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*Kantor v. Bellows*

## **Franklin Domestic Relations Law**

**Section 3** - The term "marital property" shall mean all property acquired by either or both spouses during the marriage. Marital property shall not include separate property as hereinafter defined.

**Section 4** - The term "separate property" shall mean

- A. property acquired before marriage or property acquired by bequest, devise, or descent, or gift from a party other than the spouse;
- B. compensation for personal injuries;
- C. property acquired in exchange for or the increase in value of separate property as defined in subpart (A) of this section, except when the increase is attributable to the direct or indirect contribution by the party not having title;
- D. property described as separate property by valid written agreement of the parties.

**Section 5** - Disposition of property in divorce actions.

- A. The court, in an action for divorce, shall determine the respective rights of the parties in their separate or marital property.
- B. Separate property shall remain such.
- C. Marital property shall be distributed equitably between the parties, considering the circumstances of the case and the respective parties.
- D. In determining an equitable disposition of property under paragraph C, the court shall consider
  - (1) the income and property of each party at the time of marriage and at the time of the commencement of the action;
  - (2) the duration of the marriage and the age and health of both parties;
  - (3) 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;
  - (4) the liquid or non-liquid character of all marital property;
  - (5) the probable future financial circumstances of each party;
  - (6) the impossibility or difficulty of evaluating any component asset or any interest in a business, corporation or profession, and the economic desirability of retaining such asset or interest intact and free from any claim or interference by the other party.

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

**Section 6 - Maintenance.**

- A. Except where the parties have entered into an agreement, in any divorce action the court may order temporary maintenance or maintenance in such amount as justice requires, having regard for the standard of living of the parties established during the marriage, whether the party in whose favor maintenance is granted lacks sufficient property and income to provide for his or her reasonable needs, whether the other party has sufficient property or income to provide for the reasonable needs of the other, and the circumstances of the case and the respective parties. In determining the amount and duration of maintenance, the court shall consider
- (1) the income and property of the respective parties, including marital property distributed pursuant to Section 5.
  - (2) the duration of the marriage and the age and health of both parties;
  - (3) the present and future earning capacity of both parties;
  - (4) the ability of the party seeking maintenance to become self-supporting and, if applicable, the period of time and training necessary therefore;
  - (5) reduced or lost lifetime earning capacity of the party seeking maintenance as a result of having foregone or delayed education, training, employment, or career opportunities during the marriage;
  - (6) the presence of children of the marriage in the respective homes of the parties;
  - (7) contributions and services of the party seeking maintenance as a spouse, parent, wage earner and homemaker, and to the career or career potential of the other party.
- B. The court may award permanent maintenance, but an award of maintenance shall terminate upon the death of either party or upon the recipient's valid or invalid marriage.

## **Reginald Morgan v. Victoria Morgan**

Franklin Court of Appeal, Second Appellate Division (1998)

The question in this case is whether the defendant, Victoria Morgan, has the right to share the value of a professional business (MBA) degree earned by her former husband, Reginald Morgan, during their marriage. The court must decide whether the plaintiff's degree is "property" for purposes of Franklin Domestic Relations Law Section 3. If the MBA degree is not property, we must still decide whether Victoria can nonetheless recover the money she contributed to her husband's support while he pursued his professional education. We hold that Reginald's professional degree is not property and therefore not subject to equitable distribution but that Victoria may be reimbursed for her financial contributions to Reginald's professional training.

When the parties married in 1984, Reginald had an engineering degree and Victoria had a bachelor of science degree. From that time until the parties separated in October 1991, they generally shared all household expenses. The sole exception was the period between September 1988 and January 1990, when the plaintiff attended the Wharton School of the University of Pennsylvania and received an MBA degree.

During the 16-month period in which Reginald attended school, Victoria contributed \$26,000 to cover household expenses plus another \$10,000 for Reginald's tuition. Reginald made no financial contribution while he was a student. After receiving his degree, Reginald went to work as a commercial lending officer

for Franklin National Bank. Meanwhile, in 1989 Victoria began a part-time graduate program at Franklin State University, paid for by her employer, that led to a master's degree in microbiology one year after the parties had separated. Victoria worked full time throughout the course of her graduate schooling.

The trial court granted a divorce. At the time of trial, Reginald's annual income was \$48,200 and Victoria's income was \$40,000. No claim for maintenance was made. The parties owned no real property and they divided the small amount of their personal property by agreement. The only issue at trial was Victoria's claim for an equitable share of the present value of the enhanced future earning capacity of plaintiff attributable to the MBA degree.

The trial court did not attempt to determine the value of Reginald's MBA degree. Instead, the court held that the education and degree obtained by Reginald constituted a property right and reimbursed Victoria for the contribution she made to acquiring the degree. The court awarded her the \$10,000 she contributed to Reginald's tuition and 50% of her \$26,000 contribution to household expenses during the educational period.

This court must decide whether the legislature intended an MBA degree to be "property" so that, if acquired by either spouse during a marriage, its value must be equitably

distributed upon divorce. Since there is no legislative history on the meaning of the word "property" and the statute itself offers no guidance, statutory construction in this case means little more than an inquiry into the extent to which professional degrees and licenses share the qualities of other things that the legislature and courts have treated as property.

Franklin courts have subjected a broad range of assets and interests to equitable distribution, including vested but unmatured private pensions, military retirement pay and disability benefits, and personal injury claims. This court, however, has never subjected to equitable distribution an asset whose future monetary value is as uncertain and unquantifiable as a professional degree or license. A professional license or degree cannot be sold and its value cannot readily be determined. It represents the opportunity to obtain an amount of money only upon the occurrence of highly uncertain future events. The value of a professional degree is nothing more than the possibility of enhanced earnings that the particular academic credential will provide, income that the degree holder might never acquire. Moreover, any assets resulting from future income for professional services would be property acquired after the marriage; the statute restricts equitable distribution to property acquired during the marriage.

Valuing a professional degree in the hands of any particular individual at the start of his or her career would involve a gamut of calculations that reduces to little more than guesswork. Even if such estimates could be

made, however, there would remain a world of unforeseen events that could affect the earning potential—not to mention the actual earnings—of any particular degree holder. A person qualified by education for a given profession may choose not to practice it, may fail at it, or may practice in a specialty, location, or manner which generates less than the average income enjoyed by fellow professionals. The potential for inequity to the failed professional or one who changes careers is at once apparent; his or her spouse will have been awarded a share of something which never existed in any real sense.

Valuing educational assets, even if they were marital property, in terms of the cost to the supporting spouse of obtaining the degree would be an erroneous application of equitable distribution law. The cost of a professional degree has little to do with any real value of the degree and fails to consider at all the nonfinancial efforts made by the degree holder in completing his course of study. The cost of a spouse's financial contributions has no logical connection to the value of that degree. The cost approach is not conceptually predicated on a property theory at all but rather represents a general notion of how to do equity. Equitable distribution in these cases derives from the proposition that the supporting spouse should be reimbursed for contribution to the marital unit that, because of the divorce, did not bear its expected fruit for the supporting spouse.

Although the trial court found that the degree was distributable property, it actually reimbursed the defendant without attempting

to give her part of the value of the degree. This court does not support reimbursement between former spouses in maintenance proceedings as a general principle. Marriage is not a business arrangement in which the parties keep track of debits and credits, their accounts to be settled upon divorce. Rather, marriage is a shared enterprise, a joint undertaking in many ways akin to a partnership. It is improper for a court to treat a marriage as an arm's-length transaction by allowing a spouse to come into court after the fact and make legal arguments regarding unjust enrichment. Courts should assume, in the absence of contrary proof, that the decision to obtain a professional degree was mutual and took into account what sacrifices the husband and wife needed to make in furtherance of that decision. But every joint undertaking has its bounds of fairness. Where a partner to marriage takes the benefits of his or her spouse's support in obtaining a professional degree or license with the understanding that future benefits will accrue and inure to both of them, and the marriage is then terminated without the supported spouse giving anything in return, an unfairness has occurred that calls for a remedy.

In this case, the supporting spouse made financial contributions towards her husband's professional education with the expectation that both parties would enjoy material benefits flowing from the professional license or degree. It is therefore patently unfair that the supporting spouse be denied the mutually anticipated benefit while the supported spouse keeps not only the degree, but also all of the financial and material rewards flowing from it. Furthermore, in this case a supporting spouse

has contributed more than mere earnings to her husband with the mutual expectation that both of them will realize and enjoy material improvements. Also, the wife has presumably made personal financial sacrifices, resulting in a reduced or lowered standard of living. She has postponed present consumption and a higher standard of living for the future prospect of greater support and material benefits. If the parties had remained married long enough after the husband had completed his postgraduate education so that they could have accumulated substantial property, the court would have determined how much of the marital property to allocate to the wife, taking into account her contributions to her husband's earning capacity. In this sense, an award that is referable to the spouse's monetary contributions to her partner's education significantly implicates basic considerations of marital support and standard of living.

Although not explicitly provided for in Section 6 of our Domestic Relations Law, to provide a fair and effective means of compensating a supporting spouse, we now introduce the concept of *reimbursement maintenance* into divorce proceedings. Regardless of the appropriateness of permanent maintenance or the presence or absence of marital property to be equitably distributed, there will be circumstances where a supporting spouse should be reimbursed for the financial contributions he or she made to the spouse's successful professional training. Such reimbursement maintenance should cover all financial contributions towards 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. Although courts may not make any permanent distribution of the value of professional degrees and licenses, whether based upon estimated worth or cost, where a spouse has received financial contributions used in obtaining a professional degree or license with the expectation of deriving material benefits for both, that spouse may be called upon to reimburse the supporting spouse for the amount of contributions received.

We do not hold that every spouse who contributes toward his or her partner's education or professional training is entitled to reimbursement maintenance. Only monetary contributions made with the mutual and shared expectation that both parties to the marriage will derive increased income and material benefits should be a basis for such an award. For example, it is unlikely that a spouse who has been married to a financially successful executive and returns to school after many years of homemaking would upon divorce be required to reimburse her husband for his contributions toward her degree.

We remand the case so the trial court can determine whether reimbursement maintenance should be awarded and, if so, what amount is appropriate.

## Michael Sooke v. Loretta Sooke

Franklin Court of Appeal, Fourth Appellate Division (1999)

In this divorce action, the parties' only asset of any consequence is the husband's medical degree. The principal issue is whether that degree, acquired during their marriage, is marital property. The trial court held that it was and made a distributive award in the wife's favor. It also granted her expert witness fees.

Michael and Loretta Sooke married in 1982. Both were employed as teachers. Loretta had a bachelor's degree and a temporary teaching certificate but required 18 months of postgraduate classes at an approximate cost of \$3,000, excluding living expenses, to obtain permanent certification in Franklin. She relinquished the opportunity to obtain permanent certification while Michael pursued his education. In 1984 the parties moved to Guadalajara, Mexico, where Michael became a full-time medical student. Loretta taught and contributed her earnings to their joint expenses. The parties returned to Franklin in 1987 so that Michael could complete the last two semesters of medical school and internship training here. Loretta resumed her former teaching position, where she remained at the time this action was commenced. Michael was licensed to practice medicine in 1991 and filed for divorce two months later. At the time of trial, he was a resident in general surgery. During the marriage, both parties contributed to paying the living and educational expenses. In addition to performing household work and managing the family finances, Loretta contributed 76% of the parties' income exclusive of a \$10,000 student loan obtained by Michael.

Loretta presented expert testimony that the present value of Michael's medical degree was \$950,000. Her expert testified that he arrived at this figure by comparing the average income of a college graduate and that of a general surgeon between 1996, when Michael's residency would end, and 2023, when he would reach age 65. Taking into account taxes, inflation, and interest rates, he gave his opinion that the present value of Loretta's contribution to Michael's medical education was \$210,000. Michael offered no expert testimony on the subject.

The court made a distributive award to Loretta of \$380,000, representing 40% of the value of the degree, and ordered it paid in 11 annual installments. The court also ordered Michael to pay Loretta's counsel fees of \$20,000 and her expert witness fee of \$5,000. We affirm.

Our statutes contemplate only two classes of property: marital and separate. The former, which is subject to equitable distribution, is defined broadly as "all property acquired by either or both spouses during the marriage." Michael does not contend that his license is separate property, but rather, relying on *Morgan v. Morgan* (Franklin Court of Appeal, 1998), he claims that it is not property at all.

We disagree with the decision of the Second Appellate Division in that case.

The Franklin Domestic Relations Law recognizes that spouses have an equitable

claim to things of value arising out of the marital relationship and classifies them as subject to distribution by focusing on the marital status of the parties at the time of acquisition. Those things acquired during marriage and subject to distribution have been classified as marital property, although they hardly fall within traditional property concepts because there is no common-law property interest remotely resembling marital property. Having classified the property subject to distribution, the legislature did not define it but left it to the courts to determine what interests come within its terms.

Section 5 provides that in making an equitable distribution of marital property, the 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 profession. . . ." Where such difficulty exists, the court shall make a distributive award in lieu of an actual distribution of property. The words mean exactly what they say: an interest in a profession or professional career potential is marital property which may be represented by direct or indirect contributions of the non-titleholding spouse, including financial contributions and nonfinancial contributions made by caring for the home and family. Few undertakings better qualify as the type of joint effort that the statute's implicit economic

partnership theory is intended to address than contributions toward one spouse's acquisition of a professional degree. The legislature has decided, by its explicit reference in the statute to the contributions of one spouse to the other's profession or career, that these contributions represent investments in the economic partnership of the marriage and that the product of the parties' joint efforts should be considered marital property. It does not matter whether the spouse has established a practice or whether he or she has yet to do so. An established practice merely represents the exercise of the privileges conferred upon the professional spouse by the degree, and the income flowing from that practice represents the receipt of the enhanced earning capacity that a professional degree allows.

Michael contends that alternative remedies should be employed, such as reimbursement for direct financial contributions. Limiting a working spouse to a maintenance award not only is contrary to the economic partnership concept underlying the statute but also retains the uncertain and inequitable economic ties of dependence that the legislature sought to extinguish by equitable distribution. Maintenance is subject to termination upon the recipient's remarriage, and a working spouse may never receive adequate consideration for his or her contribution and may even be penalized for the decision to remarry. When a marriage ends, each of the spouses, based on the totality of the contributions made to it, has a stake in and right to a share of the marital assets accumulated while it endured, not because that share is needed, but because those

assets represent the capital product of what was essentially a partnership entity.

Turning to the question of valuation, it has been suggested that even if a professional degree is considered marital property, the working spouse is entitled only to reimbursement of his or her direct financial contributions. Such a result is completely at odds with the statute's requirement that the court give full consideration to both direct and indirect contributions. If the degree is marital property, then the working spouse is entitled to an equitable portion of it, not merely a return of funds advanced. Its value is the enhanced earning capacity it affords the holder and, although fixing the present value of that enhanced earning capacity may present problems, the problems are not insurmountable. Certainly they are no more difficult than computing tort damages for wrongful death or diminished earning capacity resulting from injury, and they differ only in degree from valuing a professional practice, which courts routinely do. The trial court retains the flexibility and discretion to structure the distributive award equitably, taking into consideration factors such as the working spouse's need for immediate payment and the current ability of the spouse with the degree to pay. Once it has received evidence of the present value of the degree and the working spouse's contributions toward its acquisition, it may then make an appropriate distribution of the marital property, including a distributive award for the professional degree. For these reasons, we affirm.

DISSENT by Meyer, J.

Michael Sooke's principal argument is that a professional degree is not marital property because it does not fit within the traditional view of property as something which has an exchange value on the open market and is capable of sale, assignment or transfer. I agree.

An educational degree is simply not encompassed even by the broad views of the concept of "property." It does not have an exchange value or any objective transferable value on an open market. It is personal to the holder. It terminates on death of the holder and is not inheritable. It cannot be assigned, sold, transferred, conveyed or pledged. An advanced degree is a cumulative product of many years of previous education, combined with diligence and hard work. It may not be acquired by the mere expenditure of money. It is simply an intellectual achievement that may potentially assist in the future acquisition of property. In my view, it has none of the attributes of property in the usual sense of that term. My interpretation is in accord with the Second Appellate Division of this court. I would reverse.

