

POWER DIVORCE

High-earning, professional women are the big losers in the divorce courts. Brooke Kroeger finds out why.

Here is a new take on injustice: a woman marries, then studies to become a doctor or a lawyer, or starts a business. Her husband doesn't stop her, but he doesn't help her much either. When they divorce, he can get up to half of what she has earned.

Consider:

- The woman who raised five children and then became a lawyer without any financial help from her husband. He sued for divorce and half the value of her law license. The court granted him 20 percent of that value. He has appealed the judgment. He wants more.

- The woman who used her personal resources to cofound a business. Her husband then left her for another woman. She sued for divorce and offered him their major personal possessions to expedite a settlement. But he waged a four-year court battle for her half-interest in the firm, which cost her \$72,000 in legal fees for what in the end was a \$6500 judgment.

- The fledgling manufacturer who gave up her half-interest in a one million dollar co-op and four shops to keep her ex-husband out of her new business. He has yet to meet his financial obligations to her in their settlement and even tried to take all of her jewelry.

- An attorney who divorced her banker husband, who had earned half as much as she did during their six-year marriage. She didn't think he would lay claim to part of her law license—and he didn't—but he could have under law. To make sure the issue never came up, she gave him all their joint belongings—a collection of icons, Oriental rugs, and other antiques.

Where is the national debate on these legal hijinks for women? Their plight is not likely to reach the cutting edge of matrimonial jurisprudence. When you consider that only 1 percent of forty-eight million married women in this country have incomes of \$50,000

a year or higher, it's easy to see why no one is waving the cudgel on behalf of those who are worse off than they should be, but so much better off than most.

That is to say, there is no rush to confront the problems of this very aggrieved but still very elite group. The sympathies of the courts will not be with them anytime soon. For now, their only defense is a solid prenuptial or postnuptial pact.

And yet, though the numbers are still small, the percentage of women earning in the upper brackets continues to grow, enough so that some in the legal vanguard acknowledge that the imbalance created by treating a successful wife exactly as you would a successful husband—even though their situations are not really equal—will have to be addressed.

"There are going to be more and more of these women in the coming years," says Leonard L. Loeb, past editor of the *Journal of the American Academy of Matrimonial Lawyers*, "and the laws are going to change."

Of course the laws already changed once in the interests of women more than a decade ago. The system of equitable distribution is now in place in forty-one states. It came about largely to protect the dependent homemaker who raised children and entertained clients to advance her husband's career and then found herself with little or nothing when the marriage fell apart. The idea was to ensure her claim to an "equitable" share of the family's assets even though her contribution had not been financial.

What no one seemed to anticipate was how these laws would work against a woman who earned her own assets during the marriage. Her husband was probably not "Mr. Mom." In fact, the only thing he was likely to have done to advance her career was stay out of her way. And yet, in numerous

cases, judges have treated the uninvolved husband as they would the dedicated homemaker, decreeing his entitlement to a portion of the business she may have established or the value of the medical or legal license she has earned.

If he truly enabled her to establish herself—through financial contribution or sacrificial domestic support—so be it. "What's good for the goose" and all that. But what if he didn't?

It is impossible to generalize from specific cases. Laws vary in different jurisdictions, as do the attitudes that contribute to interpreting them. The uniqueness of every set of circumstances cannot be underestimated, nor can the effects of bad and good lawyering.

What can be gleaned from case histories and interviews with divorcing women, attorneys, judges, and other experts in the field is a sense of outrage at what happens when this select subset of working women—the group so many of the other 99 percent would aspire to be—end up in divorce.

Margaret and Brian Holihan were both teachers when they married in 1960. She left teaching to have their first child two years later, and then had four more in quick succession. Money was tight. Margaret sewed the children's clothes and ran credit cards to the limit to keep the family going. They had no savings except for Brian's accruing pension, and were heavily in debt. It was clear that if the children were going to go to college, Margaret would have to go back to work. In 1975, when the youngest child started school, Margaret applied to law school. She was accepted, won a scholarship, and took out loans that she repaid herself to finance her education. By now, Brian was a guidance counselor, home from work early. The children were old enough to fend for themselves, but Brian did help

out more at home and sometimes picked up Margaret at the train with the family car. She studied hard. She made editor of *The Law Review*. A prestigious New York City firm hired her in 1979.

With her earnings, Margaret started paying off the debts, assuming the major household expenses, including mortgage and taxes and all the children's private university costs. Brian began paying only for food and utilities. The couple grew apart. Brian began keeping most of his income for himself. Five years after she started working, Brian sued for divorce and half the value of Margaret's license to practice law—the family's major asset other than their home and Brian's pension.

At the time, Margaret was earning \$110,000 a year and Brian, \$42,000. An expert appraiser was called in by Brian's attorney to evaluate Margaret's law license. In New York, Ohio, and Michigan, a professional license or practice begun during a marriage by one spouse is classified as marital property to which the untitled spouse has claim.

In the Holihan case, Margaret's law license was valued at \$810,000 after taxes. From that, the appraiser deducted the projected amount she would have earned as a teacher—the profession she established before the marriage—making the marital value of the law license roughly \$584,000.

The judge, Alfred J. Weiner of New York's Rockland County, granted Brian 20 percent of the value of Margaret's license, saying: "His [Brian's] encouragement and support enabled the defendant to concentrate on her efforts to successfully complete law school and to pursue her legal career. During this period of time, the plaintiff assumed increased responsibilities in taking care of the children and the marital residence. However, the plaintiff continued in his position as a guidance counselor and at no time did he sacrifice his own career."

Brian Holihan has appealed, asking a full 50 percent of the value of Margaret's law license. He did not challenge Margaret's award of half the value of his pension, appraised at \$174,000, but he did contest Judge Weiner's order that he reimburse Margaret for limited portion of the children's college bills. At publication, the appeal is pending.

Attorneys who hear the details of the Holihan case tend to agree with the original judgment. Had it been the husband who earned the degree during the marriage, there would likely be strong feelings that his wife would be entitled to a portion of its value. A wife is likely to have had responsibility for a household and children and may have taken on an unsatisfying job to help support the family.

But the question Margaret Holihan might ask is why should a husband who does not sacrifice his career prospects, his money, his own leisure time be rewarded for doing what should be expected of any husband whether his wife is in law school or not: to help it when needed with the kids and a house, and to be supportive to his mate?

"You get a very interesting situation when someone who goes out to work is penalized," said Peter Weinstein, the New York City celebrity divorce lawyer. "Let me tell you a primary difference [when the wife is earning significantly]. The husbands are usually not stay-at-home care-for-the-home homemakers. They are usually business people or professional people. And it's not usually taking care of kids, giving dinner parties, decorating. He probably doesn't have a time."

Of course she doesn't have the time, either, but she often performs those tasks anyway. "Does she get credit for her second job as homemaker?" asks attorney Sanford Dranoff, president of the New York chapter of the American Academy of Matrimonial Lawyers. "The court says no."

New York Justice Jacqueline Silberman cited her decision in another case, *Delli Veneri v. Delli Veneri*, a childless marriage of ten years at the time the wife filed for divorce in 1984. She had started a small executive search firm with a partner the year before the marriage broke up. Her husband, an out-of-work tax specialist, claims to have helped her in the business by doing one income tax return and having conversations with her about it. He left her for another woman, according to disclosed documents, and then pressured her to get back into their

rented one-bedroom apartment, allegedly threatening her life.

On appeal, she obtained a precedent-setting court order giving her temporary exclusive possession of the apartment. She then sued for divorce. In settlement, she offered him the apartment, their car, their furniture and their small savings. But he wanted half of her interest in the business. The case dragged on for four years.

After the trial, Silberman awarded him half the furniture, \$2500 toward the cost of his legal fees (since he was out of work), and 10 percent of her half of the business in 1984—or \$4000 of the total value of \$80,000—the only year of the marriage the business existed. His total cash award was \$6500.

This was how Silberman reasoned. "Marital property is marital property," she said. "Where your discretion comes in is on percentages. If it's acquired during the marriage, it's marital property. If it's separate property that has increased in value, the increase in value becomes marital property, as long as that increase is not passive [such as stocks or artwork]."

Few would question Silberman's decision in the *Delli Veneri* case. It upheld the law and it was fair. What was not fair was what it cost Mrs. Delli Veneri in legal fees to reach a \$6500 judgment—largely because of her husband's sense, firmly rooted in the law, that he could get much more, up to 50 percent of her portion of the business's value. Her fees totaled \$72,000.

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Judge Walter Schackman, a colleague of Silberman's, said the successful woman with high earnings can be penalized in court when her husband's earnings are higher. That was what happened to a patient of JoAnn Magdoff, a psychotherapist who serves on the New York Interdisciplinary Committee for Mental Health and Family Law. The woman, a mother of two, turned down a promotion that would have meant longer hours because her husband insisted she be available in the evenings as a hostess for his business contacts. When he sued for divorce, the court focused only on how solid her



earning potential was. She was not compensated for having stymied her career advancement or for having been so helpful to his business interests.

Indeed, Schackman said a dependent wife may, in some cases, wind up with a greater share of her husband's assets in divorce than a wife who is successful on her own. The dependent wife, he said, will

earn a pool. "When she has to give something up," Goodman said, "the traditional streak comes out."

"My husband gets part of this?" is a typical question," he said. "And the answer is yes."

The courts, obviously, take no notice of what a woman had to go through to achieve what she did or the limitations on her future prospects when compared with her husband's. For the financially successful woman, there is no such thing as handicapping.

As for the divorced women themselves, the six interviewed for this article all agreed it was better to be rid of their husbands at whatever price than to quibble about how much property they were going to end up with. It's hard to imagine the man who would show such detachment about what he had worked so hard to attain.

Of course, the wifely anguish in all these divorces could have been avoided if these women had sought pre- or postnuptial agreements before they began accumulating assets. Indeed, all of them said they wish they had shown the foresight to insist upon such an agreement when it would have mattered. "Contracts may be unromantic," said the manufacturer, summing up the collective sentiment. "But it's also unromantic to get a divorce."

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