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MARRIAGE DISSOLUTION: AN EQUITABLE APPROACH TOWARD PROPERTY DISTRIBUTION

*Tibbetts v. Tibbetts*¹

David and Donna Tibbetts purchased a house as joint tenants. The wife contributed \$5,000 toward the purchase price with funds acquired prior to marriage. The parties later were divorced.² At the divorce proceeding, the trial court refused to distribute the house. The superior court amended the decree only to clarify the basis of the trial court's decision, that the house was not marital property and that recognition of the interests of the parties as joint tenants was sufficient to set apart the property without making further division.³

The Maine Supreme Court reversed and remanded, holding that the involvement of the wife's \$5,000 in the purchase of the house did not completely exclude the property from the marital property category. The court further held that although the statute⁴ excludes from marital prop-

1. 406 A.2d 70 (Me. 1979).

2. *Id.* at 73.

3. The wife appealed the original divorce judgment, claiming that the judgment did not clearly reflect the treatment accorded to the wife's \$5,000 involved in the purchase of the house. The superior court remanded to the trial court for further findings of fact. The trial court declined to distribute the house. The wife appealed again, urging that the trial court was not "setting apart" the jointly held property as required by ME. REV. STAT. ANN. tit. 19, § 722-A (Supp. 1979).

4. ME. REV. STAT. ANN. tit. 19, § 722-A (Supp. 1979) provides in part:

1. Disposition. In a proceeding: (a) for a divorce . . . , the court shall set apart to each spouse his property and shall divide the marital property in such proportions as the court deems just after considering all relevant factors. . . .
2. Definition. For purposes of this section only, "marital property" means all property acquired by either spouse subsequent to the marriage except:
 - A. Property acquired by gift, bequest, devise or descent;
 - B. Property acquired in exchange for property acquired prior to the marriage or in exchange for property acquired by gift, bequest, devise or descent;
 - C. Property acquired by a spouse after a decree of legal separation;
 - D. Property excluded by valid agreement of the parties; and
 - E. The increase in value of property acquired prior to the marriage.
3. Acquired subsequent to marriage. All property acquired by either spouse subsequent to the marriage and prior to a decree of legal separation is presumed to be marital property regardless of whether the title is held individually or by the spouses in some form of co-ownership such as joint tenancy, tenancy in common, tenancy by the entirety, and community property. The presumption of marital property is overcome by a showing that the property was acquired by a method listed in subsection 2.

erty all property acquired in exchange for property acquired before marriage, it did not follow that where a part of the property exchanged was non-marital, the entire property, as a result, was non-marital.

The Maine statute dealing with disposition of property at divorce substantially tracks section 307 of the Uniform Marriage and Dissolution Act as drafted in 1970⁵ and is nearly identical to Mo. Rev. Stat. section 452.330.⁶ These new marriage and dissolution acts have forced common law jurisdictions to deal with alien concepts of "marital" and "non-marital" or "separate" property. In a dissolution proceeding, the court must "set apart" to each spouse his separate property. The court then must divide the marital property in a just manner.⁷ Property acquired during marriage by either spouse is presumed to be marital property unless it qualifies as separate property under one of the statutory exceptions. The exception involved in *Tibbetts* was the exclusion from marital property of "property acquired in exchange for property acquired prior to the marriage." The term, "acquired in exchange for" poses interpretive difficulties in the *Tibbetts* situation where non-marital and marital properties are combined to purchase a single asset during marriage. The *Tibbetts* court rejected the finding that the wife's \$5,000 contribution from separate funds rendered the house entirely non-marital.⁸ The Maine Supreme Court also had previously rejected the proposition that real estate acquired by a husband and wife, partially in exchange for property acquired prior to marriage and with the balance secured by a mortgage loan, was wholly marital.⁹ In Maine, a single item of property acquired during the marriage can be to some extent non-marital and the remainder marital.

Under *Tibbetts*, that portion of property acquired during marriage that can be "traced" to separate funds remains separate. This may be

5. Colorado, Kentucky, Maine, and Missouri have adopted modified versions of § 307 of the UNIFORM MARRIAGE AND DISSOLUTION ACT as promulgated in 1970. COLO. REV. STAT. § 14-10-113 (1973); KY. REV. STAT. ANN. § 403.190 (Baldwin Supp. 1978); ME. REV. STAT. ANN. tit. 19, § 722-A (Supp. 1979); RSMo § 452.330 (1978). In 1973, § 307 was withdrawn from the Uniform Act and was replaced with two alternative provisions. Alternative A was recommended for general adoption. It eliminated the distinction between marital and non-marital property for distribution purposes. Alternative B was recommended for adoption by community property states.

6. The slight variation in the Missouri statute concerns the factors to be considered in dividing the marital property. Compare RSMo § 452.330.1 (1978) with ME. REV. STAT. ANN. tit. 19, § 722-A(1) (Supp. 1979).

7. See, e.g., ME. REV. STAT. ANN. tit. 19, § 722-A(1) (Supp. 1979); RSMo § 452.330.1 (1978). Missouri courts have held that the court's obligation to divide the marital property is mandatory. *Corder v. Corder*, 546 S.W.2d 798 (Mo. App., K.C. 1977); *Davis v. Davis*, 544 S.W.2d 259 (Mo. App., K.C. 1976); *L.F.H. v. R.L.H.*, 543 S.W.2d 520 (Mo. App., St. L. 1976).

8. It is not clear from the opinion why the lower courts reached the decision that the entire house was non-marital property. The superior court decree simply recognized the legal interests of the parties as joint tenants as sufficiently set apart without further division or distribution. 406 A.2d at 74.

9. *Young v. Young*, 329 A.2d 386 (Me. 1974).

significant in Missouri property division litigation for two reasons. First, *Tibbetts* stands for the proposition that where property is acquired during marriage in exchange for both marital and non-marital properties, the statute requires the divorce court to separate marital and non-marital interests to the extent that contributions made by each spouse can be traced or identified. Although two recent Missouri decisions passively seemed to approve the tracing theory,¹⁰ none have dealt with facts establishing tracing. Second, *Tibbetts* adopted the "source of funds" rule for determining separate and marital estates in a single asset acquired during marriage with both separate and marital funds.¹¹

The "tracing" or "source" doctrine is rooted in community property principles and dates from ancient Spanish law.¹² Mo. Rev. Stat. section 452.330 adopted the basic structure used by community property states¹³ for distinguishing separate property from marital property. Although Missouri courts have not formally adopted community property principles, these principles by analogy are instructive.¹⁴ According to community property rules, property acquired by one or both spouses during marriage is presumed to be community property. The most common method of overcoming this presumption in favor of community ownership is by tracing back to a separate property source.¹⁵ "Where property is exchanged for other property or is sold and the proceeds of the sale are used to buy other property, the property bought is of the same character as that given in exchange or sold."¹⁶ This rule is based on equitable principles: the fund that furnished the consideration should be reimbursed for its contribution.

Despite its equitable appeal, tracing presents difficulties under the new marriage and dissolution acts just as it did under Spanish community property law. Under Spanish law, tracing could be defeated by showing that the separate and community properties were commingled to the extent that it was impossible to distinguish them.¹⁷ The finding that commingled

10. See *In re Marriage of Pate*, 591 S.W.2d 384, 389-90 (Mo. App., W.D. 1979); *In re Marriage of Morris*, 588 S.W.2d 39, 44 (Mo. App., W.D. 1979).

11. 406 A.2d at 75-76.

12. W. BROCKELBANK, *THE COMMUNITY PROPERTY LAW OF IDAHO* 134 (1962); Krauskopf, *Marital Property at Marriage Dissolution*, 43 MO. L. REV. 157, 189 (1978).

13. The eight community property states are: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, and Washington.

14. For discussion of the development of community property law in the United States, see E. CLARK, *COMMUNITY OF PROPERTY AND THE FAMILY IN NEW MEXICO* (1956); W. REPPY & W. DE FUNIAK, *COMMUNITY PROPERTY IN THE UNITED STATES* (1975); Kirkwood, *Historical Background and Objectives of the Law of Community Property in the Pacific Coast States*, 11 WASH. L. REV. 1 (1936); Lyons, *Development of Community Property Law in Arizona*, 15 LA. L. REV. 512 (1955); McKnight, *Texas Community Property Law—Its Course of Development and Reform*, 8 CAL. W.L. REV. 117 (1971).

15. W. REPPY & W. DE FUNIAK, *supra* note 14, at 140.

16. W. BROCKELBANK, *supra* note 12, at 134.

17. W. DE FUNIAK & M. VAUGHN, *PRINCIPLES OF COMMUNITY PROPERTY* 125 (2d ed. 1971). See also *Laughlin v. Laughlin*, 61 Ariz. 6, 143 P.2d 336 (1943);

property was community property did not, however, arise from the fact of intermixture but from an impossibility of identification. Where separate and community properties were commingled beyond recognition, an intent to make a gift of the separate property to the community was presumed.¹⁸

Missouri courts have applied commingling principles in interpreting the exception to marital property of property "acquired in exchange for property acquired prior to marriage."¹⁹ In *Jaeger v. Jaeger*,²⁰ the husband purchased stock in his name during marriage. The stock was purchased with the proceeds from the sale of stock he owned before marriage and of other stock which was marital property. The court found the new stock to be marital property, stating:

We do not believe that the "exchange" exception found in 452.330.(2) is applicable when a person uses both his pre-marriage property and marital property to purchase a new property during the marriage. In commingling his assets with marital assets, the spouse has failed to sufficiently segregate his own property. Such a commingling is indicative of an intent on the part of the owner of the pre-marriage property to contribute it to the marital estate.²¹

The court indicated that its holding would not preclude tracing, but that the evidence failed to establish that the husband did not intend a gift upon the marital estate.²²

Application of the tracing doctrine to property division in Missouri is further complicated by the common law presumption that a conveyance of property by one spouse to both spouses in joint tenancy is intended to benefit the marital estate.²³ The *Tibbetts* court did not address this issue, apparently because both parties agreed that no gift to the marital estate was intended.²⁴ Missouri decisions hold that such property acquired in joint ownership during marriage is marital property unless it is shown that: (1) the property was "acquired in exchange for property acquired prior to marriage"; and (2) the transfer was not intended as a provision

Fisher v. Fisher, 86 Idaho 131, 383 P.2d 840 (1963); *Fox v. Fox*, 81 Nev. 186, 401 P.2d 53 (1965).

18. *W. DE FUNIAK & M. VAUGHN*, *supra* note 17, at 125, 184-85.

19. *In re Marriage of Badalamenti*, 566 S.W.2d 229, 236 (Mo. App., St. L. 1978); *Jaeger v. Jaeger*, 547 S.W.2d 207, 211-12 (Mo. App., St. L. 1977).

20. 547 S.W.2d 207 (Mo. App., St. L. 1977).

21. *Id.* at 211.

22. *Id.*

23. Under the common law in Missouri, if one spouse pays the consideration for a conveyance made in joint names, it is presumed that the conveyance was intended as a settlement upon, or as a provision for a gift to the other spouse. *Gaede v. Smith*, 354 Mo. 738, 741, 190 S.W.2d 931, 932 (1945); *Lewis v. Lewis*, 354 Mo. 415, 422, 189 S.W.2d 557, 560 (1945); *Gillispie v. Gillispie*, 289 S.W. 579, 581 (Mo. 1926). *Conrad v. Bowers*, 533 S.W.2d 614, 622 (Mo. App., St. L. 1975) held that RSMo § 452.330 (1978) did not change this common law presumption.

24. 406 A.2d at 74 n.4.

for settlement or as a gift to the other spouse.²⁵ Missouri courts have construed the statute to mean that even though jointly titled property or a portion thereof can be traced to separate funds, the gift presumption must be overcome by clear and convincing evidence or the property will be deemed marital.²⁶

Two recent Missouri decisions appear to recognize that the gift presumption can be overcome so that the portion of the property acquired in exchange for separate property remains separate.²⁷ In *In re Marriage of Pate*,²⁸ the wife argued that certificates of deposit purchased with funds from a joint checking account should be classed as marital property. The husband's premarital assets included the checking account in question into which both the husband and wife deposited funds during marriage. The wife drew upon these funds for personal and joint expenses but was not aware that she was a joint owner of the checking account, if in fact she was, until trial. The court found from the husband's testimony that he did not intend to transfer ownership of his premarital assets to his wife but intended only to afford her the use thereof. Without further discussion, the court found that if the presumption had ever arisen that the checking account was marital property, it was rebutted.²⁹

The *Pate* court did not refer to the tracing doctrine, nor did it hold that the statute mandates separation of non-marital and marital properties by tracing the contributions made by each spouse if sufficient evidence is presented. *Pate*, however, does indicate that Missouri courts may be sympathetic to an argument that a portion of property should be classed as separate because it can be traced to separate property exchanged for it. Assuming that a court will entertain such an argument, the presumption of a gift where marital and non-marital properties are commingled or where property is titled jointly, must be rebutted. Neither *Pate* nor *Tibbetts* indicates what evidence is necessary to rebut this pre-

25. *Jaeger v. Jaeger*, 547 S.W.2d 207, 211 (Mo. App., St. L. 1977); *Conrad v. Bowers*, 533 S.W.2d 614, 622 (Mo. App., St. L. 1975).

26. See cases cited note 25 *supra*.

Transmutation is the community property principle whereby separate property is converted to marital property by gift or agreement, express or implied. See *Noble v. Noble*, 26 Ariz. App. 89, 546 P.2d 358 (1976); *In re Marriage of Jafeman*, 29 Cal. App. 3d 244, 105 Cal. Rptr. 483 (1972). See also *In re Marriage of Moncrief*, 36 Colo. App. 140, 535 P.2d 1137 (1975) (applying a statute nearly identical to the Missouri statute). Cf. *Young v. Young*, 329 A.2d 386 (Me. 1974) (holding that prior to the effective date of the new statutory concept of marital property there could be no intent to convert or transmute separate property to marital property).

27. *In re Marriage of Pate*, 591 S.W.2d 384 (Mo. App., W.D. 1979); *In re Marriage of Morris*, 588 S.W.2d 39 (Mo. App., W.D. 1979).

28. 591 S.W.2d 384 (Mo. App., W.D. 1979).

29. The court emphasized that the wife was not aware that the checking account was jointly titled. In determining whether the husband intended to transmute his separate property to marital property, however, the court's focus should have been on the husband's intent. Thus the court's reasoning that the gift presumption may not have arisen is questionable.

sumption. Under Spanish law, to facilitate proof as to what property was separate property, it was generally recommended that an inventory be made of all premarital property at the time of the marriage contract.³⁰ Several community property states approve such a recording by statute.³¹ If the Missouri courts are willing to trace to separate property sources, as *Pate* suggests they might be, attorneys should advise clients who wish to protect separate property to keep records that will facilitate tracing.

Another way to facilitate tracing is to provide by antenuptial contract which property is separate and which property shall be subject to division as marital property at dissolution. It was a basic precept of Spanish community property law that spouses could provide by contract which property would be classed as separate property and which would be classed as community property, or that the spouses could contract away community property rights altogether.³² The law operated on the theory that it would not regulate the marital partnership unless the spouses failed to do so. In Missouri, an antenuptial agreement purporting to settle issues of property division at dissolution is neither contrary to public policy nor precluded by the Marriage and Dissolution Act if the agreement is conscionable and fairly made.³³ Such an agreement could be updated as new items of property are purchased to show clearly the contributions furnished from separate and marital sources. Even if the agreement were unenforceable, it might still guide the court in tracing back to separate funds.

Tracing is only one step toward an equitable distribution of property at dissolution. The court also must determine how the separate and marital estates are to be compensated for their respective contributions. Both the Missouri statutory definition of marital property³⁴ and the presumption

30. W. DE FUNIAK & M. VAUGHN, *supra* note 17, at 123-24.

31. See, e.g., CAL. CIV. CODE § 5114 (Deering 1972) (authorizes husband and wife to file an inventory of separate property); IDAHO CODE §§ 32-907, -908 (1968) (authorizes only the wife to file); NEV. REV. STAT. §§ 123.140, .160 (1973) (failure to file an inventory of separate property is prima facie evidence that the property is not separate).

32. W. DE FUNIAK & M. VAUGHN, *supra* note 17, at 116.

33. *Ferry v. Ferry*, 586 S.W.2d 782 (Mo. App., W.D. 1979). Cf. *Wilson v. Wilson*, 354 S.W.2d 532, 546 (Mo. App., Spr. 1962) (because the antenuptial contract rule predated the Marriage and Dissolution Act, contracts will not be enforced unless entered into freely, fairly, knowingly, understandingly, and in good faith and with full disclosure).

For other cases holding that antenuptial contracts are not contrary to public policy, see *Posner v. Posner*, 233 So. 2d 381 (Fla. 1970); *Eule v. Eule*, 24 Ill. App. 3d 83, 320 N.E.2d 506 (1974); *Flora v. Flora*, 166 Ind. App. 620, 337 N.E.2d 846 (1976). See also Clark, *Antenuptial Contracts*, 50 COLO. L. REV. 150 (1979); Evans, *Antenuptial Contracts Determining Property Rights Upon Death or Divorce*, 47 U.M.K.C. L. REV. 31 (1978).

34. RSMo § 452.330.2 (1978) provides:

For purposes of sections 452.300 to 452.415 only, "marital property" means all property acquired by either spouse subsequent to the marriage except:

(1) Property acquired by gift, bequest, devise, or descent;

in favor of marital property depend on the property having been "acquired" during marriage. Thus, "acquisition" is a key concept in determining the character of certain property at dissolution. Two principal interpretations of the acquisition concept have evolved. *Tibbetts* adopted the "source of funds" rule as opposed to the "inception of title" rule followed in Missouri.³⁵ These rules, borrowed from community property jurisdictions, generally are applied where right or title to property is obtained by one party before marriage and the obtention is completed during marriage with the use of marital funds.³⁶

The "inception of title" rule is the traditional rule of Spanish community property law.³⁷ The character of the property is fixed as separate or marital when the right to title is taken. If title is acquired before marriage, the property remains wholly non-marital, even if marital funds are expended toward its purchase or maintenance. Under this rule, the marital community is reimbursed, upon dissolution, in the amount of marital property used to complete purchase of the property or to enhance its value.³⁸ Any increase in value due to general economic conditions, however, is the separate property of the spouse who acquired title before marriage.³⁹ Extending the logic of the "inception of title" rule to the *Tibbetts* situation where the house was purchased after marriage and titled jointly, the wife would have been reimbursed for her contribution of separate funds but the marital estate would have been entitled to any increase in value due to economic conditions.

The "source of funds" rule is of more recent origin and can be viewed as an equitable exception to the "inception of title" rule.⁴⁰ The marital and separate interests are determined by comparing the ratio of marital and

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- (2) Property acquired in exchange for property acquired prior to the marriage or in exchange for property acquired by gift, bequest, devise, or descent;
 - (3) Property acquired by a spouse after a decree of legal separation;
 - (4) Property excluded by valid agreement of the parties; and
 - (5) The increase in value of property acquired prior to the marriage.

35. See, e.g., *Davis v. Davis*, 544 S.W.2d 259 (Mo. App., K.C. 1976); *Stark v. Stark*, 539 S.W.2d 779 (Mo. App., K.C. 1976); *Cain v. Cain*, 536 S.W.2d 866 (Mo. App., Spr. 1976). The "inception of title" rule as adopted in these cases does not necessarily preclude application of the tracing doctrine. See *In re Marriage of Pate*, 591 S.W.2d 384, 389-90 (Mo. App., W.D. 1979); *In re Marriage of Morris*, 588 S.W.2d 39, 44 (Mo. App., W.D. 1979). See also text accompanying notes 28-30 *supra*.

36. See *Bartke, Yours, Mine and Ours—Separate Property and Community Funds*, 44 WASH. L. REV. 379, 383 (1969); Note, *Dissolution of Marriage—Division of Property Which Has Increased in Value*, 42 MO. L. REV. 479, 480-81 (1977).

37. W. DE FUNIAK & M. VAUGHN, *supra* note 17, at 133. The Spanish rule regarding acquisition is followed in New Mexico and Texas. *Gillispie v. Gillispie*, 84 N.M. 618, 506 P.2d 775 (1973); *Hodge v. Ellis*, 268 S.W.2d 275 (Tex. Civ. App. 1954).

38. W. DE FUNIAK & M. VAUGHN, *supra* note 17, at 130-31, 133.

39. *Id.*

40. 406 A.2d at 76-77 n.9.

separate investments in the property. Upon dissolution, the separate and marital estates receive a proportionate share of any increase in value due to economic conditions.⁴¹ For example, assume that Donna Tibbetts' contribution of \$5,000 from separate funds was the down payment on the house purchased during marriage and that the total purchase price was \$10,000, the remaining \$5,000 being financed through credit. One-half of the value of the house would be her separate property. If the couple contributed \$5,000 of marital property and if the property appreciated in value to \$20,000, one-half of the value of the house, or \$10,000, would be the wife's separate property at dissolution. The other half, or \$10,000, would be marital property subject to division.

Just as the theory underlying the tracing doctrine is one of equity and fairness, the same considerations weigh in favor of the "source of funds" theory. The *Tibbetts* court relied upon the purpose of the Uniform Marriage and Dissolution Act and upon a dynamic interpretation of the term "acquisition" to support the contention that the "source of funds" rule is the more equitable approach.⁴²

The shared enterprise or partnership theory is a guiding principle in the separation and division of property at dissolution under the Uniform Act.⁴³ The partnership theory entitles the separate and marital estates, respectively, to a proportionate share in the value of the property. The separate and marital estates are entitled to the full benefit and return from their investments as if they were partners in a business partnership.⁴⁴

The partnership theory harmonizes with a dynamic interpretation of the term "acquisition"; the characterization of the property as marital or non-marital may shift as items of property, marital or non-marital, are contributed by the spouses in exchange for the new asset. This dynamic interpretation is simply a restatement of the "source of funds" rule and is an interpretation inconsistent with the "inception of title" rule. If acquisition is an ongoing process, it must not be arbitrarily and finally fixed at the

41. The "source of funds" rule is followed in California, Idaho, and Washington. *In re Marriage of Jafeman*, 29 Cal. App. 3d 244, 105 Cal. Rptr. 483 (1973); *Gapsch v. Gapsch*, 76 Idaho 44, 277 P.2d 278 (1954); *In re Dougherty's Estate*, 27 Wash. 2d 11, 176 P.2d 335 (1947).

42. The court's discussion of the "source of funds" rule may be dicta in whole or in part. It is not clear from the opinion whether there was an increase in value of the property. Assuming that the house did increase in value, that portion of the opinion that would apply the "source of funds" rule to the situation where property is titled in one spouse prior to marriage and where acquisition is completed during marriage is clearly dicta.

43. See HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS 178 (1970); Krauskopf, *A Theory For A Just Division of Marital Property in Missouri*, 41 Mo. L. Rev. 165, 166 (1976).

44. The commissioners who drafted the Uniform Act recommended that distribution be treated, as nearly as possible, like the dissolution of a business partnership. HANDBOOK OF THE NATIONAL CONFERENCE OF THE COMMISSIONERS ON UNIFORM STATE LAWS 111 (1970).

point in time when title is incepted. The "inception of title" rule discourages spouses from investing separate property in marital property. If title is taken by one spouse prior to marriage, it discourages the other spouse from permitting marital funds to be expended on that separate property. The rule also discourages the owner of separate property from combining separate funds with marital funds in order to purchase a new asset during marriage.⁴⁵

The question left unanswered in *Tibbetts* is whether application of the tracing doctrine necessarily implicates acceptance of the "source of funds" rule. If a fair reading of *Tibbetts* discloses such a suggestion, the decision may be an incentive for Missouri courts to re-evaluate their position. Missouri adopted the "inception of title" rule soon after the new Marriage and Dissolution Act became effective.⁴⁶ Acceptance of that rule is understandable in view of the circumstances at that time. The courts were interpreting a new statute based on unfamiliar concepts and looked to the traditional community property rule for assistance.

Although the "inception of title" rule is still the majority view, the proposition that the tracing doctrine and the "source of funds" rule are interrelated is tenable. Each evolved from the same basic notions of equity and fairness. Where the original contributions, both separate and marital, to the purchase of an asset, are insignificant in comparison to a large increase in the value of the asset, the equitable considerations of the tracing doctrine would be undermined if the respective estates did not share in the increase. It is inequitable to deny the marital estate a proportionate share in the increase in value merely because property was titled in one spouse prior to marriage, or to deny the separate estate a proportionate share merely because property was purchased during marriage.

The ultimate goal of the new marriage and dissolution acts is to achieve a fair and just distribution of property at dissolution. Both the tracing doctrine and the "source of funds" rule comport with this objective. Although the "inception of title" rule may have produced equitable results in old Spain, the rule is outdated in view of present economic conditions. Property values, in particular those of real estate, have increased dramatically over the past few years. To deny the respective estates a proportionate share of this increase is patently inequitable. *Tibbetts* represents an attempt to achieve the equitable result contemplated by the drafters of the Uniform Act. Missouri courts should reassess their position with the same goal in mind.

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45. Note, *supra* note 36, at 484-85.

46. Missouri enacted the Marriage and Dissolution Act in 1973. It became effective January 1, 1974.