



Future Assets in Divorce: Insights for Reforming Malaysia's Law Reform (Marriage and Divorce) Act 1976 Through Equitable Distribution Principles

Ravindran Nadarajan^{1*}, Hamizah Abdul Rahman², Che Natheera Banu Syed Abdul Aziz³,
Siti Fazilah Abdul Shukor⁴, Saslina Kamaruddin⁵

¹ Faculty of Business and Finance, Universiti Tunku Abdul Rahman, Petaling Jaya, Malaysia

² Faculty of Business and Management, Universiti Sultan Zainal Abidin, Kuala Terengganu, Malaysia

³ Faculty of Business and Finance, Universiti Tunku Abdul Rahman, Petaling Jaya, Malaysia

⁴ Faculty of Business and Finance, Universiti Tunku Abdul Rahman, Petaling Jaya, Malaysia

⁵ Faculty of Management and Economics, Universiti Pendidikan Sultan Idris, Tanjung Malim, Malaysia

ravindrann@utar.edu.my

Abstract. This study examines whether Malaysia's Law Reform (Marriage and Divorce) Act 1976 (LRA), and in particular Section 76, adequately addresses the treatment of intangible assets such as enhanced earning capacity, career advancements, and educational qualifications, in divorce proceedings. The purpose is to evaluate the scope of current provisions and propose reforms that better reflect the realities of modern matrimonial dissolution. This study juxtaposes Malaysian case law and statute law with foreign jurisdictions, namely the New York and California jurisdictions. New York's Domestic Relations Law, Section 236, once recognized superior earning capacity by way of professional licensure or educational qualifications as distributable property, and though its amendment in 2016 removed this valuation from its provisions, it remains part of equitable distribution. California Family Code (2005) does not define future earning capacity as part of the distribution of community property, but makes allowance for non-titled spouses' compensation in the form of spousal support or reimbursement claims where educational or professional advancement contributions are proven. Malaysian courts are inclined to address material assets, and have no set statutory criteria for intangible financial assets, leaving outcomes to judicial discretion. The addition of New York's recognition of indirect contributions and California's system of compensation would modernize the LRA to give more fairness, gender equity, and legal certainty in property distribution. The significance of this research lies in its proposal to integrate international best practices into Malaysia's matrimonial law, thereby aligning it with global trends and addressing a critical gap in the equitable distribution of marital property.

Keywords: Comparative Family Law, Economic Disparity, Equitable Remedy, Legal Reform, Matrimonial Distribution.

1 Introduction

In contemporary divorce cases, the definition of marital assets has broadened to include not just tangible possessions like real estate and automobiles, but also non-physical resources such as anticipated income, professional development, and academic achievements attained throughout the union. In New York, for example, financial resources, including non-physical assets, projected income, professional progression, and scholastic attainments, are recognized as components of marital property and may be divided during divorce litigation, particularly when financial imbalance between partners is contested. Therefore, undertaking a thorough investigation into the intricate issues tied to the allocation of economic resources (notably increased earning potential) in the context of divorce could offer valuable insights for future reform to the Law Reform (Marriage and Divorce) Act 1976 (LRA). This legal examination seeks to explore the intricate methods California and New York employ in addressing financial assets as a factor in assessing economic imbalance between spouses during divorce cases. Through a comparative analysis of how intangible resources are evaluated and allocated in both jurisdictions, the study aims to offer a thorough insight into the legislative structures surrounding financial entitlements – particularly in the context of divorce resolutions – providing meaningful guidance for lawmakers, practitioners, and those engaged in the division of marital wealth.

2 Methodology

The study adopts a doctrinal legal research methodology, which involves reading statutes, case law, and the decisions of courts in order to determine whether Malaysia's LRA adequately addresses intangible assets in divorce proceedings. Primary legal sources include Section 76 of the LRA, Malaysian case law, and comparative statutory law provisions under New York's Domestic Relations Law, Section 236, and California's Family Code (CFC) (2005). Secondary sources such as academic commentary, law reform reports, and journal articles are also consulted in order to provide critical analysis and contextual expertise. A comparative approach is adopted in order to contrast how New York (as an equitable distribution state) and California (as a community property state) treat intangible assets such as increased earning capacity and career advancement. This makes it possible to ascertain the strengths, weaknesses, and applicable principles of these states. The methodology of the research is qualitative, focusing on legal reasoning and normative considerations rather than empirical evidence. By comparing Malaysian law systematically to international models, the research aims to highlight gaps that do exist, analyze the place of judicial discretion, and recommend reforms that improve fairness, gender equality, and legal certainty in matrimonial asset division.

3 Results

3.1 Section 76 of Malaysia's Law Reform (*Marriage and Divorce*) Act 1976

Section 76 of Malaysia's LRA grants the court the power to issue orders regarding the division of matrimonial assets when couples go through divorce proceedings. It requires the court to consider various factors, including the financial and non-financial contributions of each spouse, the duration of the marriage, the needs of any children, and the earning capacity of each spouse. The section emphasises equitable distribution and grants the court discretion to tailor orders to the unique details surrounding every individual case. Ultimately, the section provides the court discretion to grant orders that reflect the unique circumstances of each case, ensuring fairness in asset division. This means the court can decide how to fairly divide assets like property, finances, and other possessions that were acquired during the marriage.

Section 76 of the LRA primarily focuses on the division of tangible assets acquired during the marriage. It outlines the court's authority to distribute existing assets acquired during the course of the marriage, and it does not explicitly address other types of assets or financial resources. As such, the section is primarily designed to deal with tangible assets, and any distribution of other types of assets would likely fall under different legal provisions or require specific consideration within the court's discretion.

Conducting a study exploring the treatment of financial resources as assets for the distribution of matrimonial property under Section 76 of Malaysia's LRA could provide valuable insights. Such a study could investigate how courts interpret and apply financial resources as elements when considering matrimonial property. Adopting principles from family law from other jurisdictions, such as New York or California, into Malaysia's Section 76 could improve the handling of spouses who may face economic disparity in Malaysian divorces. This would offer clearer guidelines on elements of financial resources to compensate spouses who may face economic disparity, or those who have made significant contributions to any property.

3.2 Scope of Enhanced Earning Capacity under *New York Domestic Relations Law of 1909*

Section 236 of the New York Domestic Relations Law of 1909 defines matrimonial property as all property obtained by one or both partners throughout the course of the

marital relationship. This includes income, assets purchased with that income, retirement benefits, and appreciation of marital property [1]. Unlike community property jurisdictions, New York does not divide assets equally, but instead applies equitable distribution, with courts considering factors such as the duration of the marriage, each spouse's income, health, age, custodial responsibilities, contributions (financial or domestic), and future financial circumstances [2]. Pensions, health insurance, inheritance rights, and business or professional interests are also evaluated, with the courts sometimes preserving such assets intact while accounting for their value in the overall distribution. Tax consequences, wasteful dissipation of assets, or transfers made in anticipation of divorce may also influence decisions [3]. Separate property, including assets owned before marriage, inheritances, gifts, and personal injury compensation, remains with the original owner, unless its appreciation is attributable to the other spouse's contributions [4].

This was the law prior to the 2016 amendment of the New York Domestic Relations Law, after which New York courts treated enhanced earning capacity as a distributable asset in matrimonial proceedings. The concept was not limited to tangible property but extended to professional licenses, academic degrees, and special skills acquired during the marriage [5]. Although not expressly enumerated in the statute, case law developed to recognize such qualifications as assets capable of generating long-term financial value. Where a spouse obtained a license or degree during marriage, it was deemed matrimonial property, and the non-titled spouse was entitled to a distributive share reflecting their direct or indirect contributions to its attainment [6]. Courts often awarded a percentage of the projected lifetime value of the license or degree, measured over the recipient's anticipated working years. This approach, though innovative, generated debate over whether personal attributes such as education and professional qualifications should be subject to property division. This highlights the tension between equitable distribution principles and the conceptual boundaries of matrimonial property [7].

In 1985, in the New York Court of Appeals, in the case of *O'Brien v O'Brien*, the plaintiff and defendant were married, and they moved to Mexico so that the plaintiff could go to medical school there on a full-time basis. The respondent worked as a teacher and allocated her income toward shared household costs. The spouses moved back to America so that the plaintiff could finish school. Two months after the plaintiff received his license, he filed for divorce [8]. The court acknowledged that a professional certification earned during the course of a marriage constituted matrimonial property and was therefore eligible for fair division. Meanwhile, legal systems in other regions attempting to determine an appropriate approach to handling academic qualifications in divorce contexts have arrived at sometimes diverging rulings [8].

The principles set in the O'Brien's case were followed in the case of *McSparron v McSparron* in 1995. The parties were married on 24th May 1969, and had two children. At the time of the marriage, neither spouse was employed, although both held undergraduate degrees. During the marriage, the defendant pursued and obtained a law degree and license to practice law, while the plaintiff later obtained a medical degree and license to practice medicine [9]. The court held that a professional license, such as a license to practice law, merges into and becomes subsumed within a salaried career. As such, it does not constitute matrimonial property, nor is it an asset with an independent identity for the purpose of computing appreciation [9].

Furthermore, the court determined that the husband's contributions to the wife's attainment of her medical license and consequently, her enhanced earning capacity were *de minimis*. As a result, he was not awarded any distributive share of the enhanced earnings, despite the fact that the license was obtained during the course of the marriage. In *Sotnik v Zavilyansky*, the defendant's involvement in supporting the plaintiff's acquisition of her medical certification was deemed to be *de minimis*. The Supreme Court appropriately applied its judgment in concluding that the defendant had no rightful claim to a portion of the plaintiff's increased income potential stemming from that professional qualification [10].

Likewise, when an acquisition of a degree or license is in large part attributable to the titled spouse's own efforts – such as through obtaining scholarships, working part-time, or using separate property to pay for the attainment of the degree or license – this will also limit the non-titled spouse's share in the enhanced earnings. For example, in the case of *Sadaghiani v Ghayoori*, In a case where the parties had been married for eight years, the Appellate Court upheld the trial court's finding that the foundation of the husband's medical career had been established prior to the marriage. The husband had already obtained his medical degree before the marriage and had completed several qualifying examinations required for medical practice by the time he arrived in the United States [11]. Nevertheless, while recognizing these pre-marital achievements, the court found that awarding the wife 30 percent of the matrimonial portion of the husband's career was not an equitable settlement. The wife's award was reduced to only 10 percent of the husband's enhanced earnings due to her modest contributions, while the husband made no contributions to the wife's real estate, pension, or compensation plans [11].

Most equitable methods of reimbursement rely upon restitution measures, which seek to compensate a non-titled spouse by awarding him or her the present value of past contributions towards the other spouse's degree or license. Restitution measures are equally adaptable to both those jurisdictions that hold professional degrees and licenses earned during a marriage to constitute matrimonial property, and to those jurisdictions that sustain the contrary position [1].

It can be observed in jurisdictions of old law that if one spouse attains a medical degree during the course of a marriage, then the value of the medical degree must be determined, so that the spouse who does not hold the degree can be awarded a percentage of that degree's value, upon divorce. The spouse who did not attain the medical degree is entitled to a percentage because of his or her contributions, which enabled the degree holder to attain said degree. The challenge that arises in having to place a value on a degree or license in the trial courts often does not result in fair or just outcomes. Certain branches of law – including divorce law – are inherently tailored to the specific dynamics of each case, making it difficult to impose universally applicable, standardized regulations. Nonetheless, the presence of consistent guiding principles remains essential to uphold the fair and accurate implementation of legal statutes across varying circumstances, and those rulings serve their anticipated purposes, in order to achieve equitable remedies [12]. A partner pursuing a share of increased earning potential or a stake in a commercial or professional enterprise must establish that they played a significant role in helping the owning spouse obtain the relevant qualification, credential, or business asset [13].

This law later developed when one of the most significant components of the new equitable distribution was amended. This came into effect on 25th January 2016, as the revised section 236 (B)(5)(d)(7) of the New York Domestic Relations Law of 1909. This eliminated the well-established judicial practice that obligated courts to quantify a spouse's increased earning potential arising from credentials, educational achievements, public recognition, or professional growth attained during the marriage, and subsequently treat that valuation as a divisible asset. This was a groundbreaking change because the new statute effectively overturned the seminal case of *O'Brien v O'Brien*, as decided by the New York State Court of Appeals over thirty years prior, and its legal progeny. Since *O'Brien*, professional licenses and educational degrees acquired during the marriage were deemed to be matrimonial property, subject to equitable distribution to the extent that the non-titled spouse contributed either directly or indirectly towards its acquisition. Now, however, with the new statute, the courts are prohibited from considering the value of a spouse's enhanced earning capacity as matrimonial property subject to equitable distribution [14].

Despite the amendment, courts must still consider a spouse's direct or indirect contributions to the other spouse's enhanced earning capacity when deciding on equitable distribution. Equitable distribution was introduced to create a fairer system for dividing matrimonial assets. Although enhanced earning capacity is no longer treated as a matrimonial asset to be divided, it remains a factor in determining fairness. The change applies only to cases filed on or after 25 January 2016. Cases filed earlier than this still require the valuation of enhanced earning capacity as part of the division process [15].

Enhanced earning capacity is recognised as a matrimonial asset on the basis that all property acquired during the marriage constitutes matrimonial property. Under section 236(B)(5)(d)(7) of the New York Domestic Relations Law, enhanced earnings obtained during the marriage are subject to equitable distribution, as they represent a valuable asset derived from the acquiring spouse's qualifications or professional achievements. Where the non-acquiring spouse has contributed to the attainment of such assets, the courts often award a percentage of the enhanced earnings to that spouse. The valuation of enhanced earnings is generally fixed at the date of commencement of the matrimonial action. However, this principle is subject to limitation – i.e., the non-acquiring spouse bears the burden of proving those substantial contributions, whether financial, domestic, or otherwise, were made towards the acquiring spouse's attainment of the asset. Thus, enhanced earning capacity is treated as matrimonial property only to the extent that contributions from the non-acquiring spouse can be established, thereby ensuring an equitable distribution [16].

In the case of *Lynch v Lynch*, on the facts of the case, the parties were married on December 26, 1993, and it was a second marriage for both parties. There were no children from this marriage, although the defendant had three children from his prior marriage, and the plaintiff had one child from her prior marriage. The husband held a part-time teaching position, which was not found to reflect an enhancement of his lifetime earning capacity. The court held that the husband's master's degree was not subject to equitable distribution, as it did not enhance his earning capacity. Furthermore, his pre-degree earnings already exceeded the baseline, the wife's expert data was flawed, and she failed to prove any substantial contribution to his attainment of the degree [17].

In the case of *Nadasi v Nadel-Nadasi*, the Supreme Court of New York held that the wife's indirect contributions as a homemaker and primary caretaker of the couple's three children during a long-term marriage, while sacrificing her own career, justified a greater share of the husband's business interests. Although the trial court had credited her with only 15 percent, the Supreme Court found this inadequate and increased her award to 25 percent of the value of the husband's interest in the brokerage firm – recognizing her substantial non-financial contributions to the family's welfare [18]. The trial court appropriately exercised its discretion under section 237(a) of the New York Domestic Relations Law by awarding the wife 70 percent of her attorney and expert witness fees. This decision was based on the significant economic disparity between the parties, the wife's substantial distributive award, the scope of legal services provided, and the relative merits of each party's position at trial [18].

It should be noted that in New York, enhanced earning capacity is no longer classified as a matrimonial asset subject to direct distribution between spouses. Nevertheless, it remains an important factor in equitable distribution. The statute requires

the court to evaluate the other spouse's direct or indirect contributions to the acquisition of such enhanced earning capacity when determining the appropriate distributive award. In contrast, California has taken a different approach, expressly rejecting the concept of treating enhanced earning capacity as property. Instead, its statute provides for reimbursement to the community for educational expenses incurred during the marriage, where those expenses have substantially increased the earning capacity of one spouse [19].

3.3 Reimbursement for Educational Contributions under Section 2641 of the California Family Code

Section 2641 of the CFC establishes a community's entitlement to recover costs incurred for academic or training expenditures that are funded with community property, which significantly boosts a partner's potential to generate income. The provision itself further states that the right to reimbursement is property, subject to division as community property (California Code Family Code 2021, s. 2641(1)), with the requirements stated thereof [20]. Furthermore, if a spouse's education took place before the marriage, and community funds were used during the marriage to repay the spouse's educational loans, this then allows the other party to claim reimbursement upon separation or divorce. This includes all educational costs paid with community funds, even when the education occurred before the marriage. This provision imbues value for the skills, training or education acquired by one party, at the sacrifice and contribution of the other spouse (whether that be monetary or non-monetary) towards the acquisition of the education or skills as an asset. In essence, if one spouse's contribution is made towards another spouse's education or skills acquired, it should be treated as community property [20]. Fundamentally, under the CFC, it is permitted for both spouses to make a claim for their contribution made towards the education or skills acquired by one spouse with a loan [20]. It is at the court's discretion whether to grant an award, on the basis of the case submission, where at the core, the court will look into whether community debt property benefited both spouses, or not [20]. If, however, it cannot be justified that an educational loan was derived from community funds, then the claimant loses the possibility of reimbursement under said provision.

In assessing the community's right to reimbursement for educational expenses paid for with community property, that then substantially enhances a spouse's earning capacity, there are additional definitions of earning capacity which can be included as community property, as can be seen in the reimbursement on education or training debts [21]. The majority of American states – including Michigan and California – consider a professional degree as community property [22]. Professional degrees are not alone, and

fall under a large category of other types of assets, such as pensions and retirement benefits, licenses to practice a profession or trade, medical and hospital insurance, the goodwill of a business, and entitlements to company goods and services, are all classed as new property (if acquired during the duration of the marriage), and are therefore subject to distribution upon divorce. It is further defined that earning capacity derived from goodwill, such as professional, commercial, personal, and enterprise goodwill, is subject to distribution as community property [23]. The remaining position recognizes all goodwill, even goodwill related to an individual professional, as well as goodwill associated with a business entity, as property subject to distribution [23]. A business entity possesses this and may use this to enhance the value of the business. This includes brand name, business name, and increases in the value of earnings in the future, which can generate income in return as an investment, that would benefit the spouse, based on their contribution [24]. The reasoning behind this is that any contribution made by one spouse through their sacrifice in supporting the other spouse in acquiring education or skills, etc., which then has value in the future in return, should still benefit the non-acquiring spouse, upon divorce [25].

It is of note that the overall provisions do not clearly define the types of property that belong to settlements, which could otherwise allow for a better understanding of how they relate to each other. Working spouses who have contributed to their student spouse's education and skills, but have not provided the marriage with a lucrative financial future, may leave this spouse uncompensated. The legislation does not clearly define the required types of property that belong to community property, and without such legislation, the courts will be unable to award claims from working spouses in a consistent manner [26]. In order to justify the financial support of debts acquired during the course of marriage, the earning capacity of each spouse must be considered as community property subject to distribution, in order to settle the debts [27]. This includes the value of goodwill as a community asset upon divorce, by measuring a spouse's personal earning power or human capital [28], [29].

In a Court of Appeal case, there was evidence that money paid from community funds was used for an educational loan, the court granted reimbursement to the other party. In the case of *re Marriage of Mullonkal & Kodiyamplakkil* in 2020, the court held that the husband was entitled to reimbursement for community funds used to repay the wife's education loans, which had been obtained from both lending institutions and her parents. However, the trial court wrongly denied reimbursement on the basis that the husband had not contributed to repayment of the education debt or community expenses, relying on improper criteria and an incorrect legal assumption [30]. The Court of Appeal reversed the trial court's decision, finding it to be a misapplication of the law and an abuse of judicial discretion. It further held that the community was entitled to reimbursement for

all community expenditures made during the marriage toward the wife's education loans, whether those loans originated from lending institutions or from her family [30].

As previously noted, a debt paid by one spouse to assist another spouse in obtaining an education degree transforms said degree into community property, since the value of education may benefit the community [20]. As such, the overall provisions focus on the value of the education, as a family intervention, rather than as contributing parts [20]. The former spouse can demand half of the value of the money contributed towards the other spouse obtaining their education, with the loan as their matrimonial property [31]. Therefore, it is evident that the CFC recognizes one spouse's financial contribution to the education and loans obtained during the studies undertaken by the other spouse. This represents the courts' attempt to apply the CFC reasonably and equitably.

Furthermore, it can be justified that the non-student working spouse's community property interests suffered when the marriage was dissolved, particularly where the dissolution occurs shortly after completion of the education or training. This inequity results from the fact that the working partner provided financial and emotional support to both the household and the studying spouse throughout the pursuit of advanced education. Upon dissolution of the marriage, the individuals leave with disproportionate benefits from their shared contributions. The inequity in this arrangement becomes clear as the educated spouse gains enhanced prospects for income and personal achievement, while the supporting partner may receive no compensation or recognition for their role in enabling that success.

In the case of *Finby v Finby (In re Marriage of Finby)* in 2013, the spouses lived together for 15 years of married life, and separated in 2010. During the course of the marriage, the wife worked as a financial advisor and created a book of business generated from client investments, of which the value exceeded \$192 million. As part of the commission, the company that she worked for agreed to pay her \$2.8 million for engaging customers with the company [32]. The Court of Appeal held that the book of business was a valuable asset, and therefore was defined as community property, and was subject to distribution as matrimonial property [32]. Furthermore, the scope of the increased value of the spouse's professional skills was also recognized as property subject to distribution as community property.

A spouse who acquires an education or skill with the support of the other spouse, whose skills and education have value in the future, should therefore pay the investor the value of the return – i.e., to the spouse who sacrificed their time and money [33]. In addition, earning capacity should be determined according to the spouse's contributions during the marriage, in order to ensure a fair division of matrimonial assets.

Both spouses should receive the benefits by treating the contributions made to the other spouse's professional degree that would increase the potential earning of the education, as a financial investment [34]. Although each spouse has a different background of knowledge and skills in terms of their earning capacity, the earning disparity between the spouses during the course of the marriage is accumulated upon divorce [35]. All increases in earning capacity generated during the marriage must be eligible for division as matrimonial property [35]. In most scenarios, the supporting spouse will be left uncompensated and unappreciated for their sacrifice in support of their spouse. This suggests that the courts should require some speculative analysis to determine suitable compensation, subject to distribution as matrimonial property [36].

As previously noted, many cases recognize the potential for increases in future earning capacity that have been made possible by the acquisition of a law degree and the attainment of a certificate of admission to the bar, conferred upon a husband with the aid of his wife's efforts. This constitutes an asset for distribution by the court. However, the professional skills themselves do not constitute an asset as community property, as there must be elements of enhanced earning from those professional skills, in order to justify them as assets subject to community property, and with the wife having contributed to the welfare of the family or efforts to the husband's acquisition of the skills.

Whether business assets can be distributed as community property differs case by case, depending on the contributions of the parties. If both parties earned similar amounts (compared to their partner), then they will not be granted any award based on earning capacity. This was justified by the Court of Appeal of California, in the case of *re Marriage of McTiernan & Dubrow* (2005, p. 1090). The High Court held that the trial court erred in finding goodwill in the husband's career as a motion picture director to be community property [37]. The Court of Appeal noted that the wife earned an average of \$125,000 annually as a film producer during the marriage (largely from projects involving the husband) while her independent projects earned only about \$50,000. The court determined that the wife was capable of supporting herself and that earning capacity does not qualify as community property. Where a non-acquiring spouse makes no contribution towards loans or marital expenses, courts are reluctant to classify the other spouse's enhanced earning capacity as community property [37]. If there is no element of contribution by a non-acquiring spouse whatsoever in contributing to the repayment of loans, or otherwise contributing to expenses during the marriage, then the courts will be reluctant to grant an award of the earning capacity of the acquiring spouse on education, as it would not constitute community property.

In addition to the positions outlined above, the courts will further examine the duration of a marriage, as well as other considerations relating to the other partner's earning capabilities, before any decision is made about enhanced earning capacity. If it is

proven that the contribution towards the community debt has been for less than 10 years before the divorce filing or separation, then the court will not designate this as community property [20]. The basic provisions clearly state that once the benefit to one party from the community property debts can be proven, then the supporting spouse will be granted reimbursement for the contribution that they have made [20].

It can be noted that in divorce cases, it is efficient for assets to be counted as equitable for distribution, based on the basic assumption that all cross contributions to human capital are considered as matrimonial property. There will always be the need for factors to measure financial resources, in order to identify a spouse's standard of living, so that the most can be done to accommodate the interests and needs of the former spouse (usually the wife), and any children, when designating property as subject to distribution as matrimonial property. The courts take into consideration the elements of earning capacity, not only in terms of human capital skills and education, but also in terms of human capital in business investments – such as stocks, bonds, real estate, and other investments [23].

Looking closely at the courts' processes, it can be observed that they emphasize a more equitable distribution by following the economic partnership method, in order to distribute assets for community property, and fairly share corporate assets in equitable distribution [38],[39]. The economic partnership model should reflect the adoption as community property, upon separation [40]. The adoption of earning capacity as partnership assets is defined as community property, where it is stated that the divisibility on divorce of 'human capital' or 'career assets' acquired differently by spouses during the marriage is community property [41]. The statutory provision underlines that equal and joint acquisition of property acquired by them is in the name of the partnership [42].

As such, the partnership theory is closely linked to the contributions made by each spouse during the marriage, where both are regarded as equal partners. Any contribution by one partner is recognized and compensated for in the form of matrimonial property. Under the CFC, community property is to be divided equally between the spouses, treating them as co-owners of one-half of the property, regardless of whose name the property is under. Different jurisdictions use varying terminology to describe property subject to division upon divorce. In California, it is referred to as community property, while in many Commonwealth jurisdictions it is termed matrimonial property [43]. In both civil and common jurisdictions, the term "separate property" is used to denote property that is not subject to distribution as matrimonial property [44]. In this way, property acquired solely by one spouse, without any financial or non-financial contribution from the other, remains the acquiring spouse's individual property. Such property is legally classified as separate property, distinct from community or matrimonial property, and is therefore excluded from distribution upon divorce.

In general, most physical property acquired through a loan by either spouse during the course of a marriage is classified as community property, irrespective of whether the spouses have individually apportioned responsibility for the loan. However, the courts have consistently held that the value of such community property must be reduced by the outstanding loan liabilities before it can be considered as community property subject to distribution [45]. Civil law and common law jurisdictions adopt similar approaches in this regard. Upon divorce, community property (after deducting the associated liabilities) is divided equally between the spouses, while separate property remains with the original owner and is divided according to legal title [46].

4 Recommendation

The Malaysian LRA presently provides limited direction on how courts should address enhanced earning capacity or educational expenses acquired during marriage, creating a significant gap in the protection of spouses who have directly or indirectly contributed to their partner's professional advancement. Lessons from foreign jurisdictions (particularly New York and California) offer valuable guidance for reform. In New York, the Domestic Relations Law treats enhanced earning capacity – such as qualifications, licenses, and professional training obtained during marriage – as matrimonial property subject to equitable distribution, on the basis that marriage is an economic partnership where both parties share in the benefits of assets, whether tangible or intangible, acquired during the marriage. Courts there do not only consider monetary contributions, i.e., tuition fees or living allowances, but also non-monetary contributions, e.g., childcare or homemaking, when determining how such capacity can be fairly distributed. Similarly, Section 2641 of the CFC provides reimbursement for contributions to education or training of a spouse made toward a substantial enhancement of their earning capacity as deductible, in view of the fact that such expense is an investment in the marriage relationship and should not leave the contributing spouse uncompensated. A reform of the LRA could merge both approaches by avowedly recognizing enhanced earning capacity acquired during the course of marriage as matrimonial property, and a statutory right of recoupment where matrimonial money has been spent on one spouse's education, training, or career development. This would enable Malaysian courts to balance equity by preventing unjust enrichment, yet recognizing direct and indirect contributions to enhanced earning capacity and to ensure that a supporting spouse's sacrifices and investments are taken into consideration. This would align the Malaysian regime more with principles of just distribution, guard against economic inequality at divorce, and at last provide more equitable outcomes for spouses – particularly non-acquiring spouses who often incur the hidden costs of subsidizing their spouse's professional development.

5 Conclusion

In the two important recognitions – the recognition of greater earning capacity as matrimonial property and the reimbursement of education costs expended during the course of the marriage – this body of law discloses an important innovation in the family law of fairness and equality on divorce. The juxtaposition of New York and California demonstrates how both states have fashioned legal instruments to address the financial inequalities that commonly result from one spouse's direct or indirect contribution to the other's career advancement. New York's approach, which considers enhanced earning capacity a distributable asset, acknowledges the economic partnership nature of marriage and ensures that intangible and tangible contributions alike are equally valued. California, through Section 2641 of its Family Code, augments this perspective by creating an express right of reimbursement when community property has been used to fund education or training expanding a spouse's earning capacity. These models present a useful framework for reform of the Malaysian LRA, which lacks adequate provisions for dealing with such cases. Adopting principles from each jurisdiction in Malaysian law would allow courts to achieve a balance between equity and fairness, prevent unjust enrichment, and safeguard the interests of non-acquiring spouses who have suffered sacrifices for the development and achievement of their partners. In due course, this type of reform will make the concept of equitable sharing in Malaysia's matrimonial property regime even more robust, aligned with global best practice, and improved towards fairer and more realistic outcomes for divorce cases.

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