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Article 14

DLR § 236(B): Appellate Division Expands Equitable Distribution Law to Include Educational Degrees as Marital Property Subject to Equitable Distribution

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knowledge of material and necessary information.[34]

The court's interpretation of the special circumstances requirement in *Dioguardi* may result in nondisclosure of facts which are needed by defendants to prepare fully for trial. By placing upon the defendant the burden of showing facts despite the plaintiff's exclusive right to ascertain such evidence, the *Dioguardi* court has narrowed the scope of nonparty disclosure far beyond that intended by CPLR 3101(a)(4). The unique relationship between the plaintiff and his physician requires the more liberal interpretation of the *Cirale* holding suggested in this survey.[35]

Edward G. Kehoe

DOMESTIC RELATIONS LAW

DRL § 236(B): Appellate Division expands Equitable Distribution Law to include educational degrees as marital property subject to equitable distribution

Until 1980, parties involved in a judicially ordered property distribution pursuant to a New York divorce decree were forced to rely on common law rules which frequently resulted in "inequitable" distribution.[1] In response, the New York State Legislature en-

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[34] *See* O'Neill v. Oakgrove Constr., Inc., 71 N.Y.2d 521, 526, 523 N.E.2d 277, 279, 528 N.Y.S.2d 1, 2 (1988). The *O'Neill* court confirmed the long-held view that special circumstances are present when a nonparty possesses exclusive knowledge of facts which might be material to the case. *Id.*

[35] The First Department has applied the special circumstances standard to facts similar to those in *Dioguardi* and has allowed for the deposition of a nonparty treating physician. *See* Villano v. Conde Nast Publications, Inc., 46 App. Div. 2d 118, 122, 361 N.Y.S.2d 351, 355 (1st Dep't 1974); Names Unlimited, Inc. v. New York Life Ins. Co., 45 App. Div. 2d 696, 697, 357 N.Y.S.2d 72, 73 (1st Dep't 1974). In *Villano*, despite the availability of medical records, the court granted deposition of plaintiff's treating physicians on the assumption that they possessed special and exclusive knowlege which was necessary in order for defendant to prepare fully for trial. *Villano*, 46 App. Div. 2d at 120, 361 N.Y.S.2d at 353. In *Names Unlimited*, the analysis was the same. *See Names Unlimited*, 45 App. Div. 2d at 697, 357 N.Y.S.2d at 73.

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[1] *See* DRL § 236(B), commentary at 140 (McKinney 1986). Prior to the passage of New York's Equitable Distribution Law, courts were required to award property to the spouse who held title, regardless of any contributions by the other spouse in acquiring the property.

acted the Equitable Distribution Law[2] so as to recognize the economic partnership created by marriage.[3] This statute was intended

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See DRL § 236 (McKinney 1977). This common law approach typically resulted in inequities. L. GOLDEN, EQUITABLE DISTRIBUTION OF PROPERTY § 1.03, at 4-5 (1983). At common law, property rights did not arise as a result of the marriage; they were based solely on title principles. *Id.* Even if the non-titled spouse contributed financially to the marriage, he or she would not share in that property acquired during the marital period upon divorce. *Id.* at 5.

Under the common law, as developed in New York, courts did not have the power to dispose of property, rather, they were limited to awarding alimony. *See* 11C J. ZETT, M. KAUFAM & C. KRAUT, NEW YORK CIVIL PRACTICE, EQUITABLE DISTRIBUTION ACTIONS vol. 11C § 64.01[1], at 64-3 (1987) [hereinafter NEW YORK CIVIL PRACTICE]. Consequently, the non-titled spouse did not receive recognition for his or her financial interest in the assets. *Id.* at 64-65; *see also* H. FOSTER, D. FREED, & J. BRANDES, LAW AND THE FAMILY—NEW YORK § 2.25, at 171 (2d ed. 1988) [hereinafter LAW AND THE FAMILY] (under common law marital property consisted solely of property jointly owned); G. MCLELLAN, EQUITABLE DISTRIBUTION LAW AND PRACTICE § 1.4, at 5 (1985) (one-sided result often occurred since traditionally majority of assets were purchased with husband's money).

Numerous cases illustrate the unjust results of the New York common law approach to property distribution. *See, e.g.*, Fischer v. Wirth, 38 App. Div. 2d 611, 612, 326 N.Y.S.2d 308, 311 (3d Dep't 1971) (mem.) (wife of thirty-six years who raised two children and shared financial obligations was deprived of her fair share of family assets because all investments were made in husband's name); Manheim v. Manheim, 60 Misc. 2d 88, 91, 302 N.Y.S.2d 473, 476 (Sup. Ct. Nassau County 1969) (unless gift is specifically made, wife has no claim to household goods purchased with husband's funds), *aff'd*, 34 App. Div. 2d 660, 310 N.Y.S.2d 1017 (2d Dep't 1970).

[2] DRL § 236(B) (McKinney 1986). By adopting this Equitable Distribution Statute, the legislature intended to abolish this "tyranny of title" and implement a new concept to the distribution of property. *See* LAW AND THE FAMILY, *supra* note 1, § 2.25, at 171.

More than 40 states have enacted some form of equitable distribution statute. *See* L. GOLDEN, *supra* note 1, § 1.02, at 3; *see also* Note, *Searching for an Equitable Interest in a Professional Education Upon Divorce: Time to Legislate the Emerging View*, 32 WASH. U.J. URB. & CONTEMP. L. 173, 177 (1987) [hereinafter, Note, *Searching for an Equitable Interest*] (majority of divorce statutes provide for equitable distribution of property acquired during marriage); Comment, *'Til Graduation Do We Part—The Professional Degree Acquired During Marriage as Marital Property Upon Dissolution: An Evaluation and Recommendation for Ohio*, 56 U. CIN. L. REV. 227, 230 n.13 (1987) (listing states which have enacted equitable distribution statutes).

Nine jurisdictions presently practice community property law. *See* Note, *Educational Degrees at Divorce: Toward an Educated Dissolution*, 59 S. CAL. L. REV. 1351, 1357 (1986). Under community property law, the assets acquired during the marriage flow to the union, rather than to the individual contributor. *Id.*; *see also* I. BAXTER, MARITAL PROPERTY, § 6:1, at 107 (1973) ("community is a union of pecuniary interests between the spouses, and the placing in common of the gains acquired during the marriage").

Mississippi is the only jurisdiction which follows the common law title rule. *See* L. GOLDEN, *supra* note 1, at 5 n.21.

[3] *See* Governor's Memorandum on Approval of ch. 281, N.Y. Laws (June 19, 1980), *reprinted in* [1980] N.Y. Laws 1863 (McKinney); *see also* Memorandum of Assemblyman Burrows, *reprinted in* [1980] N.Y. LEGIS. ANN. 130 ("Modern marriage should be viewed as a form of partnership"); NEW YORK CIVIL PRACTICE, *supra* note 1, § 60.01[2], at 60-4 (intent of statute is to recognize marriage as partnership of coequals).

to provide an equitable and comprehensive approach to the distribution of assets upon the dissolution of a marriage.[4] It established the concept of "marital property" in New York to identify those assets acquired during the marriage through either the individual or joint efforts of the spouses.[5] Although the statute designates time parameters within which "marital property" may be acquired, it fails specifically to define what constitutes such property.[6] In the landmark decision of *O'Brien v. O'Brien*,[7] the New York Court of Appeals held that a professional license acquired during the marriage constituted marital property subject to equitable distribution.[8] *O'Brien* set New York apart from the majority of jurisdic-

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[4] *See* DRL § 236, commentary at 191 (McKinney 1986). "The theory of the statute is that marriage is an economic partnership and that, upon dissolution . . . the tangible fruit of that partnership . . . should be equitably divided between the parties." *Id.* New York's equitable distribution statute furthers its goal of fairly dividing the assets of a dissolved marriage by identifying twelve factors to be considered in distributing the marital property, DRL § 236(B)(5)(d)(1)-(12), and further allows consideration of "any other factor which the court shall expressly find to be just and proper." *Id.* at § 236(B)(5)(d)(13).

[5] *See* DRL § 236(B)(1)(c) (McKinney 1986). The statute defines "marital property" as "all property acquired by either or both spouses during the marriage and before the . . . commencement of a matrimonial action, regardless of the form in which title is held." *Id.*

The statute further defines "separate property" thus:

(1) property acquired before marriage or property acquired by bequest, devise, or descent, or gift from a party other than the spouse;

(2) compensation for personal injuries;

(3) property acquired in exchange for or the increase in value of separate property, except to the extent that such appreciation is due in part to the contributions or efforts of the other spouse;

(4) property described as separate property by written agreement of the parties . . .

Id. § 236(B)(1)(d). It is important to note that only *marital* property is subject to equitable distribution. *See id.* § 236(B)(5)(c).

[6] *See* DRL § 236(B). Marital property has been interpreted to include anything with provable economic worth that is produced by either or both spouses during their marital partnership. *See* O'Brien v. O'Brien, 66 N.Y.2d 576, 583, 489 N.E.2d 712, 715, 498 N.Y.S.2d 743, 746 (1985). In *O'Brien*, the New York Court of Appeals held that a medical license was marital property. *Id.* at 584, 489 N.E.2d at 715, 498 N.Y.S.2d at 746.

Courts have classified many other items of economic worth as marital property. *See, e.g.*, Litman v. Litman, 61 N.Y.2d 918, 920, 463 N.E.2d 34, 34, 474 N.Y.S.2d 718, 718 (1984) (law practice); Maloney v. Maloney, 114 App. Div. 2d 440, 441, 494 N.Y.S.2d 356, 357 (2d Dep't 1985) (jointly owned marital premises); Woertler v. Woertler, 110 App. Div. 2d 947, 949, 488 N.Y.S.2d 265, 268 (3d Dep't 1985) (gift between spouses of jewelry and car); Ackley v. Ackley, 100 App. Div. 2d 153, 156, 472 N.Y.S.2d 804, 806 (4th Dep't 1984) (wedding gift); *cf.* Trickel v. Trickel, 88 App. Div. 2d 741, 742, 451 N.Y.S.2d 871, 873 (3d Dep't 1982) (remanding for determination of whether savings account was marital property).

[7] 66 N.Y.2d 576, 489 N.E.2d 712, 498 N.Y.S.2d 743 (1985).

[8] *See id.* at 584, 489 N.E.2d at 715, 498 N.Y.S.2d at 746. In extending the boundaries of the traditional definition of property, the court recognized both that the "New York Legisla-

tions which recognizes no property interest in professional status.[9] Recently, in *McGowan v. McGowan*,[10] the Appellate Division, Second Department, extended this unique interpretation of marital property to include an educational degree acquired during the marriage.[11]

In *McGowan*, the parties married in 1963, approximately two weeks before Mrs. McGowan received her permanent teaching certification.[12] She obtained her master's degree in 1977, entitling her to a higher salary as a teacher.[13] Throughout the marriage, the husband maintained an unstable employment history.[14] In 1987,

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ture deliberately went beyond traditional property concepts when it formulated the Equitable Distribution Law" and that "there is no common-law property interest remotely resembling marital property." *Id.* at 583, 489 N.E.2d at 715, 498 N.Y.S.2d at 746. The *O'Brien* court concluded that by classifying the property subject to distribution as "marital" without further defining the term, the legislature intended for the courts to determine the limits of "marital property." *Id.* at 584, 489 N.E.2d at 715, 498 N.Y.S.2d at 746. In view of this broad latitude to interpret the meaning of marital property, the court concluded that "marital property encompasses a license to practice medicine to the extent that the license is acquired during marriage." *Id.*

Notwithstanding *O'Brien*, the modern trend remains clearly against treating degrees and licenses as marital property. *See, e.g.*, Stevens v. Stevens, 23 Ohio St. 3d 115, 120, 492 N.E.2d 131, 135 (1986) (veterinary degree not marital property); Hodge v. Hodge, 513 Pa. 264, 269, 520 A.2d 15, 17 (1986) (medical license and potential for increased earning capacity attained with degree not marital property).

[9] *See* G. McLELLAN, *supra* note 1, § 2.22, at 31. The leading case, *In re* Marriage of Graham, 194 Colo. 429, 431, 574 P.2d 75, 77 (1978), held that a professional degree or license "has none of the attributes of property in the usual sense of that term" and therefore could not be considered marital property. Using traditional definitions of property the *Graham* court ruled that since an educational degree or professional license has no exchange value, cannot be assigned, sold or transferred, and is personal to the holder, the husband's M.B.A. degree was not property subject to division upon divorce. *Id.* Most jurisdictions have followed the *Graham* court's approach. *See, e.g., In re* Marriage of Weinstein, 128 Ill. App. 3d 234, 244, 470 N.E.2d 551, 559 (1984) (osteopathy degree and license not marital property); Mahoney v. Mahoney, 91 N.J. 488, 496, 453 A.2d 527, 531 (1982) (M.B.A. degree); DeWitt v. DeWitt, 98 Wis. 2d 44, 60, 296 N.W.2d 761, 769 (Ct. App. 1980) (law degree); *see also*. Note, *The Equity/Property Dilemma: Analyzing the Working Spouse's Contributions to the Other's Educational Degree at Divorce*, 23 HOUS. L. REV. 991, 998-99 (1986) (judicial treatment of advanced educational degrees fall into three categories, with only a limited number of jurisdictions categorizing them as marital property); Note, *Searching for an Equitable Interest*, *supra* note 2, at 173 (in twenty-four out of twenty-eight jurisdictions ruling on the matter, professional degrees or licenses not considered marital property).

[10] 142 App. Div. 2d 355, 535 N.Y.S.2d 990 (2d Dep't 1988).

[11] *Id.* at 362, 535 N.Y.S.2d at 994.

[12] *Id.* at 357, 535 N.Y.S.2d at 991. From June 1961 until August 1963, the wife completed the graduate work necessary to obtain her permanent teaching certificate. *Id.*

[13] *Id.*

[14] *See id.* at 365, 535 N.Y.S.2d at 996. Mr. McGowan worked for a time in Arkansas and, subsequent to a period of unemployment, obtained a job with the U.S. Postal Service which resulted in his living away from home for a period of five years. *Id.* Consequently,

Mrs. McGowan brought an action for divorce, and, in response, her husband moved for a determination that her teaching license was marital property.[15] The Supreme Court, Suffolk County, relying on the Court of Appeals' broad definition of property in *O'Brien v. O'Brien*,[16] granted the defendant's motion, holding that since the wife acquired her teaching certificate during the marriage, it constituted marital property subject to equitable distribution.[17] The court also held that the wife's master's degree should be characterized as marital property.[18]

While the Appellate Division, Second Department, reversed the trial court's decision as to the wife's teaching certificate, it affirmed the classification of the master's degree as marital property.[19] Writing for the court, Justice Bracken acknowledged that teaching certificates may be considered marital property, but only if earned during the parties' marriage.[20] Since Mrs. McGowan had completed the requirements for her teaching certificate prior to the marriage, the certificate did not constitute marital property.[21]

In affirming the trial court's decision regarding the master's degree, Justice Bracken reasoned that the distinctions between professional licenses and academic degrees are insufficient to deny

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Mrs. McGowan was consistently responsible for the care of the home and children, while maintaining her graduate studies and full time teaching position. *Id.*

[15] McGowan v. McGowan, 136 Misc. 2d 225, 226, 518 N.Y.S.2d 346, 347 (Sup. Ct. Suffolk County 1987), *modified*, 142 App. Div. 2d 355, 535 N.Y.S.2d 990 (2d Dep't 1988). The defendant based this motion upon his mistaken belief that his wife had not received her permanent teaching certificate until she received her master's degree in 1977. *McGowan*, 142 App. Div. 2d at 357, 535 N.Y.S.2d at 992.

[16] 66 N.Y.2d 576, 489 N.E.2d 712, 498 N.Y.S.2d 743 (1985).

[17] *McGowan*, 136 Misc. 2d at 228-29, 518 N.Y.S.2d at 349. The trial court reasoned that "given the definition of a license's value as enunciated in *O'Brien*," it could not rationally be concluded that the Court of Appeals intended to limit marital property to licenses. *Id.* at 228, 518 N.Y.S.2d at 349. The court did not address the fact that Mrs. McGowan had completed the requirements for her teaching certificate prior to the commencement of the marriage. *See supra* note 12.

[18] *McGowan*, 136 Misc. 2d at 228-29, 518 N.Y.S.2d at 349.

[19] *McGowan*, 142 App. Div. 2d at 362, 535 N.Y.S.2d at 994.

[20] *Id.* at 363, 535 N.Y.S.2d at 995.

[21] *Id.* at 357, 535 N.Y.S.2d at 991. The court reasoned that the asset which actually would be classified as marital property is the enhancement of earning capacity which is "acquired when it is actually achieved . . . not at some later point when . . . [it] is formally recognized by the conferral of a degree or license." *Id.*; *cf.* Freyer v. Freyer, 138 Misc. 2d 158, 160, 524 N.Y.S.2d 147, 148-49 (Sup. Ct. Suffolk County 1987) (medical license constituted marital property when wife attended and graduated from medical school during marriage but commenced divorce action six months prior to receiving actual license).

marital property status to an academic degree.[22] The court observed that the reason a professional license is considered marital property—the notion that "it reflects the enhancement of the future earning potential obtained by one spouse . . . only with the assistance and support of the other spouse"[23]—will apply equally, in many circumstances, to an academic degree.[24] The court then concluded that for purposes of equitable distribution, an academic degree acquired during marriage should be considered marital property.[25]

Justice Weinstein, dissenting in part, disagreed with the majority's ruling that an educational degree may constitute a marital asset in certain circumstances.[26] In addition, he argued that in the instant case, the completion of the wife's master's program could hardly have been attributed to the assistance and support of her spouse.[27]

It is submitted that the *McGowan* court, in recognizing the inequity of limiting the *O'Brien* doctrine to professional licenses, was correct in holding that academic degrees *may* be marital property. Pragmatically, a degree that offers its holder increased economic opportunities mirrors the enhanced earnings available to the holder of a professional license.[28] The significant factors should be

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[22] *McGowan*, 142 App. Div. 2d at 359-60, 535 N.Y.S.2d at 993. The court compared an M.B.A. from Harvard Business School and a license to operate a junkyard and concluded that to distinguish between licenses and degrees made little sense. *Id.*

[23] *Id.* at 358, 535 N.Y.S.2d at 992.

[24] *Id.* at 362, 535 N.Y.S.2d at 994.

[25] *Id.* The court reasoned that since the degree, conferred upon the wife subsequent to marriage, increased her earning capacity and reflected the successful completion of study which took place during marriage, it should be subject to the *O'Brien* rule, even though it was not a license. *Id.* at 358-62, 535 N.Y.S.2d at 992-94.

[26] *Id.* at 364, 535 N.Y.S.2d at 996 (Weinstein, J., dissenting in part).

[27] *Id.* at 366, 535 N.Y.S.2d at 997. Justice Weinstein, after reviewing factors which would establish spousal contribution—"income, the assumption of household responsibilities, the deprivation of marital assets . . . and emotional and moral support"— found that Mr. McGowan had made no substantial contributions to the wife's attainment of her master's degree. *Id.* at 365, 535 N.Y.S.2d at 997.

[28] *See* Note, *Professional Licenses as Marital Property: Responses to Some of* O'Brien's *Unanswered Questions*, 73 CORNELL L. REV. 133, 149 (1987). "Although conceptual distinctions exist between licenses and degrees, these distinctions should not outweigh equitable considerations." *Id.* The arguments that persuaded the Court of Appeals to extend marital property to include professional licenses apply with equal force to educational degrees. *See* L. GOLDEN, *supra* note 1, § 6.18, at 182 n.192. "[T]he arguments are equally applicable to other types of educational degrees. It would be hard to justify a rule which applied only to certain educational degrees." *Id.*; *see also* Golub v. Golub, 139 Misc. 2d 440, 446, 527 N.Y.S.2d 946, 950 (Sup. Ct. N.Y. County 1988)("There seems to be no rational

the skills, knowledge, and potential for advancement in a particular field, not the conferral of a license or diploma.[29]

While the *McGowan* court's premise that educational degrees *may* constitute marital property is not disputed, it is submitted that the court's application of this rule to the facts in the *McGowan* case was in error. The Equitable Distribution Law was intended to remedy the inflexible common law rules,[30] and, as such, requires flexibility in its application.[31] Arguably, the statute's underlying policy requires a case-by-case analysis to determine properly whether an educational degree constitutes marital property.[32]

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basis upon which to distinguish between a degree, a license, or any other special skill that generates substantial income"). *See generally* Mullenix, *The Valuation of an Educational Degree at Divorce*, 16 LOY. L.A.L. REV. 227, 274-83 (1983)(labor theory of value analysis concluding that supporting spouse entitled to 50% of degree); Note, *supra* note 9, at 1019-37 (proposing equitable partnership view of educational degree).

[29] *See* DRL § 236, commentary at 25 (McKinney Supp. 1989). "It seems frail and arbitrary to make the availability of equitable distribution of enhanced earning capacity . . . dependent upon the presence of formal documentation." *Id.*; *see also Golub*, 139 Misc. 2d at 444, 527 N.Y.S.2d at 949 (regardless of person's status an enhanced earning ability must be recognized).

The language of the Equitable Distribution Statute does not distinguish between professional and non-professional careers when requiring courts to consider spousal contributions in dividing marital property. DRL § 236(B)(5)(d)(6). The statute provides that in making an equitable distribution of 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 . . . and to the career or career potential of the other party." *Id.*

[30] *See supra* note 1.

[31] *See* Memorandum of Assemblyman Burrows, *supra* note 3, at 130. "Flexibility, rather than rigidity is essential for the fair disposition of a given case." *Id.* Accordingly, the courts have retained broad discretion either to declare an asset marital property or simply to use it as a factor in distributing existing marital property. *See* Comment, *Not What The Doctor Ordered—Medical License Declared Marital Property:* O'Brien v. O'Brien, 60 ST. JOHN'S L. REV. 539, 547 (1986); *see also* Note, *The New York Equitable Distribution Statute: An Update*, 53 BROOKLYN L. REV. 845, 861 (1987) ("Possibly the most significant characteristic of the Statute is its built in flexibility").

Courts have utilized the flexibility of DRL § 236(B) when faced with situations where there are few or no marital assets at the time of divorce. *See, e.g.*, O'Brien v. O'Brien, 66 N.Y.2d at 576, 588, 489 N.E.2d 712, 718, 498 N.Y.S.2d 743, 749 (1985) (legislative intent behind DRL warranted holding that medical license was marital property, especially when no other marital assets existed); *cf.* Conteh v. Conteh, 117 Misc. 2d 42, 44, 457 N.Y.S.2d 363, 365 (Sup. Ct. Monroe County 1982)(since wife entitled to rehabilitative maintenance, distributive award was not warranted).

[32] *See O'Brien*, 66 N.Y.2d at 585, 489 N.E.2d at 716, 498 N.Y.S.2d at 747. The Equitable Distribution Law is based on an entirely new theory which considers "all the circumstances of the case and the respective parties to the marriage." *Id. See generally* Note, *supra* note 2, at 1359-64 (discussing exemplary awards based on facts and circumstances).

It is submitted that when the circumstances of a case indicate a significant contribution by the other spouse, it is fair to subject degrees and licenses to distribution. Conversely,

In labeling the wife's masters degree marital property, the *McGowan* court did not consider that her husband made no substantive contribution to its attainment.[33] Although on remand the trial court may attempt to rectify this injustice by determining that Mr. McGowan's equitable share of this piece of marital property is zero,[34] it is suggested that the label marital property, by itself, may be prejudical to its holder. It is submitted that the court may become unjustly influenced by its knowledge of the masters degree when distributing the remaining marital assets. It is urged that, in this situation, it was unjust and contrary to the legislative intent to hold that Mrs. McGowan's masters degree, which provided her with an enhanced earning capacity earned on her own, was marital property.

Practitioners must now be acutely aware of the implications of the *McGowan* ruling. Just as *McGowan* logically extended the *O'Brien* rule to include degrees other than professional licenses, at least one recent case, citing the *McGowan* trial court, has extended the marital property concept to include valuable career skills other than those recognized by a diploma or license.[35] It is apparent that fair application of this ruling will require great flexibility in consid-

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where one party has made *no* contribution, to consider a license or degree marital property would be inequitable. *Compare* Kutanovski v. Kutanovski, 120 App. Div. 2d 571, 572, 502 N.Y.S.2d 218, 219 (2d Dep't 1986) (mem.) (wife properly awarded interest in husband's medical license since she provided couple's sole support while he studied for licensing exam and she arranged for his first employment) *and O'Brien*, 66 N.Y.2d at 581, 489 N.E.2d at 714, 498 N.Y.S.2d at 745 (wife who contributed 76% of couple's income while husband completed college and medical school awarded 40% of his projected life earnings) *with McGowan*, 142 App. Div. 2d at 357, 535 N.Y.S.2d at 991 (husband made no financial contributions, left all child raising and household responsibilities to wife, was periodically unemployed and often lived away from home, yet was awarded share in wife's master's degree).

[33] *See supra* notes 14 & 27.

[34] *See* DRL § 236, commentary at 210-11 (McKinney 1986). Simply because property is deemed marital does not mean each spouse will be awarded a percentage of it. *Id.* The court, in rendering distribution awards, must consider certain statutory factors as well as other elements the court finds "just and proper." DRL § 236(B)(5)(d)(13).

[35] *See* Golub v. Golub, 139 Misc. 2d 440, 447, 527 N.Y.S.2d 946, 947 (Sup. Ct. N.Y. County 1988). Relying on the "expansive meaning" given to enhanced earning capacity by the *McGowan* trial court, the *Golub* court held that the increased value of a wife's acting and modeling career constitued marital property, regardless of the fact that her "celebrity status" was neither "professional nor licensed." *Id.* The court went on to state that "the skills of an artisan, actor, professional athlete or *any person* whose expertise in his or her career has enabled him or her to become an exceptional wage earner should be valued as marital property subject to equitable distribution." *Id.* (emphasis added).

ering the unique facts and circumstances of each case.

Laura B. Weiner

INSURANCE LAW

Ins. Law § 3420(f): Requirement of uninsured motorist coverage does not extend to unregulated self-insurers of police vehicles

Mandatory uninsured motorist coverage[1] was implemented in 1958 to eliminate the loopholes of compulsory automobile insurance[2] by decreasing the number of incidents in which an innocent victim of an automobile accident was left uncompensated because of the financial irresponsibility of the offending motorist.[3] Since its

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[1] N.Y. INS. LAW §§ 3420(f), 5201-5225 (McKinney 1985). In 1958, § 3420(f) (former § 167-2a) and §§ 5201-5225 (former §§ 600-626) were jointly enacted to indemnify innocent victims through the Motor Vehicle Indemnification Corporation ("MVAIC"). Ch. 759, §§ 2, 3, 4, [1958] N.Y. Laws 1624 (McKinney). In 1965, the legislature assigned a portion of the MVAIC's responsibilities to insurance companies by dividing innocent victims into two groups—insured and uninsured. Ch. 322, §§ 1, 3, [1965] N.Y. Laws 1026 (McKinney); *see* Memorandum of American Insurance Association, *reprinted in* [1965] N.Y. LEGIS. ANN. 381-82. [hereinafter 1965 N.Y. LEGIS. ANN.].

[2] *See* Bohlinger, 1958 Insurance Legislation, *reprinted in* [1958] N.Y. LEGIS. ANN. 244-45 [hereinafter 1958 N.Y. LEGIS. ANN., Bohlinger]; Memorandum of Assemblyman Steingut, *reprinted in* [1958] N.Y. LEGIS. ANN. 299-302 [hereinafter 1958 N.Y. LEGIS. ANN., Steingut]. N.Y. Gov. Mess. to Legislature (Jan. 23, 1958), *reprinted in* [1958], N.Y. LEGIS. ANN. 436-37. Compulsory automobile insurance, mandated by the Motor Vehicle Financial Security Act, requires motorists, under penalty of revocation or suspension of their license or registration, to obtain liability insurance. N.Y. VEH. & TRAF. LAW §§ 310-321 (McKinney 1986). However, the legislature quickly realized that the act did not give recourse to innocent victims of financially irresponsible motorists. 1958 N.Y. LEGIS. ANN., Bohlinger, *supra*, at 244-45.

[3] *See* 8C J. APPLEMAN, INSURANCE LAW AND PRACTICE § 5067.45 (1981) (statute designed to provide monetary remedy to victims of financially irresponsible motorists).

Uninsured motorist coverage was enacted to extend protection to previously uncompensated victims of accidents involving: 1) out-of-state uninsured vehicles; 2) hit and run vehicles; 3) registered motor vehicles with ineffective policies; 4) stolen motor vehicles; 5) motor vehicles operated without permission; 6) insured motor vehicles whose liability has been disclaimed by the insurer, and 7) unregistered motor vehicles. N.Y. INS. LAW §§ 3420(f)(1), 5201 (McKinney 1985); *see* Passaro v. Metro. Property & Liab. Ins. Co., 128 Misc. 2d 21, 23-24, 487 N.Y.S.2d 1009, 1011 (Sup. Ct. Queens County 1985) (underinsured person is considered uninsured for purposes of supplementary excess liability), *aff'd*, 124 App. Div. 2d 647, 507 N.Y.S.2d 836 (2d Dep't 1987).

Innocent victims are divided into two categories depending upon whether or not the victim is covered by personal automobile insurance. *See* N.Y. INS. LAW §§ 3420(f) (McKinney 1985) (insured victims), 5201-5208 (uninsured victims); *see also* Matter of St. John, 105 App. Div. 2d 530, 530-31, 481 N.Y.S.2d 787, 789 (3d Dep't 1984) (those dubbed "insured" or