

1965

Alice Mae Buck v. Edwin Holt Buck : Appellant's Brief

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Recommended Citation

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**IN THE SUPREME COURT
OF THE STATE OF UTAH**

ALICE MAE BUCK,

Plaintiff,

vs.

EDWIN HOLT BUCK,

Defendant.

APPELLANT'S

**APPEAL FROM JUDGMENT
OF THE THIRD DISTRICT
FOR SALT LAKE COUNTY**

HONORABLE MERRILL C. [unclear]

**DALE T. [unclear]
C. [unclear]
[unclear]
[unclear]**

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IN THE SUPREME COURT OF THE STATE OF UTAH

ALICE MAE BUCK,

Plaintiff,

vs.

EDWIN HOLT BUCK,

Defendant.

}
Case
No. 10595

APPELLANT'S BRIEF

NATURE OF CASE

This is an action for annulment and distribution of property acquired during period of cohabitation.

DISPOSITION IN LOWER COURT

This case was tried without a jury before Judge Merrill C. Faux. Judgment was rendered allocating the assets \$31,957.43 less payments of \$6,909.70, or a total of \$25,047.73 to plaintiff and \$92,343.45 plus all other assets to the defendant, plaintiff appeals.

RELIEF SOUGHT ON APPEAL

Plaintiff seeks distribution of half the property acquired during the period of cohabitation of the parties and since the separation.

STATEMENT OF FACTS

This case was originally filed as a divorce action. Defendant answered claiming that the marriage was not valid in that the defendant's divorce was not final when the parties were married. The Trial Court held that the marriage was invalid for the reason that it was entered into prior to the time that the divorce of Mr. Buck was final. The Trial Court gave leave to amend the complaint and plaintiff amended her complaint to ask for an annulment of the purported marriage and for an equitable distribution of the property acquired during the purported marriage.

That plaintiff and defendant were married in Mexico on the 17th day of March, 1945. They lived together as husband and wife for 19 years. For the first year of their marriage, they lived in California where the defendant was employed at the Ship Yards at \$1.10 per hour with overtime at \$1.25 per hour, and the plaintiff was employed in a drug store.

At the time they were married, the defendant had, according to defendant's testimony, and also his answers to interrogatories, \$15,000.00 maturity value in government bonds; \$4,000.00 in a bank account, \$400.00 automobile and a water bond of \$1,000.00. In addition to this, the defendant had some real property in Long Beach, California, which real property he still owns in his own name (T. 203. T. 292 shows smaller amount).

On January 22, 1946, the parties moved to Salt Lake City, Utah, where they purchased a tavern and eating place known as the Buckeroo. (T. 7). This business was purchased for \$6,000.00. (T. 302 and 303).

\$4,000.00 worth of bonds, plus a \$1,000.00 lot they

had purchased in Salt Lake City, was used to make the down payment on the home at 2671 Welington. (T. 301).

The stocks were first bought in 1954, 9 years after the marriage. (T. 205).

Part of the first small amounts of stock purchased were purchased with some assets the defendant had at the time he came into the marriage and also money they earned out of the Buckeroo. (T. 209). Thereafter, the purchase of stocks came from the money they were earning together.

During the years of the marriage there was some small income received from the California property (See defendant's Exhibit 15D, also see all Income Tax Returns plaintiff's Exhibits 9P, 10P and 12P which show lesser amounts than defendant's Exhibit 15D). At the same time, however, the defendant was paying out \$600.00 per year for the support of his minor child by a previous marriage. Defendant testified this was for a period of 14 years at the time of the trial. (T. 217). In defendant's deposition, defendant said it was for 17 years (Defendant's deposition, page 6).

At the time the Buckeroo was first purchased, it was not known whether the business would work out or not. The business started out slow, but with both working, built into a very lucrative, high net, income business as the years went by. The defendant failed to produce the Income Tax Returns prior to 1951 and also failed to produce the 1955 tax return, but the other Income Tax Returns filed as Exhibits show they *netted* the amounts as follows:

1951	.....	\$ 8,226.30
1952	.....	8,644.63
1953	.....	14,789.74
1954	.....	20,858.70
1955	.....	No Income Tax Return
1956	.....	20,047.29
1957	.....	21,510.91
1958	.....	33,733.47
1959	.....	29,345.25
1960	.....	23,561.37
1961	.....	27,845.00
1962	.....	26,675.00
1963	.....	24,699.56
1964	.....	14,145.81

The business netted over \$20,000.00 per year from 1954 on until plaintiff separated from defendant in 1964. Since the defendant has run the business without any help from the plaintiff it is netting at least \$10,000.00 less per year than it did during any of the previous six years when they worked together as shown by the Income Tax Exhibits.

Both plaintiff and defendant worked in the business. The plaintiff worked more during the years the business was being built up and less during later years. The defendant also worked less in later years. (T. 271, 272, 273, and 274). During the entire 19 years which the plaintiff and defendant lived together as husband and wife, the wife carried out all of the full responsibilities of running the home and household responsibilities and in a very fine and efficient manner, in addition to the work she did at the Buckeroo (See Court's Findings of Fact, paragraph VI, which the Court specifically inserted). Plaintiff took care of defendant during his drunken binges

and took over entirely on the business when he was incapacitated. (T. 14 and 15). There were also additional sums expended for medical bills for defendant's son. (T. 75). During the marriage the defendant has gambled very heavily and lost large sums of money. Plaintiff gambled very little. Parties both had many trips during the time of the marriage and also during the marriage the defendant smashed up a new Cadillac automobile and defendant did not carry any insurance on it. It was a total wreck. The defendant immediately purchased another new Cadillac for himself. Both of them have drunk intoxicants during the marriage and both of them have had some hospitalization and operations during the marriage. At the time of the separation in 1964, the defendant still had his property in California, which property is now vacant property. In addition to the California property which the defendant still held in his own name, at the time of the trial, there were the following assets: Stocks were mostly in joint tenancy.

1322 shares	Greyhound	\$30,406.00
1200 shares	Standard Oil Ind.	57,600.00
23 shares	Standard Oil Calif.	1,048.00
35 shares	Standard Oil N. Y.	2,765.00
330 shares	Mountain Fuel	12,705.00
100 shares	El Paso Nat. Gas	2,100.00
3 shares	Ranier	111.00
		<hr/>
	Total Stock	\$107,435.00
Cost of Realty at Buckeroo		\$34,500.00
Addition to Buckeroo		5,600.00
Cost of Buckeroo Business		6,000.00
Tavern Business Increase of Value		
Residence		15,000.00
Duplex		5,500.00

Money in Bank	9,018.00
Cadillac Automobile	7,800.00
Accumulated Stock Dividends	
Earnings of Business since separation	

At the time of the trial, the value of the property owned by the parties was as shown above. In addition thereto, as shown above, there is the value of the Tavern Business which at present time is earning over \$1,000.00 per month. (T. 250). The great value of the business property is to the defendant because defendant put the beer license only in his name and said license cannot be transferred to anyone else or the license would be lost. (T. 250 and 251).

In addition to the assets listed above, there would be the accumulated dividends from the stock to date and the accumulated earnings of the business to date. The defendant is now running the tavern business and now taking all of the earnings therefrom for himself and is taking the stock dividends which are almost entirely in joint tenancy, forging the plaintiff's name and putting them in his own personal bank account. Since the parties separated the plaintiff has been paid the sum of \$6,909.70, which is partly from stock dividends. The plaintiff is now 60 years old and has no other income. All of the assets acquired by the parties with the exception of the amount mentioned in the next preceding sentence, is in the exclusive possession of the defendant.

In the accounting by the Court, the Court gave all of the increase of value of all stocks from the date of purchase of each stock to the defendant (See Court Memorandum Decision in setting out the Court's Accounting and also the reasoning of the court in the Amendment to the Memorandum Decision entered by the Court).

The stocks originally cost \$49,700.84 and at the time of the trial were worth \$107,435.00. (T. 215, Exhibits 6P and 7P).

The Trial Court also gave all of the bank interest and all of the stock dividends earned from all assets during the entire marriage to the defendant as part of his contribution. (See Exhibit 16D and Memorandum Decision showing Court's Accounting, and T. page 296).

At one time during the gambling trips of the defendant, defendant admitted spending \$1,700.00 on this trip alone. On another of the drinking trips of defendant, the defendant admitted waking up in Denver and not knowing how he got to Denver.

ARGUMENT

POINT 1. COURT ERRED IN FINDING THE DEFENDANT CONTRIBUTED \$70,386.02 CASH TOWARDS THE ACQUISITION OF THE PROPERTY.

In the Findings of Fact, Number 5, the Court found that the defendant contributed the sum of \$70,386.02 towards the acquisition of the property. This is not a true statement of the facts as presented by the evidence.

The defendant stated that he had received the sum of \$12,000.00 from his mother's estate (T. 203), along with a \$1,000.00 water bond, together with certain real property located in Long Beach, California. The defendant further testified that he invested some of the money from his mother's estate, out of the bank account in Long Beach, for an automobile. (T. 283, exhibit 11P). He also testified that he invested some of these funds in the purchase of savings bonds. (T. 203). The Court has ruled that the \$12,000.00 was all invested in savings bonds having a total cash value of \$15,000.00. This is

error in that the defendant cashed many of these bonds for his own purposes prior to their maturity date, to-wit: for the automobile (T. 37); on a trip to Las Vegas in 1947 (T. 158); to get the tavern business started in 1946 (T. 206), which money he repaid himself out of the profits from the business (T. 206); and to make a down payment on the home located on Wellington Avenue. (T. 206).

The Court further found that the defendant was entitled to the sum of \$23,014.76 bank interest and dividends (Court's Memorandum Decision). The defendant's testimony with respect to these amounts was to the effect that this money was acquired as a result of interest on his bank account which he had at the time of the marriage, the interest from moneys realized in the tavern business, and the dividends from the stocks which were jointly acquired. This \$23,014.76 represents all bank interest and all dividends received from all sources both parties earned from 1950 to 1964. (T. 296 and 298). In effect, the Court gave the defendant the dividends and interest on everything they both acquired during the marriage. Plaintiff is not given anything, anywhere, not one penny of interest or dividends on any property acquired during the marriage, except on the payment on the Order to Show Cause. The Court further erred in granting to defendant the full amount of the reality income on the Long Beach property of \$27,371.26 in that the defendant testified that he had spent much for renovation of the property, taxes, and other expenses with respect to the receiving of such income. A careful analysis of the income tax figures will show the net was less.

POINT II. THE COURT ERRED IN NOT CHARGING THE DEFENDANT'S SHARE WITH

SOME OF THE GAMBLING LOSSES ABOUT WHICH HE TESTIFIED.

The defendant testified that on one occasion he went to Las Vegas and lost a total amount of \$1,700.00 (T. 354, 221, 222, and 223), and that on other occasions he lost in excess of \$500.00. There was evidence that he cashed many bonds in Las Vegas in 1947 for the purpose of gambling. (T. 357). The Court ruled that the gambling losses and travel expenses offset each other. In reality, the gambling losses were the losses of the *defendant*, whereas the traveling expenses were incurred by *both* parties and the defendant and the plaintiff both received the benefit of the expense of traveling in which the parties engaged. The Court should have required the defendant to stand his own gambling losses and should have rightfully offset the personal expenses and travel expenses each of the other.

POINT III. THE COURT ERRED IN NOT CHARGING THE DEFENDANT'S SHARE WITH THE UNINSURED LOSS OF THE 1959 CADILLAC.

The defendant testified that he bought himself a new Cadillac in 1959. Shortly after acquiring the automobile, he was involved in an accident which totally demolished the automobile. He immediately purchased a new automobile. There was testimony that the defendant did not carry insurance to cover said loss because he felt that such insurance expense was a waste of money. (T. 120). He should be charged with this loss of \$7,800.00 less salvage of \$1,700.00. The Court should also charge him with the 1964 Cadillac which is in his name only, and which he claims is his own. (T. 282).

POINT IV. THE COURT ERRED IN FINDING THAT THE ACQUISITION OF THE PROPERTY IS ALMOST ENTIRELY BECAUSE OF THE EFFORTS AND CONTRIBUTIONS OF THE DEFENDANT.

In reality, the plaintiff contributed in the early years, according to the evidence, only a little less than the defendant in point of time and effort to the building of the business. This was in addition to running the home and doing well all of the duties of a housewife. (T. 10, 11, 12, 13, 105, 114, 115, 129, 136, 137, 138, 271, 273, 222, and 270). The Court in its Memorandum Decision of November 29, 1965, found that the parties should divide the property jointly acquired by them and ruled that the stocks, the tavern business, the residence, the duplex, the reality of the Buckeroo, and the additions to the Buckeroo were jointly acquired by the efforts of the parties. The Court cannot, on the one hand, say that these assets were jointly acquired by the parties and then on the other hand, say that the plaintiff did not contribute to the acquisition of the increase in value of said property. The Court ruled that the increment in value of the jointly acquired stocks would inure solely to the benefit of the defendant since the plaintiff did nothing to enhance the value of the stocks. This is error because the defendant did nothing to enhance the value of the stocks either. The evidence clearly showed that the stock market has increased nearly double since the acquisition of the stock, and that therefore, the increment should be to the benefit of both parties. (T. 440). Nearly all of the stocks were purchased by moneys taken from the net profits of the Buckeroo business which in the last ten year period alone, amounted to over \$200,000.00. (T. 218 and Income Tax Exhibits).

POINT V. THE COURT ERRED IN NOT FINDING THE DEFENDANT VOLUNTARILY PLACED STOCKS IN JOINT TENANCY, AFTER HAVING BEEN ADVISED THAT THE MARRIAGE WAS NOT VALID.

The defendant and Mr. Bishop testified that in 1959, the defendant had a conversation with Attorney Bishop to the extent that the marriage was probably not valid and defendant should make efforts to validate the marriage. (T. 123). The defendant further testified that he continued to place the property in joint tenancy even after having been advised that the marriage was not valid. Even after this conversation, stocks which had been previously acquired, were liquidated and reinvested and were placed in joint tenancy with the plaintiff and the defendant. Also, new stocks went into joint tenancy.

POINT VI. THE COURT ERRED IN NOT ACCOUNTING OR INCLUDING IN THE PRESENT HOLDINGS, THE BANK ACCOUNT AT THE TIME OF SEPARATION, OR THE DIVIDENDS OR THE INTEREST, OR THE PROFITS FROM THE BUSINESS SINCE OCTOBER, 1964.

The defendant testified that at the time of trial, he presently had on deposit the sum of \$9,018.98. (T. 261). In addition to this, he has also testified that he has received some \$1,000.00 or more per month profit on the business during that period of time for a total of some \$12,000.00 (T. 250). That in addition to this, he has acquired interest on the moneys which he had in the bank account which he should be required to account for (T. 218 and 271). Defendant also holds (T. 258), or has forged plaintiff's name, to the stock dividend checks received since the time of the separation. Defend-

ant testified he has forged plaintiff's name to the checks and has deposited them in an account in his own name (T. 268 and 269).

POINT VII. THE COURT ERRED IN VALUING THE TAVERN BUSINESS AT ONLY \$6,000.00.

This was the acquisition value of the property in 1946. The income has increased greatly, and no Court could find that property with an income of \$1,000.00 per month or more could only have a value of \$6,000.00 (T. 250). The Court had the responsibility of finding a reasonable value for the tavern business and placing the said value on the business. Plaintiff testified defendant was offered \$50,000.00 for the business in 1962 (T. 31). The business was valuable only to the defendant since he has the sole and exclusive right to the beer license and he testified it could not be sold (T. 251). Defendant was careful to see that the license was in his name only; therefore, the Court should award him the business at a realistic value and award the plaintiff other assets of like value.

POINT VIII. THE COURT ERRED IN FINDING PLAINTIFF HAD NOTHING TO DO WITH THE ACQUISITION OR REINVESTMENT OF THE STOCKS AND AWARDING THE TOTAL INCREASE IN VALUE OF ALL STOCKS TO THE DEFENDANT.

(Refer to Findings of Fact, paragraph VI.)

According to defendant, the total property the defendant brought into the marriage was as follows:

Government Bonds	\$15,000.00
Bank Account	4,000.00
Water Bond	1,000.00
Automobile	400.00

(See plaintiff's interrogatory No. 1 and defendant's answer No. 1. Also T. 203.) Defendant also had a little real property in Long Beach, California which real property in California produced some income during the term of the marriage. (See income tax exhibits 9P, 10P, and 12P, which show less than defendant's exhibit 15D.)

From the assets the defendant brought into the marriage, the defendant paid out over \$10,200.00 for the support of a son by a previous marriage (T. 283, 217, 218, 219, and Court's Memorandum Decision). Also, defendant paid \$1,874.69 for an automobile purchased soon after the marriage to plaintiff (Exhibit 11P and T. 249). The trial Judge also charged defendant with \$7,800.00 for a 1964 Cadillac which defendant purchased for himself (T. 282. See accounting in Court's Memorandum Decision).

The defendant gambled a great deal (T. 85, 93, 264, 357, 354, 353, 224, 223, 140, and 161). Defendant admitted that in one gambling trip he lost \$1,700.00 (T. 221).

Whatever money defendant retained from assets he had when he came into the marriage, went into the same bank accounts that the earnings after the marriage went into (T. 218).

The Buckeroo business was purchased after the marriage to plaintiff (T. 236).

The moneys realized from the operation of the Buckeroo business were put into common bank accounts and the business was regarded as *their* business and the earnings as *their money* (T. 238, 218, and 123). Both of them worked in the business (T. 10, 11, 12, 13, 114,

115, 129, 105, 136, 137, 138, 271, and 273). Stocks were purchased with this money out of the common bank account and the great amount of this money was from the earnings of the parties in the Buckeroo business (See Income Tax Exhibits).

The money realized from the operation of the Buckeroo business was very great (See all Income Tax Returns which were filed as exhibits).

These tax returns show that from 1951 to 1964 the net income reported to the Internal Revenue Service was as follows:

1964	.....	\$14,145.81
1963	.....	24,699.56
1962	.....	26,675.93
1961	.....	27,845.00
1960	.....	23,561.37
1959	.....	29,345.25
1958	.....	33,733.47
1957	.....	21,510.91
1956	.....	20,047.29
1955	.....	Not produced by Mr. Buck
1954	.....	20,858.70
1953	.....	14,789.74
1952	.....	8,644.63
1951	.....	8,226.30

The great majority of the money which purchased the stocks was from the money that was earned in the business in which both parties worked.

Plaintiff does not deny that defendant was the one who went to the stock broker's office to get help to pick out stocks, or that defendant bought the stocks, but the

stocks were purchased nearly entirely from the large amounts of money which the two acquired during the period of their cohabitation. They did not both do the same things. Mrs. Buck had the home and household duties to do in addition to the help in the business. Part of Mr. Buck's responsibility was the investment of their money.

The original cost of the stocks which are now being held by the defendant was \$49,700.88 (T. 27, 28, and 307, Exhibit 6P).

These stocks have increased in value as of October 5, 1965, the time of the trial, to \$107,435.00 (T. 30 and 215, Exhibit 7P), or a total increase of value of \$57,734.12, which entire increase in value the Court has given to the defendant (See Trial Court's Memorandum Decision and Court's reasoning in the Amendment to Memorandum Decision).

POINT IX. THE COURT ERRED IN FINDING THAT \$31,957.43 REPRESENTS ONE-HALF OF THE JOINTLY ACQUIRED PROPERTY ACQUIRED DURING THE PERIOD OF COHABITATION (Findings of Fact No. VIII).

In considering all of the elements of this case, we find that the records show the plaintiff and defendant were married when the defendant's divorce was not final. The parties had gone to Mexico thinking that a divorce and marriage in Mexico would be good. The only evidence, that prior to the time the divorce action was started, either of the parties knew the marriage was not good was indicated in the testimony of the neighbor next door, Mr. Bishop (who is an attorney, and whom plaintiff had to subpoena) notified Mr. Buck he felt they

should be remarried and that their marriage was probably not good. Mr. Buck, interestingly enough, replied to this that it did not matter because the property had been fixed up to take care of her anyway (T. 123 and 124). In fact, Mr. Buck continued to refer to the property being acquired as "our" property (T. 223, 218 and 123), and admitted the money made was "their" money (T. 218), and most of the stocks were put into joint tenancy after Mr. Bishop, the attorney, had notified Mr. Buck that they should be remarried.

There is no question that defendant had some assets when they entered into the marriage. Taking the testimony most favorable to Mr. Buck, he only had \$15,000.00 maturity value in bonds, plus \$4,000.00 in the bank, plus \$400.00 automobile and \$1,000.00 water bond (T. 203). He also had some property in California with some old houses on it, which old houses have been condemned and torn down. Defendant still has his California real property without the houses on it. This property is exclusively in defendant's name. This property in California did bring some income but the income tax returns show less of an income than defendant's exhibit 15D.

From Mr. Buck's assets brought into the marriage, he bought a Nash automobile (T. 17, lines 16 to 18, and exhibit 11P). Mr. Buck totally demolished a new Cadillac and failed to have any insurance on it. He immediately replaced it with a new one (T. 120).

Mr. Buck gambled heavily. He even admitted on one trip to Las Vegas he lost \$1,700.00 (T. 221 and 223). This money Mr. Buck lost was both of their money (T. 223). Mr. Buck admitted the tavern business was both of their business (T. 123, 218 and 238).

Defendant drank heavily (T 13, 185, 186 and 187). On one occasion he even admitted ending up in Denver and not knowing how he got there (T. 373, 219, 146 and 152). Mr. Buck paid out \$600.00 per year for a son of a previous marriage for 14 to 17 years (T. 217, 283 and 351). Mr. Buck presently has a new Cadillac automobile in his name only (T. 282).

The Income Tax returns also show that during the last ten years of the marriage alone, the net earnings as shown by the Income Tax Returns from the business was over \$200,000.00. The Income Tax Returns also show that large amounts were made prior to that time and during the marriage of the parties.

Aside from the defendant's Cadillac automobiles, money for defendant's son, defendant's gambling, and the trips taken by both parties, plus some additional gambling trips by the defendant and local gambling, from which the defendant hid behind the Fifth Amendment so he would not have to testify (T. 223 and 224), the parties lived fairly frugally. The defendant only gave the plaintiff \$35.00 per week during early years of the marriage and later \$50.00 per week for food and household expenses (T. 80). It is therefore obvious that the stocks and other assets were acquired by the large amounts of net yearly income the parties were making out of the tavern business. Otherwise, they would now have a large amount of cash in their assets and all there is in cash is \$9,018.98, after earnings of hundreds of thousands of dollars (T. 261). The stocks, therefore, had to come from the earnings of their business. Both parties worked in this business. Probably the defendant did somewhat more than the plaintiff in the business, however, the plaintiff, in addition to helping in the business,

very well carried out and executed all of the duties usually discharged by a wife. All of the witnesses, including the defendant himself, said she was a fine housekeeper, cook, hostess, etc. Although the testimony of the plaintiff and the neighbors was to the effect that plaintiff was putting in a great deal of time in the business, defendant himself testified that she, in addition to caring very well for the home and preparing the meals, etc. (T. 122), worked at the Buckeroo for substantial periods of time (T. 271). The evidence shows that plaintiff worked at home and in the business and the defendant worked in the business and that by their mutual efforts, they accumulated the property together. They were working together as a team. Actually, the increase in the stock was merely the stock going up with the upward trend in the stock market in the past ten or twelve years. As their stock broker testified, the stock market average has about doubled in this same period of time and in checking the increase of the stock purchased it has about doubled (T. 440). So, there was not any unusual ability connected with the rise in stock, which stock came from the great amount they were earning in their business. Actually, this purchasing of the stock was part of the defendant's responsibility in the association and during this time the plaintiff had other responsibilities she took care of which the defendant did not.

They worked as a team and built up the large estate together. As the Trial Court said, all we have is the problem of determining how much property there is in this community enterprise and what share does each of these associated to the community enterprise property claim (T. 4).

The plaintiff built with the defendant nearly all of the assets. These assets amount to \$195,353.00, plus the value of the business itself, which the Court did not set, plus the dividends to date from the stock, plus the earnings of their business since October, 1964 to the present time which have amounted to over \$1,000.00 per month (T. 250).

The value of the business should be at least \$25,000.00 (T. 31 and 351). The net income of the business should be established since October, 1964, at \$1,000.00 per month or a total of \$19,000.00. The worth of the dividends is \$6,000.00 at \$1,000.00 per quarter since October, 1964.

In addition to this, the Court placed too low a value on the duplex. This figure should be \$7,000.00 (T. 30, 237 and 350) instead of \$5,000.00 as the Court set.

There should be deducted a minimum of \$3,000.00 from defendant's share for gambling losses (T. 357). The Court ruled that this loss was offset by the travel the plaintiff and defendant did together. Since only defendant gambled, aside from \$2.00 bets to which plaintiff testified (T. 94 and 95) and both parties traveled, the offset should not have been allowed and the defendant should be charged with the \$3,000.00 losses about which he testified.

The appellant therefore proposes the following accounting in contrast with the accounting of the Court below:

COURT'S ACCOUNTING

Stocks	\$ 49,700.88		<i>His Contribution</i>
Tavern business	6,000.00	Bonds	\$ 15,000.00
Residence	15,000.00	Realty Income..	27,371.26
Duplex	5,500.00	Bank. Int. &	
Realty Buckeroo	34,500.00	Div.	23,014.76
Additions to		Water Bond	1,000.00
Buckeroo	5,600.00	Bank Account..	4,000.00
	<hr/>		<hr/>
Present			\$70,386.02
Holdings	\$116,300.		
Removed from			
earnings for			
his own			
benefit	7,800.00	1964 Cadillac	
	10,200.00	for support of son	
	<hr/>		
Total worth	134,300.88		
His contribu-			
tion	70,386.02		
	<hr/>		
Net Worth	63,914.86		
One-half net			
worth	31,957.43		
Interim payments			
to plaintiff ..	2,909.70		
	<hr/>		
		\$ 29,047.74	plus interest at 6%

APPELLANT'S PROPOSED ACCOUNTING

His Contribution

Bonds	\$15,000.00
Realty Income	20,000.00
Water Bond	1,000.00
Bank Account	4,000.00
	<hr/>
	40,000.00
Less child support	10,200.00
	<hr/>
	29,800.00
Less auto he now has	7,800.00
	<hr/>
	22,000.00
Less accident 1959	
6,000 less 1,700 salvage..	4,300.00
	<hr/>
	17,700.00
Less gambling loss	3,000.00
	<hr/>
	\$14,700.00

Present Worth of Assets

Stocks	\$107,435.00	T. 30 and 215, Exhibit 7P
Tavern Business	25,000.00	
Home	15,000.00	T. 348 and 349
Duplex	7,000.00	T. 30, 237 & 350
Buckeroo Realty	34,500.00	Memorandum Decision and T. 240 & 261
Additions to Buckeroo.....	5,600.00	
Automobile	7,800.00	
Bank Account	9,018.00	T. 261
Undeposited Dividends	6,000.00	T. 236, 258, 259 & 268
Net income since Oct. 1964	19,000.00	T. 250 & 255
Present Holdings	236,353.00	
Total Worth	236,353.00	
Less His Contribution.....	14,700.00	
Net Worth	\$221,653.00	
One-half of Net Worth....	\$110,826.50	plus interest at 6%

CONCLUSION

The Utah law is well established on the distribution of the property acquired during the time the litigants were cohabiting as man and wife.

In the case *Jenkins vs. Jenkins* 153 P. 2d 262 the Court held as follows:

“Likewise the power of the Court to divide equally between the parties the property acquired by their

joint efforts while living together under a void marriage entered into in good faith is well established.”

The above Utah case is in conformity with the law of other states.

In the case *Schneider vs. Schneider* 191 P. 533 the Court said:

“In dividing gains of a married man and woman living together under a void marriage, innocently entered into, Court applied by analogy the rule which will obtain when a valid marriage is dissolved.”

Also see *Figoni vs. Figoni* 295 P. 339

Werner vs. Werner 53 P. 127

Krauter vs. Krauter 190 P. 1089

Powers vs. Powers 200 P. 1080

The great difference in this case between the amount awarded by the Court and the amount which appellant claims should have been awarded, lies in two large items.

- A. In the increase in value of the property acquired during the period of cohabitation.
- B. The failure of the Court to account and distribute a number of assets acquired by the parties during their 19 years of cohabitation.

The lower Court came to the conclusion in its Memorandum Decision, rightfully, that the plaintiff should share in one-half of the property acquired by the parties less the amount brought into the marriage by the defendant. The lower Court erred in failing to account for many assets and also in failing to award the increase in value, brought about not only by the joint

efforts of the parties, but also by a general rise in prosperity in the entire economy and the resulting increase in value of the assets. Appellant contends that if she is entitled to one-half of the jointly acquired property, she should share its value as of the time of trial and not as of its acquisition. Appellant further contends there are other accounting errors in the lower Court's Memorandum Decision on which the Findings of Fact and Conclusions of Law are based in that the Court awarded defendant all realty income, bank interest and dividends, and bank accounts, which defendant should not have received. The lower Court also failed to account for the stock dividends and proceeds from the business from October, 1964 to the time of trial. If the plaintiff had any interest in the business or any ownership in the stock, she was entitled to an accounting of said dividends, proceeds and assets. Appellant proposes the accounting as set forth in Point No. IX as being proper.

The result of the trial Court's Decree is to leave the plaintiff \$25,047.74 while the defendant has assets of \$211,306.00 after paying the \$25,047.74. This despite the fact that defendant brought limited assets into the marriage, and despite the fact that during the period of cohabitation hundreds of thousands of dollars of assets were made by the parties and there is now a gross estate presently held by the parties of \$236,353.00.

Respectfully submitted,

DALE T. BROWNING
C. DEMONT JUDD, JR.
Attorneys for Plaintiff