Note: The Need to Value Homemaker Services upon Divorce

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Note

THE NEED TO VALUE HOMEMAKER SERVICES UPON DIVORCE

I. INTRODUCTION

The common law placed no economic value on a wife’s contribution to the assets of a marriage.

The common law system is based on the assumption that the wife’s place is in the home. Although it fosters the homemaker’s role as proper and necessary, the common law provides no economic reward for the wife’s contribution to the family assets or for her lost opportunity to develop earning power outside the home. The system ignores the fact that the wife’s entire economic worth is absorbed into the marital unit.¹

Today, the value of a wife’s efforts is being recognized and the courts are considering the value of the homemaker and her rights to property as a result of her contributions. Considering the magnitude of these changes, one author has characterized them as a judicial revolution in the area of family law.² The value of a wife’s contribution to a marriage as a homemaker and methods to calculate that value at divorce is the focus of this Note.

II. HISTORICAL PERSPECTIVE

Under common law, a woman lost most of her legal personality when she married.³ The husband owned all his wife’s chattel and could use and benefit from her real property.⁴ The wife’s only interest in the property of her husband was her dower, which depended on her surviving her husband.⁵ Although the common law recognized the economic unit comprised of husband and wife, the husband was entitled to the control, enjoyment and virtual ownership of his wife’s assets. The pooling of the marriage assets was ostensibly for their mutual benefit but, in effect, benefitted only the husband.⁶

¹ Krauskopf, A Theory for "Just" Division of Marital Property in Missouri, 41 Mo. L. Rev. 165, 168 (1976), cited in Avner, Using the Connecticut Equal Rights Amendment at Divorce to Protect Homemakers’ Contributions to the Acquisition of Marital Property, 4 Bridgeport L. Rev. 265, 266 (1983).
⁴ Id.
⁵ Id.
⁶ Id.
A major alteration of the common law came in the nineteenth century in the United States when married women were granted the right to their own property.\(^7\) A wife’s property usually included gifts or inheritance from her family or possibly gifts from her husband.\(^8\) However, no property interest was recognized by virtue of the marriage itself; if the property was in the name of the husband it belonged to him.\(^9\) Because most major assets were in the husband’s name, the reforms provided no protection for the vast majority of women.\(^10\)

III. BARRIERS FACED BY WOMEN

Although marriage is beginning to be understood as a partnership between equals, inequalities for women still exist.\(^11\) Often marriages which end in divorce are revealed as poor investments for the women involved, considering the myriad of problems and inequities that women, and especially women who have been homemakers, face upon divorce. A recognition and understanding of these many barriers is necessary to establish the need for valuing homemaker services.

First, upon divorce a woman faces the probability that her primary means of support will be terminated; the awarding of alimony is more myth than reality.\(^12\) At the request of the National Women’s Year Commission a poll was taken in 1975 which indicated that only fourteen percent of divorced wives were awarded alimony by the courts or through a voluntary settlement approved by the courts and of those women only forty-six percent, or fewer than half, received payments regularly.\(^13\) Additionally, in the last several years the number of alimony awards has declined.\(^14\)

With no means of support and often with few marketable skills, alimony is of vital importance for the survival of many divorced women.\(^15\) While alimony has been regarded as a means of sustaining the wife who is unable to support herself,

\(^7\) Krauskopf, supra note 3, at 2.
\(^8\) Id.
\(^9\) Id.
\(^10\) Id.
\(^11\) Bruch, supra note 2, at 101.
\(^13\) Market Opinion Research, Detroit, Michigan, Study Done For The International Women’s Year Commission (1975).
\(^14\) Wietzman & Dixon, supra note 12, at 172.
\(^15\) Alimony is the recognition by the legal system that many women can’t earn a living. . . .

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the appropriate view of alimony is to regard it as back compensation. Whether a woman works inside or outside the home, she is involved in work. However, the woman involved in work inside the home has received no wage or salary for her efforts, despite the fact that the time spent working by homemakers may be as much or greater than the amount spent by those working outside the home. A study by Walker and Woods of 1,296 families in Syracuse, New York revealed that full time married homemakers spent, on the average, fifty-six hours per week in household chores. Chase Manhattan Bank conducted a study in 1972 to determine the amount of time spent by wives on homemaker services. This study estimated that the American homemaker holds the equivalent of a 99.6 hour a week job.

The second barrier, in addition to the lack of financial support and back pay upon divorce, is that a woman who has worked in the home often lacks education, training, and experience in the job market. As a result, her opportunities for employment are limited. The reasons why women choose to put others' needs before their own are deeply rooted in the traditional female roles of Western society. Despite recent changes in views of female roles, the grip that holds women to the traditional feminine roles of wife and mother is still strong. In addition, societal barriers have contributed to the lack of education, training and experience for homemakers. Women who work outside the home often find their earnings are spent in buying the freedom to work. Examples of these economic/structural pressures are the inequities of the social security system, and the lack of affordable child care facilities.

Women are often encouraged to forego further education and work experience upon marriage. In the event of divorce, however, they may find themselves at a great disadvantage. In effect, they have been penalized for their conformity. Severe consequences await the homemaker who has not worked outside the home and who upon divorce must seek employment. Unlike other jobs where feedback and evaluation are available from a supervisor, employers find that they cannot know if the homemaker's job-related experiences are as she claimed. No means for qualitatively assessing transferable skills are in common use. Homemakers have no employment records or verifications of job skills and no letters of

16 Id. at 184.
19 The state from which people are emancipated is by definition a state of slavery, but the state to which they are emancipated is not necessarily one of liberation. . . . The ideology of women's innate difference from men, their domesticity, their inferiority, has been carried over into the era of "women's equality."
recommendation. As a result, a housewife’s years of managing or volunteer experiences are not considered by many employers.\textsuperscript{22}

A third problem facing the homemaker upon divorce is discrimination within the job market itself. A woman’s vulnerability after divorce is compounded by the fact that because of her sex and resulting employment discrimination she will be forced to take low paying jobs traditionally held by women. In 1955 the average woman worker earned sixty-four percent of the wages paid to a similarly employed man.\textsuperscript{23} In 1970 the gap grew, with the average woman worker earning fifty-nine percent of the wages paid to men.\textsuperscript{24} Within certain broad occupational groupings the earnings gap is even greater. As an example, in 1970 a saleswoman averaged only 4,188 dollars as compared to 9,790 dollars for a salesman. The median income for a woman employed full time in 1971 was 5,323 dollars and for a man it was 8,966 dollars.\textsuperscript{25}

While more and more women are entering the workforce and are making some gains in finding employment in male dominated areas, by far the most overwhelming increases in female employment are occurring precisely in those jobs where women traditionally have been working.

Between 1962 and 1974 the number of employed women increased by 10 million or 45 percent and their proportion of the work force increased from 34 to 39 percent.\textsuperscript{26} The largest gain, 4.8 million, occurred in clerical occupations in which women have accounted for almost 70 percent of all employees in 1962. By 1974 women held almost 4 out of 5 jobs in this category and—undoubtedly—the rapid rate of growth of women’s employment in this occupation helped to account for a substantial portion of the overall increase in the number of women in the work force. At the detailed occupational level . . . women cashiers increased from 82 percent to 88 percent of all such workers, women bank tellers from 72 to 92 percent, women payroll clerks from 62 to 77 percent. . . .\textsuperscript{27}

At the beginning of this century, the most common occupation for an American woman was unpaid labor in the home.\textsuperscript{28} In 1900 the women in the paid labor force

\textsuperscript{22} Id. at 58.  
A final economic consideration is that the woman engaging full time in the culturally valued homemaker role loses the opportunity to develop her own earning power. Earning power grows with seniority, with experience, with enhancement of the earning skill. Day by day and year by year in the homemaker role, the woman falls farther behind in earning power. When her full economic worth is eaten up by marital duties, she has neither property nor earning ability.


\textsuperscript{23} DeCrow, \textit{supra} note 15, at 183.

\textsuperscript{24} \textit{Id.}


\textsuperscript{27} L. Kapp Howe, \textit{Pink Collar Workers} 6 (1977).
were found in agricultural, manufacturing or domestic service jobs. Today nearly two-thirds of women in the paid labor force can be found in clerical, service, or sales jobs. The rate of occupational segregation by sex is the same today as it was in 1900. There have been and still are two separate and distinct labor markets with very few exceptions: one which is mainly male and one which is mainly female. The female labor market includes those jobs which do not have a potential for advancement and which pay substantially lower wages than jobs held by men.

A fourth problem facing women upon divorce is that women are often poorer than men. The United States Commission on Civil Rights reported that the median income for a husband-wife family in 1972 was 11,900.00 dollars compared to 5,340.00 dollars for families headed by a woman. It reported that the median income earned by white female heads (6,205 dollars) was 62 percent of that earned by white male heads of families (11,504 dollars). In addition, the report documented that thirty-four percent of the 6.6 million female-headed families were below the poverty level.

By 1982, more than 9.4 million families were supported solely by women. The number is growing ten times as fast as male-headed families. The female-headed households represent 15 percent of all families, but almost half of all families at or below the poverty line. Over two-thirds of these families included children under eighteen years of age. Of the families maintained by women, more than one-third live in poverty. According to an estimate of the National Advisory Council on Economic Opportunity, by the year 2000, women and children will make up 100 percent of the poor in this country if the current rate of growth in number of families maintained by women continues.

The number of working women who are poor or "near poor" is large and growing. As of 1979, most working women (seven out of ten) still earned less than 10,000 dollars a year and one out of three full-time working women earned less than 7,000 dollars. Even women who work in comparable jobs and have comparable experience to men earn lower wages.

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1 Id. See also Ryting, Earnings of Men and Women: A Look at Specific Occupations, MONTHLY LABOR REV., Apr. 1982, at 25, 31.
2 KAPP HOWE, supra note 27, at 6.
3 Krauskopf, supra note 22, at 107.
5 COALITION ON WOMEN AND THE BUDGET, supra note 31, at 40.
6 Id.
7 Id. at 8.
8 Id.
9 Id. at 40.
10 Id.
The earnings gap also prevails among college educated women. A bachelor's degree is worth $329,000 dollars in extra lifetime earnings for today's men and only $142,000 dollars for today's young women. Additionally, a man with only an elementary school education earns more than a woman with a college education.

The courts have begun to recognize the economic plight of divorced women in America. The West Virginia Supreme Court of Appeals in LaRue v. LaRue reviewed the statistics and found that "divorced women with children now make up a new class of the poverty-stricken." A fifth problem is the homemaker who is displaced after a fifteen or twenty year marriage. Because she has been a fulltime homemaker, she has no recognized marketable skills. In addition, she must contend with age discrimination. She is seen by employers as a costly employee because health and disability insurance premiums increase with age. Moreover, because she will remain in the job market for a shorter period of time, she is not seen as a good training investment. At age fifty-seven one displaced homemaker "discovered [she] was part of an invisible problem, one of the women who had fallen through the cracks, too young for Social Security, too old to be hired, not eligible for unemployment insurance because homemaking is not considered work." The sixth and final barrier adding to a woman's vulnerability upon divorce is the likely award of child custody and subsequent responsibility for raising children alone. The homemaker is almost certain to obtain custody of her children in divorce. Often, child support payments are received irregularly, if at all. A study conducted in 1975 showed only forty-four percent of divorced mothers were awarded child support and only forty-seven percent of that group collected it regularly.

Collection of delinquent child support can be costly and time consuming. Even when a woman pursues costly legal remedies for delinquent and irregular support

40 Id.
42 LaRue, 304 S.E.2d at 328.
43 Hauserman, supra note 20, at 59.
44 Id.
45 Id.
47 Id. at 226.
payments, she usually must forfeit support which is in arrears.\textsuperscript{44} In addition, almost one third of all women receiving child support require public assistance.\textsuperscript{49} Another serious problem a woman must face after an award of child custody is the likely need for child care if she works. A woman may find that such a large percentage of her income must be spent on child care that she may opt to take a lower paying job in order to work part-time and care for her children. In addition, child care services lag behind the current need. Six to seven million children under the age of thirteen have no care while their parent or parents work.\textsuperscript{50}

Because women have traditionally held low paying jobs and because a strong possibility exists that payments for child support will be irregular at best, a divorced woman is often unable to avoid subsistence at a poverty level. While the absolute income of divorced men may decrease, when income is considered on a per capita basis after divorce, as compared to the per capita basis while married, the economic status of men increases.\textsuperscript{51} In fact, even fathers who pay child support are often better off financially than they were before divorce.\textsuperscript{52}

When one considers the inequities which are faced by many women, the conclusion that marital unions are poor investments for women upon divorce becomes understandable. The next step is to consider the equitable approaches to the distribution of marital assets upon divorce with particular emphasis on valuing homemaker services.

IV. Equitable Distribution

The decision for one spouse to work at earning wages and for the other spouse to care for a home and children is a decision jointly made. However, upon divorce, the burden of the joint decision is disproportionately borne by the wife. Legislatures and courts are now beginning to recognize the economic inequities facing women upon divorce.\textsuperscript{53} Marriage is recognized as an economic partnership with each spouse making his or her valuable monetary or nonmonetary contributions. This view has produced widespread legislative and judicial changes in the division of marital property upon divorce.\textsuperscript{54}

Several different methods for determining the property rights of divorcing parties are employed in American jurisdictions. Some community property states utilize

\textsuperscript{44} Hauserman, \textit{supra} note 20, at 54-55.
\textsuperscript{50} \textbf{COALITION ON WOMEN AND THE BUDGET, \textit{supra} note 31, at 50.}
\textsuperscript{51} \textbf{Wietzman \& Dixon, \textit{supra} note 12, at 173-79.}
\textsuperscript{52} \textbf{D. CHAMBERS, MAKING FATHERS PAY: THE ENFORCEMENT OF CHILD SUPPORT 42-50 (1979).}
\textsuperscript{54} \textit{Id.}
a method in which the property of the parties is divided equally upon divorce. The remaining five community property jurisdictions—Arizona, Nevada, Texas, Washington and Puerto Rico—apportion the property of the parties by use of equitable distribution. In the vast majority of common law jurisdictions equitable distribution of property has been applied. By the spring of 1983, the legislatures of all but three common law jurisdictions had adopted some version of equitable distribution. The common law states that had not adopted an equitable distribution divorce statute were Mississippi, South Carolina, and West Virginia. However, in these jurisdictions the courts have filled the gap by interpreting traditional equity principles broadly enough to encompass equitable distribution concepts. In West Virginia’s 1984 legislative session a bill on equitable distribution was passed.

An important force in common law states influencing the shift to equitable distribution was the drafting of the Uniform Marriage and Divorce Act by the National Conference of Commissioners on Uniform State Laws. The purpose of the Act was to solve many of the inequities which existed in marriage and divorce laws. Completed in 1969, the Act provided that distribution of property upon divorce should be treated similar to the distribution of assets incident to the dissolution of a partnership.

In general, the equitable distribution approach to marriage breaks with the past in several major ways:

1. It regards marriage as an economic partnership, a shared enterprise that is similar in many ways to a business partnership. A marriage becomes an entity to which each partner makes a different but equally important contribution.

2. On the termination of a marriage, property is treated as nearly as possible in the same way as it is treated in the dissolution of a business.

56 Id. at 228 & n.2.
57 Id. at 228 & n.5.
58 Id. at 228.
60 Id.
61 See Jenkins v. Jenkins, 278 So. 2d 446 (Miss. 1973) (court awarded lump sum alimony award plus periodic alimony payments); Burgess v. Burgess, 277 S.C. 283, 286 S.E.2d 142 (1982) (court created a special equity doctrine); LaRue v. LaRue, 304 S.E.2d 312 (W. Va. 1983) (court permitted transfer of title to real and personal property to create economic equitable distribution).
64 Note, Divorce and the Division of Marital Property in Arkansas—Equal or Equitable?, 35 Ark. L. Rev. 621, 678-79 (1982).
3. The contributions of each spouse to the acquisition of marital property are recognized, including the contributions of a spouse as homemaker.

4. Title no longer rules in property distribution—it does not matter in whose name the piano or house or oil painting is held.

5. Property division is used as a means of providing future support for an economically dependent spouse. A spouse may also be awarded maintenance (it used to be called alimony).

6. Fault is largely, but not completely, eliminated as a factor in ending a marriage. One mate no longer has to prove misdeeds against the other, and fault no longer serves as a major bargaining tool.65

V. FACTORS CONSIDERED

When determining an equitable distribution of property, the trial court is usually directed by statute to weigh different factors. The nature and number of factors vary widely from state to state.66 As an example of the factors to be considered, the Uniform Marriage and Divorce Act lists:

[T]he duration of the marriage, any prior marriage of either party, any antenuptial agreement of the parties, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estates, liabilities, and needs of each

65 M. MINTON & J. BLOCK, supra note 59, at 146-47.
66 See, e.g., CONN. GEN. STAT. ANN. § 46b-81(c) (1981); ILL. ANN. STAT. ch. 40 § 503(d) (Smith-Hurd 1980 & Supp. 1982-83). The Illinois statute provides a typical example of a state with a detailed listing:

(d). . . [The Court] also shall divide the marital property without regard to marital misconduct in just proportions considering all relevant factors including . . .

(1) the contribution or destruction of each party in the acquisition, preservation, or depreciation or appreciation in value of the marital and nonmarital property, including the contribution of a spouse as a homemaker or to the family unit;

(2) the value of the property set apart to each spouse;

(3) the duration of the marriage;

(4) the relevant economic circumstances of each spouse when the division of property is to become effective, including the desirability of awarding the family home, or the right to live therein for a reasonable time, to the spouse having custody of the children;

(5) any obligations and rights arising from a prior marriage of either party;

(6) the age, health, station, occupation, amount and sources of income, vocational skills, employability estate, liabilities, and needs of each of the parties;

(7) any antenuptial agreement of the parties;

(8) the custodial provisions for any children;

(9) whether the apportionment is in lieu of or in addition to maintenance;

(10) the reasonable opportunity of each spouse for future acquisition of capital assets and income; and

(11) the tax consequences of the property division upon the respective economic circumstances of the parties.

of the parties, custodial provisions, whether the apportionment is in lieu of or in addition to maintenance, and the opportunity of each for future acquisition of capital assets and income. The court shall also consider the contribution or dissipation of each party in the acquisition, preservation, depreciation, or appreciation in value of the respective estates, and as the contribution of a spouse as a homemaker or to the family unit.\(^{67}\)

Among the relevant factors considered in determining an equitable distribution of property upon divorce, the hallmark factor is homemaker services. The efforts of the homemaker were ignored by common law and often regarded as expected duties of the wife. These services were seen as gratuitous absent an express contract. Today, however, thirty-two states including Indiana, Minnesota, North Carolina, Virginia, and West Virginia provide in their laws that courts must include a wife's contribution as a homemaker as part of an equitable distribution of property upon divorce.\(^{68}\)

The homemaker should be viewed as the partner who provides for the care of the family and the maintenance of the household. The spouse employed outside the home should be viewed as the partner who provides income and acquires property. This concept of partnership was endorsed by the Supreme Court of Wisconsin: “The division of the property of the divorced parties rests upon the concept of marriage as a shared enterprise or joint undertaking. It is literally a partnership, although a partnership in which contributions and equities of the partners may and do differ from individual case to individual case.”\(^{69}\)

VI. Determining The Value of Homemaker Services

Although in many states the value of homemaking work has been acknowledged by courts when distributing property upon divorce, the proper methods for determining its value are not clear.\(^{70}\) To assure that the consideration of homemaker services is not illusory, several methods concerning proper valuation have been suggested. Essentially, there are three procedures for measuring the value of the effort devoted to home and child care. One procedure is the replacement cost method which calculates the amount of money it would take to replace the services of the


\(^{69}\) Lacey v. Lacey, 45 Wis. 2d 378, 382, 173 N.W.2d 142, 144-45 (1970).

\(^{70}\) In determining the proportion of contribution by husband and wife in the acquisition of property more than economic factors are involved. We do not deal with two people with no more in common than two strangers or business associates. The contribution of a full-time homemaker-housekeeper to the marriage may well be greater or at least as great as those of the wife required by circumstances or electing by preference to seek and secure outside employment.
homemaker. Second is the lost opportunity cost method whereby the career earnings which the homemaker forfeited are calculated. In the third method the homemaker’s contribution is presumed to be equal in value to that of the wage earner; thus, each partner is treated as an equal owner of marital assets.

A. Replacement Cost Method

The replacement cost approach values homemaker services by calculating the cost of the services when replaced with one or more properly skilled persons from the marketplace.\(^7\) The calculation takes the total number of hours spent on a task and multiplies that number by the market value for the same services.\(^7\) The homemaker provides many services for her family including preparing meals, babysitting, child care, nursing care, transportation, and entertainment. After determining the service in which a particular task belongs, the market value of purchase service is determined.\(^7\)

Several variables contribute to the amount of time devoted to household work. Among these variables are the number of children in the household, the age of the youngest child and the employment status of the homemaker.\(^7\) As an example, an unemployed wife may contribute up to seventy hours per week as a homemaker.

\(^7\) Hauserman, supra note 20, at 50.
\(^7\) Hauserman & Fethke, Valuation of A Homemaker's Services, 22 TRIAL L. GUID. 251 (1978).
\(^7\) KEY VARIABLES WHICH AFFECT TIME SPENT IN HOMEMAKING:

1. Family Complexity
   A. Size of household?
   B. Number of children?
   C. Age of youngest child?

2. Employment Status
   A. Is homemaker employed outside home?
   B. Occupation?
   C. Number of hours/week worked outside home?
   D. Salary?

3. Socioeconomic Status of Family
   A. Economic status?
   B. Occupation of spouse?
   C. Education of spouse?
   D. Spouse's income level?
   E. Unearned income?

4. Homemaker Information
   A. Age?
   B. Education?
   C. Training?
   D. Spouse's income level?
   E. Unearned income?
while an employed wife may contribute up to fifty-six hours per week as a homemaker. In computing the total monetary worth of a homemaker's services three separate value computations should be considered, although not all three computations may apply in every situation. The three computations include the value of home production, the value of market services, and the value of unpaid contributions to a spouse's business or profession.\textsuperscript{75}

The following two tables illustrate a homemaker's contributions to home production:

\textbf{Mother of Two Preschool Children\textsuperscript{76}}

<table>
<thead>
<tr>
<th>Job performed</th>
<th>Hours/Week</th>
<th>Rate/Week</th>
<th>Value/Week</th>
</tr>
</thead>
<tbody>
<tr>
<td>Buyer, food and household goods</td>
<td>6</td>
<td>$5.75</td>
<td>$34.50</td>
</tr>
<tr>
<td>Nurse</td>
<td>11</td>
<td>5.14</td>
<td>56.54</td>
</tr>
<tr>
<td>Tutor</td>
<td>5</td>
<td>5.00</td>
<td>25.00</td>
</tr>
<tr>
<td>Waitress</td>
<td>21</td>
<td>3.41</td>
<td>71.61</td>
</tr>
<tr>
<td>Seamstress</td>
<td>1</td>
<td>3.20</td>
<td>3.20</td>
</tr>
<tr>
<td>Laundress</td>
<td>14</td>
<td>2.80</td>
<td>39.20</td>
</tr>
<tr>
<td>Chauffeur</td>
<td>0</td>
<td>5.00</td>
<td>0.00</td>
</tr>
<tr>
<td>Gardener</td>
<td>3.5</td>
<td>5.00</td>
<td>17.50</td>
</tr>
<tr>
<td>Family counselor</td>
<td>2.3</td>
<td>25.00</td>
<td>57.50</td>
</tr>
<tr>
<td>Maintenance worker</td>
<td>0</td>
<td>4.90</td>
<td>0.00</td>
</tr>
<tr>
<td>General child care</td>
<td>Full time</td>
<td>174.00/week</td>
<td>174.00</td>
</tr>
<tr>
<td>Housekeeper</td>
<td>28</td>
<td>4.75</td>
<td>133.00</td>
</tr>
<tr>
<td>Cook</td>
<td>24</td>
<td>4.75</td>
<td>114.00</td>
</tr>
<tr>
<td>Maid</td>
<td>0</td>
<td>4.75</td>
<td>0.00</td>
</tr>
<tr>
<td>Interior decorator</td>
<td>.5</td>
<td>25.00</td>
<td>12.50</td>
</tr>
</tbody>
</table>

5. Homemaker Information
   A. Age?
   B. Education?
   C. Training?
   D. Other skills?
   E. Outside activities and interests (volunteer, etc.)?
   F. Past employment history?

6. Home
   A. Size of house?
   B. Number of rooms?
   C. Urban/rural/suburban?
   D. Type of house (mobile home/apartment/duplex/one-family)?

7. Other
   A. In-home help (maid, butler, nurse, etc.)?
   B. Use of day care?

Hauserman & Fethke, \textit{supra} note 73, at 260-61.
\textsuperscript{75} Chastain, \textit{supra} note 55, at 252.
\textsuperscript{76} M. Minton & J. Block, \textit{supra} note 59, at 143. Reprinted with permission of William Morrow & Co., Inc.
Obviously, the number of contributed hours will vary from household to household and the amount of wages will vary from community to community.

Secretary—No Children

<table>
<thead>
<tr>
<th>Job performed</th>
<th>Hours/Week</th>
<th>Rate/Week</th>
<th>Value Week</th>
</tr>
</thead>
<tbody>
<tr>
<td>Food buyer</td>
<td>4</td>
<td>$6.44</td>
<td>$25.75</td>
</tr>
<tr>
<td>Nurse</td>
<td>0</td>
<td>7.99</td>
<td>00.00</td>
</tr>
<tr>
<td>Tutor</td>
<td>0</td>
<td>7.20</td>
<td>00.00</td>
</tr>
<tr>
<td>Waitress</td>
<td>3</td>
<td>3.81</td>
<td>11.43</td>
</tr>
<tr>
<td>Seamstress and knitter</td>
<td>10</td>
<td>4.20</td>
<td>42.00</td>
</tr>
<tr>
<td>Laundress</td>
<td>1</td>
<td>3.47</td>
<td>3.47</td>
</tr>
<tr>
<td>Chauffeur</td>
<td>2</td>
<td>6.16</td>
<td>12.32</td>
</tr>
<tr>
<td>Gardener</td>
<td>0</td>
<td>5.60</td>
<td>00.00</td>
</tr>
<tr>
<td>Family counselor</td>
<td>.5</td>
<td>28.00</td>
<td>14.00</td>
</tr>
<tr>
<td>Maintenance worker</td>
<td>1</td>
<td>5.48</td>
<td>5.48</td>
</tr>
<tr>
<td>General child care</td>
<td>0</td>
<td>3.50</td>
<td>00.00</td>
</tr>
<tr>
<td>Cleaning woman</td>
<td>8</td>
<td>3.59</td>
<td>28.32</td>
</tr>
<tr>
<td>Housekeeper</td>
<td>14</td>
<td>5.32</td>
<td>74.84</td>
</tr>
<tr>
<td>Cook</td>
<td>7</td>
<td>5.32</td>
<td>37.24</td>
</tr>
<tr>
<td>Errand runner</td>
<td>3</td>
<td>4.24</td>
<td>12.72</td>
</tr>
<tr>
<td>Bookkeeper/budget manager</td>
<td>2</td>
<td>7.20</td>
<td>14.40</td>
</tr>
<tr>
<td>Interior decorator</td>
<td>0</td>
<td>35.84</td>
<td>00.00</td>
</tr>
<tr>
<td>Caterer</td>
<td>0</td>
<td>8.63</td>
<td>00.00</td>
</tr>
<tr>
<td>Child psychologist</td>
<td>0</td>
<td>40.00</td>
<td>00.00</td>
</tr>
<tr>
<td>Dishwasher</td>
<td>4</td>
<td>3.47</td>
<td>13.88</td>
</tr>
<tr>
<td>Dietician</td>
<td>0</td>
<td>7.61</td>
<td>00.00</td>
</tr>
<tr>
<td>Secretary</td>
<td>4</td>
<td>5.60</td>
<td>22.40</td>
</tr>
<tr>
<td>Public relations/hostess</td>
<td>.5</td>
<td>22.40</td>
<td>11.20</td>
</tr>
<tr>
<td>Dog walking</td>
<td>7</td>
<td>2.00</td>
<td>14.00</td>
</tr>
<tr>
<td>Caring for mother-in-law</td>
<td>7</td>
<td>5.00</td>
<td>35.00</td>
</tr>
<tr>
<td>Moving car to new parking space</td>
<td>3.5</td>
<td>5.00</td>
<td>17.50</td>
</tr>
</tbody>
</table>

WEEKLY VALUE $395.59
YEARLY VALUE (× 52) $20,570.68

Id. at 144. Reprinted with permission of William Morrow & Co., Inc.
Disseminated by The Research Repository @ WVU, 1984
A number of problems are associated with the replacement cost method. One of the problems which is inherent in this approach is the fact that many tasks overlap because homemakers often perform different tasks simultaneously.\textsuperscript{78} This situation may result in underestimating the replacement cost. As an example, a homemaker may be cooking, listening to a child’s book report, and mending clothing simultaneously.\textsuperscript{79} A second problem is the underestimation of the degree of difficulty and the level of responsibility of the tasks performed by the homemaker.\textsuperscript{80} As an example, meal preparation can be defined in different ways with subsequent differences in replacement cost. It can be thought of as primarily cooking with a replacement cost of a cook; or it can be thought of in terms of chef or nutritionist with a much greater replacement cost. Another common problem arises when trying to determine which hourly rate to use. Entry-level rates are not suitable for women who have worked as homemakers for years. Additionally, replacement value of homemakers is difficult to compute because of intangibles such as love, affection, security, and companionship which have no purchasable market equivalents.\textsuperscript{81} Finally, replacement figures often do not include benefits which generally flow from employment outside the home such as value of insurance, pension, or overtime pay.\textsuperscript{82}

Several other problems arise when using the replacement cost method. The replacement cost method assumes that the standard of services provided by the homemaker was average. This may not be the case. The valuation may drop for a homemaker with below average skills. Conversely, a more adept homemaker may merit a higher valuation.\textsuperscript{83} As a consequence, consideration should be given to quality of services and the number of years spent as a homemaker.

The husband’s work efforts within the household need to be considered also in the replacement cost method. In traditional marriages this amount of time often will be minimal.\textsuperscript{84} Nevertheless, some men are contributing to homemaker duties and assuming a larger share of child care. These efforts should be accounted for and proper credit given.

If a man works to put his wife through medical, dental or any other type of school, if his earnings or at-home labors make it possible for her to get her teaching certificate or her Ph.D. in economics, if he babysits while she studies to become a beautician or a therapist, then he should be entitled to the same kind of reimbursement that she would.\textsuperscript{85}

The following chart illustrates a formula which could be used to compute the value of his and her services.

\textsuperscript{78} Hauserman & Fethke, \textit{supra} note 73, at 251.
\textsuperscript{79} \textit{Id.}
\textsuperscript{80} \textit{Id.} at 252.
\textsuperscript{81} \textit{Id.} at 253.
\textsuperscript{82} Hauserman, \textit{supra} note 20, at 51.
\textsuperscript{83} Hauserman & Fethke, \textit{supra} note 73, at 253.
\textsuperscript{84} M. MINTON & J. BLOCK, \textit{supra} note 59, at 125.
Value of His and Her Services in the Home

<table>
<thead>
<tr>
<th>Job Performed</th>
<th>Hours/Week</th>
<th>Rate/Hour*</th>
<th>Value/Week</th>
</tr>
</thead>
<tbody>
<tr>
<td>Buyer, food &amp; household</td>
<td></td>
<td>$6.44</td>
<td></td>
</tr>
<tr>
<td>Nurse</td>
<td></td>
<td>7.99</td>
<td></td>
</tr>
<tr>
<td>Tutor</td>
<td></td>
<td>7.20</td>
<td></td>
</tr>
<tr>
<td>Waitress</td>
<td></td>
<td>3.81</td>
<td></td>
</tr>
<tr>
<td>Seamstress</td>
<td></td>
<td>4.20</td>
<td></td>
</tr>
<tr>
<td>Laundress</td>
<td></td>
<td>4.20</td>
<td></td>
</tr>
<tr>
<td>Chauffeur</td>
<td></td>
<td>6.16</td>
<td></td>
</tr>
<tr>
<td>Gardener</td>
<td></td>
<td>5.60</td>
<td></td>
</tr>
<tr>
<td>Family counselor</td>
<td></td>
<td>28.00</td>
<td></td>
</tr>
<tr>
<td>Maintenance worker</td>
<td></td>
<td>5.48</td>
<td></td>
</tr>
<tr>
<td>General child care</td>
<td></td>
<td>3.50</td>
<td></td>
</tr>
<tr>
<td>Cleaning woman</td>
<td></td>
<td>3.59</td>
<td></td>
</tr>
<tr>
<td>Housekeeper</td>
<td></td>
<td>5.32</td>
<td></td>
</tr>
<tr>
<td>Cook</td>
<td></td>
<td>5.32</td>
<td></td>
</tr>
<tr>
<td>Errand runner</td>
<td></td>
<td>4.24</td>
<td></td>
</tr>
<tr>
<td>Bookkeeper/budget manager</td>
<td></td>
<td>7.20</td>
<td></td>
</tr>
<tr>
<td>Interior decorator</td>
<td></td>
<td>35.84</td>
<td></td>
</tr>
<tr>
<td>Caterer</td>
<td></td>
<td>8.63</td>
<td></td>
</tr>
<tr>
<td>Child psychologist</td>
<td></td>
<td>40.00</td>
<td></td>
</tr>
<tr>
<td>Dishwasher</td>
<td></td>
<td>3.47</td>
<td></td>
</tr>
<tr>
<td>Dietician</td>
<td></td>
<td>7.61</td>
<td></td>
</tr>
<tr>
<td>Secretary</td>
<td></td>
<td>5.60</td>
<td></td>
</tr>
<tr>
<td>Public relations/host</td>
<td></td>
<td>22.40</td>
<td></td>
</tr>
<tr>
<td>Dog walker</td>
<td></td>
<td>3.00</td>
<td></td>
</tr>
<tr>
<td>Auto repair</td>
<td></td>
<td>20.00</td>
<td></td>
</tr>
<tr>
<td>Plumber</td>
<td></td>
<td>15.00</td>
<td></td>
</tr>
<tr>
<td>Electrician</td>
<td></td>
<td>17.50</td>
<td></td>
</tr>
<tr>
<td>Bartender</td>
<td></td>
<td>7.00</td>
<td></td>
</tr>
<tr>
<td>House painter</td>
<td></td>
<td>12.00</td>
<td></td>
</tr>
<tr>
<td>Leaf raker</td>
<td></td>
<td>3.00</td>
<td></td>
</tr>
<tr>
<td>Outdoor chef</td>
<td></td>
<td>15.00</td>
<td></td>
</tr>
</tbody>
</table>

WEEKLY VALUE $_________ $_________

YEARELY VALUE (x 52) $_________ $_________

*Adjust for prevailing wage rates in your area. Rates have already been adjusted to reflect inflation through 1983.
A final problem with the replacement cost method may be the incorrect assumption that a family would actually choose to replace each activity of the homemaker. The woman may be performing tasks that her family would not replace, such as decorating, and which, arguably, should not be included in the replacement cost. However, if services and goods are produced by the homemaker, an implicit income stream has been generated.87 If the husband had not married he might have performed these tasks, in which case his income stream would be the sum of actual plus implicit income. Alternatively, a husband who has chosen not to replace the services or perform them himself cannot deny the value of the implicit income stream that was generated while the services were actually performed.

The charts and figures above illustrate the economic contributions of homemaker services. This valuation process is applied in the following example. Mr. and Ms. Doe were married for 29 years. Upon divorce, the marital assets amounted to 250,000 dollars. Ms. Doe contributed household services valued over the life of the marriage at 411,636 dollars. In addition, she contributed part-time to her husband’s business for services worth 100,620 dollars. She yielded a financial contribution to her husband and family of 512,256 dollars. Mr. Doe contributed income to the family of 527,237 dollars. In addition he contributed household services worth 108,422 dollars. Mr. and Ms. Doe contributed a total of 1,147,915 dollars either directly or indirectly to the marriage. The contribution of Mr. Doe is 55 percent and the contribution of Ms. Doe is 45 percent. As a result of these percentages, the assets of the marriage should be split accordingly, allocating to Mr. Doe 137,500 dollars and to Ms. Doe 112,500 dollars.88

B. Lost Opportunity Cost Method

The second approach to the valuation of homemaker services is the lost opportunity cost method. This method assumes that in remaining a homemaker, the homemaker gave up another occupation. The value of homemaker services is determined by what the homemaker would have earned in another job. This approach is most advantageous to the woman who entered into a traditional marriage of long duration giving up a specific professional career to spend full time at home.

Most wives expect to share in their husband’s earnings. However, upon divorce a wife has the full burden of the cost of her lost opportunities. To compensate for this loss, Nebraska, Wisconsin, Colorado and California are moving toward compensating for the lost earning potential and impaired future earnings.89 The California court found:

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87 Hauserman & Fethke, supra note 73, at 254.
88 Kiker, supra note 72, at 49-50.
[The] willingness of the wife to remain at home limits her ability to develop a career of her own. If the marriage is later dissolved, the wife may be unable, despite her greatest efforts to enter the job market. . . . A wife who has spent her marriage years as a homemaker and mother may despite her best efforts find it impossible to reenter the job market. In such a case, 'the husband simply has to face up to the fact that his support responsibilities are going to be of extended duration—perhaps for life. This has nothing to do with feminism, sexism, male chauvenism. . . . It is ordinary common sense.'

In order to calculate lost opportunity, it is necessary to consider age, educational level, and employment history. In the case of a homemaker with no employment history and, therefore, no occupation to measure against, consideration should be given to the kinds of jobs people from her same educational level, geographic area and socioeconomic background perform.

In addition to the situation where an entire career has been forfeited, the lost opportunity method may be applied to the situation where a wife is forced to accept reduced earnings after making a geographic move for her husband or where a wife is not able to find a job upon relocation. It also applies to a wife who has worked only part-time. In addition to diminished earnings 'part-time workers receive few

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90 In Re Marriage of Morrison, 20 Cal. 3d 437, at 453, 143 Cal. Rptr. 139, at 150, 573 P.2d 41, at 51-52 (1978).

In a similar vein, the Supreme Court of Oregon found:
We will not ignore the fact that, at least until recent years, the young women entering marriage were led to believe—if not expressly by their husbands-to-be, certainly implicitly by the entire culture in which they had come to maturity—that they need not develop any special skills or abilities beyond those necessary to homemaking and child care, because their husbands, if they married, would provide their financial support and security. We cannot hold that women who relied on that assurance, regardless of whether they sacrificed any specific career plans of their own when they married, must as a matter of principle be limited to the standard of living they can provide for themselves if 'employed at a job commensurate with [their] skills and abilities.' The marriage itself may well have prevented the development of those skills and abilities.


91 Hauserman & Fethke, supra note 73, at 255. To calculate lost opportunity costs:
Step I: Select a Next-Best (To Homemaking) Occupation
Determine a job classification that this housewife could have occupied had she entered the labor force. Consider the following: age, education level, previous work history, if any, occupations of other women from the same geographic area and socioeconomic background who continue to work instead of marrying, evidence of promotions and advancement in part-time jobs.
E.g., Marilyn, 34, three children ages 12, 11 and 5 with a high school degree was employed before her marriage for 18 months as a receptionist. For the past three years she has worked part-time in a similar job.

Step II: Determine the Annual Income for the Position Switchboard Operator-Receptionist-Manufacturing
Firm-Average 39.5 Hours Per Week
Mean Weekly Earnings $156.50
Range Weekly earnings $128-$167
$2 Weeks X $156.50-$8,138.00
Hauserman & Fethke, supra note 73, at 256.
employee benefits such as health care, pensions or vacation time." To determine the lost opportunities costs, the individual's actual earnings, if any, are subtracted from the amount that would have been earned had the individual remained in paid employment. The following chart helps to illustrate this computation.

**INCOME DIFFERENTIAL FOREGONE**

<table>
<thead>
<tr>
<th>YEAR</th>
<th>TOTAL INCOME</th>
<th>POTENTIAL INCOME</th>
<th>INCOME FOREGONE</th>
<th>PRESENT VALUE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1976</td>
<td>$9,972</td>
<td>$10,752</td>
<td>$780</td>
<td>$1,043.80</td>
</tr>
<tr>
<td>1977</td>
<td>10,500</td>
<td>11,371</td>
<td>871</td>
<td>1,099.64</td>
</tr>
<tr>
<td>1978</td>
<td>11,048</td>
<td>12,740</td>
<td>1,692</td>
<td>2,015.17</td>
</tr>
<tr>
<td>1979</td>
<td>12,149</td>
<td>13,540</td>
<td>1,411</td>
<td>1,585.40</td>
</tr>
<tr>
<td>1980</td>
<td>14,210</td>
<td>15,100</td>
<td>890</td>
<td>943.40</td>
</tr>
<tr>
<td>TOTAL INCOME FOREGONE</td>
<td>$5,644</td>
<td>$6,687.41</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The lost opportunity cost approach has two serious problems. First, like the replacement cost method, an underestimation of valuation is likely to occur. "Consideration of the occupational choice of a woman must be tempered by consideration of the history of education and employment discrimination toward women. . . . Pay raises and job promotions may have been hampered by elements of discrimination, lowering the wage received." Second, what someone did for the first five years of her adult life may not be a reliable indicator of what that person would be doing ten years later had she stayed in the work force.

C. *Equal Presumption Method*

The third approach considers the homemaker's contribution as equal in value to that of the wage earner and therefore an equal owner of the assets. It allows courts the necessary flexibility to make a distribution of property, as well as assuring the legal recognition of the value of homemaker services. This approach avoids any attempts to trivialize the value of homemaker services in a divorce suit.

The presumption of equal distribution is a rebuttable presumption. If, after evaluating the situation, the court determines that an equal distribution is unjust, the distribution of property can be adjusted accordingly. In making its adjustment

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92 M. Minton & J. Block, supra note 59, at 151.
93 Chastain, supra note 55, at 253.
94 Id. at 254.
95 Hauserman, supra note 20, at 52.
96 Avner, supra note 53, at 13.
the court evaluates the criteria listed in the particular equitable distribution law. As a result, the actual division of property may be more than one-half for one spouse and less than one-half for the other spouse. A homemaker in her fifties with few job prospects could be awarded more than one-half of the marital assets. However, she could receive less than one-half if she had just inherited a large sum of money not subject to equitable distribution.

The Arkansas equitable distribution statute includes the presumption of equal division. The provision states that all marital property “shall be distributed one-half to each party unless the court finds such a division is unjust.” A similar provision is found in the equitable distribution statutes of North Carolina, Oregon and Wisconsin. Although Ohio’s divorce statute has no express presumption of equal distribution, the Ohio Supreme Court has interpreted their statute to require an equal division as a starting point.

The general rule in the West Virginia statute for dividing marital property upon divorce is equal distribution. However, where there is a valid separation agreement, the court shall divide the property in accordance with the terms of the agreement. In the absence of such an agreement, the court shall presume that all marital property is to be divided equally, but this presumption is rebuttable.

Four factors are considered when rebutting the presumption of equal distribution. The first is the extent to which each party has contributed monetarily to the acquisition, preservation, and maintenance or increase in value of marital property. This factor includes but is not limited to employment earnings and funds which are separate property.

The second rebuttal factor measures the extent to which each party has contributed nonmonetarily to the marriage. This factor includes but is not limited to five different services, including homemaker services and child care services. The West Virginia Supreme Court in *LaRue v. LaRue* addressed the issue of

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98 *Avner, supra note 53 at 13.*  
101 *Cherry v. Cherry, 66 O. St. 2d 348, 421 N.E.2d 1293 (1981).*  
102 *W. Va. Code § 48-2-32(a) (Supp. 1984).*  
103 *Id. § 48-2-32(b) (Supp. 1984).*  
104 *Id. § 48-2-32(c) (Supp. 1984).*  
105 *Id. § 48-2-32(c)(1) (Supp. 1984).*  
106 *Id. § 48-2-32(c)(1)(A) to (B) (Supp. 1984).*  
107 *Id. § 48-2-32(c)(2) (Supp. 1984).*  
108 *Id. § 48-2-32(c)(2)(A) to (B) (Supp. 1984).*  
109 *LaRue, 304 S.E.2d at 312.*
homemaker services. The court held that a spouse contributing homemaker services to the marital unit can claim an equity interest in the marital property upon divorce.110 "[T]he concept of homemaker services is not to be measured by some mechanical formula, but instead rests on a showing that the homemaker has contributed to the economic well-being of the family unit..."111 Factors to be considered include the length of the marriage, the quality of the services, and the age, health, and skills of the homemaker.112 This is similar conceptually to the replacement cost method discussed previously. This method could be used to evaluate homemaker services following the guidelines set by the court in LaRue. In addition, within the scope of services contributed to the marriage, labor performed without compensation or for less than adequate compensation in a business in which one or both of the parties has an interest should be included.113 Also included is labor performed in the actual maintenance or improvement of tangible marital property. Finally, labor performed in the management or investment of assets which are marital property is considered to be a service within the scope of the second factor.

The third factor which can rebut the presumption of equal division is the extent to which each party expended his or her efforts during the marriage so as to limit or to decrease his or her income-earning ability or to increase the income-earning ability of the other party.114 This includes the direct and indirect contributions by either marital party to the education or training of the spouse which has increased his or her income-earning ability.115 The factor also includes the foregoing of employment or other income-earning activity by either party.116 This is similar to the lost opportunity method which could be employed to compute this factor.

The fourth factor which may be used to rebut the presumption of equal division of property is the extent to which each party during the marriage may have caused a dissipation or depreciation of the value of the marital property of the parties.117 However, fault or marital misconduct is not to be considered by the court in determining the proper distribution of marital property.118

The four rebuttal factors are not given the same weight.119 If, after consideration of factor one (monetary contributions) and factor two (nonmonetary contributions), the distribution of property is unequal, then factors three and four can be considered.120 However, the consideration of factors three and four will only in-

110 Id. at 322.
111 Id.
112 Id. at 323.
114 Id. § 48-2-32(c)(3) (Supp. 1984).
115 Id.
118 Id. § 48-2-32(c)(4) (Supp. 1984).
119 Id. § 48-2-32(c)(2)(A) (Supp. 1984).
crease the interest of the party adversely affected up to a maximum of one-half of the marital property.\textsuperscript{121} For example, if after consideration of factors one and two the principal wage earner would be entitled to sixty percent of the marital assets and the homemaker would be entitled to forty percent of the assets, but the homemaker can show that he or she "expended his or her efforts during the marriage in a manner which . . . decreased such party's income-earning ability"\textsuperscript{122} the homemaker may be awarded an increased share up to but not exceeding fifty percent.

When applying the statute to a specific situation of wife as homemaker and husband as principal wage-earner, the presumption of equal distribution of marital property applies. The presumption imposes upon the party who feels disadvantaged the burden of showing that an equal division is unfair. In the case of the homemaker, she may show that in addition to her nonmonetary contributions she made significant monetary contributions. The principal wage-earner may show that in addition to his monetary contributions he made significant nonmonetary contributions. The party with the smaller share under factors one and two of the statute has the opportunity of obtaining an equal distribution by presenting evidence of factor three, involving income earning ability, or factor four, involving dissipation or depreciation of property.

\textbf{IX. Conclusion}

Today, the services performed by homemakers are being recognized as having monetary value. Equitable distribution statutes are requiring that services of the homemaker be considered along with services of the principal wage-earner in measuring the contribution of each. This note has looked at three approaches to valuing these services: replacement cost method, lost opportunity method and the equal presumption method. West Virginia has adopted the equal presumption approach; however, the factors statutorily available for rebuttal are similar to the replacement cost method and the lost opportunity method. As the legal community grapples with the concept of homemaker services as a for-value service some uncertainty will follow. However, the mechanisms are in place to ensure a greater degree of equity between divorcing spouses.

\textit{Mary Downey}