimbursement right provided by statute. The reimbursement right is intended only as a rough measure of justice that people generally would agree is fair and should be subject to express bargaining and agreement by the parties.

The Commission's recommendation would be effectuated by enactment of the following measure.

An act to amend Section 4800 of, and to add Section 4800.3 to, the Civil Code, relating to husband and wife.

The people of the State of California do enact as follows:

36254

Civil Code § 4800 (amended)

SECTION 1. Section 4800 of the Civil Code is amended to read:

4800. (a) Except upon the written agreement of the parties, or on oral stipulation of the parties in open court, the court shall, either in its interlocutory judgment of dissolution of the marriage, in its judgment decreeing the legal separation of the parties, or at a later time if it expressly reserves jurisdiction to make such a property division, divide the community property and the quasi-community property of the parties, including any such property from which a homestead has been selected, equally. For purposes of making such division, the court shall value the assets and liabilities as near as practicable to the time of trial, except that, upon 30 days' notice by the moving party to the other party, the court for good cause shown may value all or any portion of the assets and liabilities at a date after separation and prior to trial to accomplish an equal division of the community property and the quasi-community property of the parties in an equitable manner.

(b) Notwithstanding subdivision (a), the court may divide the community property and quasi-community property of the parties as follows:

(1) Where economic circumstances warrant, the court may award any asset to one party on such conditions as it deems proper to effect a substantially equal division of the property.

(2) As an additional award or offset against existing property, the court may award, from a party's share, any sum it determines to have been deliberately misappropriated by such party to the exclusion of the community property or quasi-community property interest of the other party.

(3) If the net value of the community property and quasi-community property is less than five thousand dollars (\$5,000) and one party

cannot be located through the exercise of reasonable diligence, the court may award all such property to the other party on such conditions as it deems proper in its final judgment decreeing the dissolution of the marriage or in its judgment decreeing the legal separation of the parties.

~~(4) Educational loans shall be assigned to the spouse receiving the education in the absence of extraordinary circumstances rendering such an assignment unjust.~~

(c) Notwithstanding the provisions of subdivision (a), community property personal injury damages shall be assigned to the party who suffered the injuries unless the court, after taking into account the economic condition and needs of each party, the time that has elapsed since the recovery of the damages or the accrual of the cause of action, and all other facts of the case, determines that the interests of justice require another disposition. In such case, the community property personal injury damages shall be assigned to the respective parties in such proportions as the court determines to be just, except that at least one-half of such damages shall be assigned to the party who suffered the injuries. As used in this subdivision, "community property personal injury damages" means all money or other property received or to be received by a person in satisfaction of a judgment for damages for his or her personal injuries or pursuant to an agreement for the settlement or compromise of a claim for such damages, if the cause of action for such damages arose during the marriage but is not separate property as defined in Section 5126, unless such money or other property has been commingled with other community property.

(d) The court may make such orders as it deems necessary to carry out the purposes of this section.

Comment. The substance of former subdivision (b)(4) of Section 4800 is continued in Section 4800.3(b)(2) (expenses of education or training).

36256

Civil Code § 4800.3 (added)

SEC. 2. Section 4800.3 is added to the Civil Code, to read:

4800.3. (a) As used in this section, "community contributions" to the education or training of a party means payments made with community

property for the education or training or for a loan incurred for the education or training, and the reasonable value of the time spent by the party during marriage on the education or training.

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

(1) The community shall be reimbursed for community contributions to the education or training of a party that substantially [significantly] enhances the earning capacity of the party. The amount reimbursed shall be without interest or adjustment for change in monetary values and shall be limited to community contributions made within 10 years before commencement of the proceeding.

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

(c) The disposition required by this section shall be in addition to any support obligation of the party, but shall be reduced or modified to the extent extraordinary circumstances render the disposition unjust, including but not limited to the following:

(1) The community has substantially benefited from the education or training of the party.

(2) The education or training received by the party is substantially offset by education or training received by the other party for which community contributions have been made.

(3) The education or training enables the party to engage in gainful employment that substantially reduces the need of the party for support that would otherwise be required.

(d) The provisions of this section are subject to an express [written] agreement of the parties to the contrary.

(e) This section applies to a proceeding commenced on or after the operative date, regardless whether the education or training was received, a loan was incurred, or community contributions were made before, on, or after the operative date.

Comment. Section 4800.3 is added to provide authority for reimbursement of educational expenses that have benefited primarily one party to the marriage. Although the education, degree, or license is not "property" subject to division, community expenditures for them are properly subject to reimbursement. See, e.g., *Todd v. Todd*, 272 Cal. App.2d 786, 78 Cal. Rptr. 131 (1969); In re Marriage of Aufmuth, 89 Cal. App.3d 446,

152 Cal. Rptr. 668 (1979); In re Marriage of Sullivan (hearing granted, October 28, 1982).

Subdivision (a) does not detail the expenditures that might be included within the concept of "community contributions." These expenditures would at least include cost of tuition, fees, books and supplies, and transportation. The devotion of time and energy by a party to education or training for his or her own benefit is treated as an expenditure of community resources, just as such devotion by a party to benefit his or her separate property would be. This is measured by the reasonable value of the party's time spent on the education.

Subdivision (b)(1) states the basic rule that community contributions must be reimbursed. The reimbursement right is limited to cases where the earning capacity of a party is substantially enhanced; this limitation is intended to restrict litigation by requiring that the education or training must demonstrably enhance earning capacity and to implement the policy of the section to redress inequities in the earning capacities of the parties. However, it is not required that the party actually work in an occupation to which the enhancement applies; community contributions were made to the enhancement for the benefit of one party, who retains the potential to realize the enhancement in the future. Reimbursement under subdivision (b)(1) is subject to a 10-year statute of limitations to minimize proof problems as well as potential inequity.

Subdivision (b)(2) continues the substance of former Section 4800(b)(4) (educational loans).

Subdivision (c) is intended to permit the court to avoid the requirements of this section in an appropriate case. For example, if one party receives a medical education, degree, and license at community expense, but the marriage endures for sometime with a high standard of living and substantial accumulation of community assets attributable to the medical training, it might be inappropriate to require reimbursement. Subdivision (c)(1). If both parties receive education or training at community expense, it may be appropriate to allow no reimbursement even though the exact amounts expended for each are not equal. Subdivision (c)(2). This limitation is especially important where one party received education or training more than 10 years before the commencement of the dissolution or separation proceeding. See subdivision (b)(1). If at the end of a lengthy marriage one party, who had been a homemaker during the marriage and had never completed an education or developed job skills, receives education or training to enable him or her to be gainfully employed, reimbursement could be improper. Subdivision (c)(3). Absent the education or training, support might be necessary to maintain the party or to obtain education or training.

Subdivision (d) recognizes that at the time community contributions are made to the education or training of a spouse, the parties may well have an agreement or understanding as to the conditions of the contributions. Since such agreements or understandings may be informal, subdivision (d) does not require a writing.

Subdivision (e) makes this section retroactive to the extent practical. The inequity sought to be righted is so substantial that retroactive treatment is warranted.