

Legal Duty of Parent in USA to Pay for Child's College Education

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1. Introduction

In October 1992, I did legal research for a case in Pennsylvania involving the legal obligation of parents to pay for their child's graduate education (e.g., medical school, law school, etc.). In July 2003, I did some additional legal research and wrote this essay. My search in July 2003 was concentrated in the states of northeastern USA, particularly Pennsylvania, New York, New Jersey, and Massachusetts.

This topic of this essay is *not* what loving parents *should* do for their children. The topic is the circumstances under which courts will order a parent to pay for part of their child's post-secondary education (i.e., vocational training, undergraduate college, or even graduate school).

only divorced parents

When parents are married prior to the birth of their child, and those parents remain continuously married until after the child earns a bachelor's degree, then courts in the USA generally do *not* order the parent(s) to pay for part of their child's college education. Such a judicial inquiry would inappropriately intrude in the family relationship.

However, following divorce, courts in the USA sometimes do order a parent to pay at least part of their child's educational expenses: tuition, fees, room and board in an on-campus dormitory, books, etc. This essay mentions the conditions that courts have used to decide whether a divorced parent should pay for the child's educational expenses.

In a typical case, a divorced mother, son, or daughter sues the father (the noncustodial parent) for either reimbursement of educational expenses, modification of a child support order, or enforcement of a written divorce separation agreement. Enforcement of a written divorce separation agreement is usually straightforward contract law, but the other types of litigation are complicated, and involve both statutes, common law, and equitable principles, as explained in this essay.

Family law (e.g., the obligation of the parents to support their children, divorce law, etc.) is exclusively state law and the law varies significantly amongst states. Therefore clearly expressed law in one state may be not only *incorrect* law for another state, but also is probably *irrelevant* in another state. As explained below, the law is evolving, so a correct explanation of the past law in your state may not be valid now, and may not be valid in the future.

There are technical legal issues about which court has jurisdiction to hear the case. If the noncustodial parent is living in the state where the divorce was granted, then the jurisdiction is simple: a court in that state will hear the case. However, if the noncustodial parent is living in a different state from where the divorce was granted, then there are two possibilities:

1. If a court imposed a child support order, then the court in the state where the divorce was granted *may* have continuing jurisdiction in the case. The litigation would then continue in that divorce court, which would issue a judgment. The winning plaintiff would then take that judgment to a court in the state where the defendant is living, and that second court would enforce the judgment under the “full faith and credit” clause of the U.S. Constitution.
2. If there is a written contract that obligates the defendant to pay educational expenses, the plaintiff can file litigation in the state where the defendant is currently living (in order to get personal jurisdiction on the defendant), and the entire case proceeds in that one court. That court might apply local law to the case, or might apply the law of the state where the divorce was granted (particularly if there is a choice of law provision in the written agreement).

disclaimers

Because of the variation of law amongst the different states and because the law in each state changes with time, to understand your current legal rights, you need to hire an attorney who is knowledgeable about family law.

This essay is intended only to present general information about an interesting topic in law and is *not* legal advice for your specific, personal problem. See my disclaimer at <http://www.rbs2.com/disclaim.htm> .

I list the cases in chronological order in this essay, so the reader can easily follow the historical evolution of law. If I were writing a legal brief, then I would use the conventional citation order given in the *Bluebook* and focus on cases in one state. Further, I did a cut-and-paste of some citations from Westlaw into this essay, and Westlaw does not follow the *Bluebook* citation format. Frankly, I am more concerned about having accurate citations than following petty rules, or having a consistent citation format — it is the content (i.e., information) that is important, *not* the citation format.

2. Traditional Law in the USA

The law in the USA prior to the year 1965 was that children became adults at age 21 years. Parents no longer had a legal obligation to financially support their children, after their children became adults.

In the pre-1950 America, graduating from college was neither ordinary nor routine. While people in the learned professions (e.g., attorneys, physicians, scientists, engineers, professors, pharmacists, school teachers, etc.) were all college graduates, *most* adults in the USA never attended college.

During the 1970s, there were two major changes that are relevant to the topic of this essay:

1. the age at which children became an adult was lowered to 18 years.¹
2. it became common for people to attend college.

These two changes operate in different directions. The first change means that most students in undergraduate college are legally adults, for whom their parents *may* have no legal duty to support. But the second change means that college is no longer reserved for the few intellectual elite: now *most* people of above-average intelligence commonly attend college and it is commonly believed by many people that a bachelor's degree is required for success. The second change made it easier for judges to order parents to pay for their child's undergraduate college education.

The decrease in the age of majority occurred in the year 1973 in Massachusetts.²

Is a college education a necessity?

A number of courts in the USA have declared an undergraduate college education to be a necessity of life, for example:

- *Rhoderick v. Rhoderick*, 263 A.2d 512, 519 (Md. 1970) (“The modern trend of the appellate decisions in the United States generally is to find that a college education is a necessity if the station in life of the infant justifies a college education and the father is financially able to pay or contribute to the payment for such education.”);
- *French v. French*, 378 A.2d 1127, 1129 (N.H. 1977) (“We believe we need not labor the point that today, with rare exceptions, a college education is indispensable for success in obtaining and holding a reasonably well-paid and secure position. Another result of present conditions is that, again with rare exceptions, no one's education is completed at age eighteen, nor in practically all professions, until well after twenty-one. In the case before us, the children's welfare and the likelihood that they will soon have to assist in supporting their ailing mother demand that they be afforded what was once a luxury but has now become a necessity.”);
- *Commonwealth ex rel. Stump v. Church*, 481 A.2d 1358, 1361 (Pa.Super. 1984) (“Among the ‘necessities’ for which a child is entitled to support is a proper education.”). Although his son had already graduated from a private high school in Connecticut, the appellate court ordered the father to pay for his son's attending an additional year of private high school in Maine, to better prepare the son for attending college.

¹ This age is called the “age of emancipation” when referring to the parent's lack of legal obligation to financially support their child, and called the “age of majority” when referring to the child's legal rights. The two “ages” are normally identical, but emancipation can be earlier than majority (e.g., in the case of marriage of a daughter) or later than majority (e.g., in the case of a child in undergraduate college).

² Massachusetts Statutes, Chapter 4, § 7, clause 51 (1973).

- *Milne v. Milne*, 556 A.2d 854, 858 (Pa.Super. 1989) (“Increasingly, a college education is being viewed as a necessity.”). Quoted with approval in: *Pharoah v. Lapes*, 571 A.2d 1070, 1076 (Pa.Super. 1990); *Spitzer v. Tucker*, 591 A.2d 723, 726 (Pa.Super. 1991).

In my opinion, it is an exaggeration to call a college undergraduate education a “necessity”, except for people who aspire to a career in one of the learned professions³ and who also have both the academic ability to reach that goal (i.e., scores in the top 5% or top 10% of pupils taking nationwide standardized academic examinations) and the diligence and personal commitment to reach that goal.

As a professor of electrical engineering in the USA during most of the 1980s, I observed that many students did *not* belong in college. Many of these students had reading and mathematical skills that were too weak to enable them to read and understand college-level textbooks in physics and engineering. Some students were more interested in recreational activities and social life than in studying and learning. Because it is not politically acceptable for a professor to fail more than about 10% of students in an introductory level class, there is no doubt that the egalitarianism and entitlements of the 1980s and 1990s eroded the quality of graduates of most universities in the USA. Elsewhere I have remarked that Americans attend college for the wrong reasons.⁴ My experience as a professor suggests that, before courts order a parent to pay at least tens of thousands of dollars for a child’s college tuition, the court should be certain that the child has the aptitude and diligence to earn a bachelor’s degree.

Instead of declaring a college education to be a “necessity”, a more precise statement of the modern law is that a college education is desirable for a child with academic aptitude and diligence, and a divorced parent who can afford to pay for at least part of the costs of his/her child’s college education can be ordered to pay. But an undergraduate education is *not* nearly as necessary as food, shelter, and medical care.

³ For example, a physician, attorney, scientist, engineer, college professor, pharmacist, etc.

⁴ Ronald B. Standler, *Why Attend College?* <http://www.rbs0.com/edu.htm> (2001).

3. Support of Undergraduate Education

A landmark decision by an appellate court in New Jersey in May 1953 held that a divorced parent could be required to pay for at least part of his adult child's college education: a child after reaching the age of majority was *not necessarily* emancipated from his/her parents.

Jonitz v. Jonitz, 96 A.2d 782 (N.J.Super.A.D. 1953).

In a February 1982 case, the New Jersey Supreme Court explained emancipation:

In general, emancipation is the act by which a parent relinquishes the right to custody and is relieved of the duty to support a child. Emancipation can occur upon the child's marriage, induction into military service, by court order based on the child's best interests, or by attainment of an appropriate age. Although emancipation need not occur at any particular age, a rebuttable presumption against emancipation exists prior to attaining the age of majority, now 18. [citations omitted]

Newburgh v. Arrigo, 443 A.2d 1031, 1037-38 (N.J. 1982).

New York State has similar law:

Despite the fact that parents have a continuing obligation to support their children until they reach the age of 21 years, it is beyond cavil that emancipation of the child suspends the parent's support obligation. Children are emancipated if they become economically independent of their parents through employment, entry into military service, or marriage, and may also be deemed constructively emancipated if, without cause, they withdraw from parental control and supervision. [citations omitted]

Alice C. v. Bernard G.C., 602 N.Y.S.2d 623, 628 (N.Y.A.D. 1993).

Courts in some states (e.g., New Jersey, Pennsylvania, New York) developed common law that full-time college students who were younger than approximately 23 years of age were possibly *not* emancipated. That holding allowed courts to consider ordering divorced parents to continue supporting their adult child. Courts in these states considered the facts of each case, particularly a list of factors discussed below in this essay, and decided whether to order divorced parents to pay for their child's college education. In New York, divorced parents were ordered to pay for their adult child's college education only after the judge found that "special circumstances" existed. Pennsylvania and New Jersey followed similar law to New York State, but without the explicit label of "special circumstances". With or without the label of "special circumstances", it was still the general rule that an adult child is emancipated.

Because the law on this topic varies amongst the states, I have organized the discussion of common law and statutes by state.

Pennsylvania law 1963 to 1992

These old cases in Pennsylvania are no longer valid law in Pennsylvania; see the discussion in this essay, below, beginning at page 9. I discuss this old law in Pennsylvania, because, in my opinion, this law was both simple and an adequately complete policy. *If* a state legislature or judiciary wants to order parents to pay for at least part of their child's post-secondary education,

I believe that they should consider copying the five factors that were valid common law in Pennsylvania during 1963-92.

My reading of reported court cases in Pennsylvania suggest the following general rule: A divorced parent is legally obligated to pay for his/her child's education beyond high school, *if* all of the following five factors are true:

- a. such financial support is *not* financially burdensome to the parent (i.e., "no undue hardship").
- b. the child's age is less than 23 years, except for delay caused by either lack of parental support or illness of the child.
- c. the child wants to attend either an undergraduate school (i.e., earn a bachelor's degree) or a vocational school.
- d. the child has not repudiated the parent.
- e. the child has the aptitude to succeed in his/her educational program, so the educational program is neither futile nor wasteful.

The following paragraphs contain the citations to support each of these five factors for judges to consider.

The requirement for "no undue hardship" in (a) above is given in the following cases, among many other cases in Pennsylvania.

- *Emrick v. Emrick*, 284 A.2d 682 (Pa. 1971);
- *Sutliff v. Sutliff*, 528 A.2d 1318, 1325 (Pa. 1987);
- *Commonwealth ex rel. Ulmer v. Sommerville*, 190 A.2d 182, 184 (Pa.Super. 1963);
- *Commonwealth ex rel. Yannacone v. Yannacone*, 251 A.2d 694 (Pa.Super. 1969);
- *Brake v. Brake*, 413 A.2d 422, 423 (Pa.Super. 1979);
- *Lederer v. Lederer*, 435 A.2d 199, 201 (Pa.Super. 1981);
- *McGettigan v. McGettigan*, 639 A.2d 1231, 1232, n. 2 (Pa.Super. 1994).

The 23 y age limit in (b) above gives the child ample time to earn a bachelor's degree, because children typically graduate from high school at age 18 y, and it typically takes 4 y of full-time study in college to earn a bachelor's degree.

- *DeWalt*, 529 A.2d 508, 513-14 (Pa.Super. 1987);
- *Griffin*, 558 A.2d 75, 79-80 (Pa.Super. 1989), *appeal denied*, 571 A.2d 383 (Pa. 1989);
- *McCabe v. Krupinski*, 604 A.2d 732 (Pa.Super. 1992) (daughter with psychiatric problems took six years to earn her bachelor's degree, court ordered father to pay support until she was 24½ y of age.)

Several Pennsylvania cases refused to order a parent to pay for their child's education *after* a bachelor's degree:

- *Colantoni v. Colantoni*, 281 A.2d 662 (Pa.Super. 1971)(medical school).
- *Brown*, 474 A.2d 1168 (Pa.Super. 1984)(law school).
- *delCastillo*, 617 A.2d 26 (Pa.Super. 1992)(graduate school).

See the discussion below, beginning at page 21, on the general duty of a parent to pay for a graduate education.

There are numerous Pennsylvania cases discussing parental obligation to pay for undergraduate college education in (c) above. The following Pennsylvania cases discuss the parallel obligation of parents to pay for a child's education at a post-secondary vocational school:

- *Kopp v. Turley*, 46 Pa. D. & C.3d 52, 1986 WL 22221 (Pa.Com.Pl., Mar 07, 1986), *aff'd*, 518 A.2d 588 (Pa.Super., Dec 10, 1986)(commercial art school);
- *Wunder v. Fazio*, 552 A.2d 310 (Pa.Super., Jan 12, 1989)(Lansdale School of Business);
- *Maurer v. Maurer*, 555 A.2d 1294 (Pa.Super., Jan 30, 1989)(automobile repair school), *appeal denied*, 562 A.2d 320 (Pa. 1989).

The cases involving an adult child who repudiates his/her parent, which may release the parent from the legal duty of support, are discussed below, beginning at page 18, particularly the following Pennsylvania cases: *DeWalt v. DeWalt*, 529 A.2d 508, 512-13 (Pa.Super. 1987)(dicta); *Milne v. Milne*, 556 A.2d 854, (Pa.Super. 1989), *appeal denied*, 568 A.2d 1248 (Pa. 1989); *Powell v. Conway*, 562 A.2d 324 (Pa.Super. 1989).

The last factor, (e), is only casually discussed in Pennsylvania cases. I have not found any reported case in Pennsylvania that precisely specified what was meant by academic aptitude.

- *Commonwealth ex rel. Ulmer v. Sommerville*, 190 A.2d 182, 184 (Pa.Super. 1963)("the child should be able and willing to successfully pursue his course of studies.");
- *Commonwealth ex rel. Colligan v. Kass*, 303 A.2d 225 (Pa.Super. 1973);
- *Sutliff v. Sutliff*, 528 A.2d 1318, 1325 (Pa. 1987)("only if the child shows a willingness and aptitude to undertake the studies");
- *Marino*, 601 A.2d 1240, 1245-46 (Pa.Super. 1992)("abysmal academic record").

In one case in 1973, the Superior Court tossed any responsibility to determine the academic aptitude of a child onto the college or university that admitted the child, although the court was ordering a divorced parent to pay for his children's college education:

The fact that she did poorly in college in her first year is certainly not unusual nor does it indicate that she did not have the motivation or ability to pursue higher education. Many freshmen at college, for various reasons, do poorly, then 'shape up' after the first year, and become good students. The respective colleges of the girls, McGill University and Carlton University, are both outstanding institutions of learning and most certainly courts should not take over the responsibility of the college authorities and establish arbitrary standards of admission that have to be matched in order for the student to be found 'able and willing' to graduate from a course of study at an institution of higher learning.

The fact that both girls did enter school and the school accepted them as students is sufficient to establish that they are willing and able

Commonwealth ex rel. Colligan v. Kass, 303 A.2d 225, 227 (Pa.Super. 1973).

In one case in 1984, the Superior Court considered a case in which a son "was not ready academically to proceed to college immediately following his high school graduation", so the court ordered the father to pay for one year of education at a private high school in Maine, although the son had already graduated from a private high school in Connecticut. *Commonwealth ex rel. Stump v. Church*, 481 A.2d 1358 (Pa.Super. 1984).

Pennsylvania law after 1992

In Pennsylvania, the appellate courts and the legislature have done battle. The Pennsylvania Supreme Court held in 1992 that parental obligation of support for their child's educational expenses absolutely ended at the later of (a) child graduates from high school or (b) child is 18 y of age. *Blue v. Blue*, 616 A.2d 628 (Pa. 1992). The Pennsylvania state legislature enacted a statute in 1993, which restored the law prior to *Blue*:

(a) General rule.--Where applicable under this section, a court may order either or both parents who are separated, divorced, unmarried or otherwise subject to an existing support obligation to provide equitably for educational costs of their child whether an application for this support is made before or after the child has reached 18 years of age. The responsibility to provide for postsecondary educational expenses is a shared responsibility between both parents. The duty of a parent to provide a postsecondary education for a child is not as exacting a requirement as the duty to provide food, clothing and shelter for a child of tender years unable to support himself. This authority shall extend to postsecondary education, including periods of undergraduate or vocational education after the child graduates from high school. An award for postsecondary educational costs may be entered only after the child or student has made reasonable efforts to apply for scholarships, grants and work-study assistance.

....

(e) Other relevant factors.--After calculating educational costs and deducting grants and scholarships, the court may order either parent or both parents to pay all or part of the remaining educational costs of their child. The court shall consider all relevant factors which appear reasonable, equitable and necessary, including the following:

- (1) The financial resources of both parents.
- (2) The financial resources of the student.
- (3) The receipt of educational loans and other financial assistance by the student.
- (4) The ability, willingness and desire of the student to pursue and complete the course of study.
- (5) Any willful estrangement between parent and student caused by the student after attaining majority.
- (6) The ability of the student to contribute to the student's expenses through gainful employment. The student's history of employment is material under this paragraph.
- (7) Any other relevant factors.

(f) When liability may not be found.--A court shall not order support for educational costs if any of the following circumstances exist:

- (1) Undue financial hardship would result to the parent.
- (2) The educational costs would be a contribution for postcollege graduate educational costs.
- (3) The order would extend support for the student beyond the student's twenty-third birthday. If exceptional circumstances exist, the court may order educational support for the student beyond the student's twenty-third birthday.

23 Penn. Consolidated Statutes § 4327 (1993).

The Pennsylvania Supreme Court in October 1995 declared § 4327(a) *unconstitutional*, because the statute only applied to a separated, divorced, or unmarried parent, but not to married parents. *Curtis v. Kline*, 1994 WL 897173, 25 Pa. D. & C.4th 276 (Pa.Com.Pl. 1994),

aff'd, 666 A.2d 265 (Pa. 1995). While the legislature (as of July 2003) has neither repealed nor amended this statute, § 4327(a) is no longer valid law in Pennsylvania. It is an interesting question whether § 4327(e) and (f) are still valid law in Pennsylvania.⁵

New York law

An appellate case in New York State in the year 1930 denied a mother's motion to order the father to continue paying support to his two daughters, who had reached the age of majority and were students in undergraduate college.

The obligation resting upon the defendant to support these two children terminated upon their reaching their majority, in the absence of a showing of physical or mental disability, neither of which is involved in this case.

Unlike the furnishing of a common school education to an infant, the furnishing of a classical or professional education by a parent to a child is not a 'necessary,' within the meaning of that term in law. Especially is this so where the child has become of age. It may be that unusual circumstances might make the furnishing of a professional or classical education to an infant a necessary, enforceable in law against a parent, but that question is not here, since the children have become emancipated; each has attained her majority, and the circumstances of the parties preclude such a holding. [citations omitted]

Halsted v. Halsted, 239 N.Y.S. 422 (N.Y.A.D. 1930).

This old case is now only of historical interest, but the law in New York State on this topic has changed only a little in the past seventy years.

There was some common law in New York state about parents' duty to pay for their child's college education, before appellate judges recognized that the statutes in New York may prohibit such a legal duty. An appellate case in May 1977 said:

Absent "special circumstances", or a voluntary agreement, the furnishing of a private school college education to one's minor children is not regarded as a necessary expense for which a father can be obligated. The factors relevant to the determination of "special circumstances" are threefold: [citations to six cases omitted]

- (1) the educational background of the parents;
- (2) the child's academic ability; and
- (3) the father's financial ability to provide the necessary funds.

Kaplan v. Wallshein, 394 N.Y.S.2d 439, 440 (N.Y.A.D. 2 Dept. 1977).

These three factors were quoted with approval in the following 13 cases:

Gamble v. Gamble, 418 N.Y.S.2d 800, 802-03 (N.Y.A.D. 2 Dept., Jul 23, 1979);

Connolly v. Connolly, 443 N.Y.S.2d 661, 664 (N.Y.A.D. 1 Dept., Nov 10, 1981);

Shapiro v. Shapiro, 455 N.Y.S.2d 157, 161 (N.Y.Sup., Apr 14, 1982);

Roome v. Roome, 450 N.Y.S.2d 381, 385 (N.Y.A.D., Apr 29, 1982)(Lupiano, J., dissenting);

Barbara M v. Harry M, 458 N.Y.S.2d 136, 138 (N.Y.Fam.Ct., Dec 06, 1982);

Hutter v. Hutter, 491 N.Y.S.2d 480, 482 (N.Y.A.D. 3 Dept., Jul 11, 1985);

⁵ The Superior Court did apply these factors in one case: *Calabrese v. Calabrese*, 682 A.2d 393, 398 (Pa.Super. 1996).

Hoffman v. Hoffman, 497 N.Y.S.2d 259, 262 (N.Y.Sup., Dec 06, 1985),
aff'd as modified, 505 N.Y.S.2d 273 (N.Y.A.D. 4 Dept. Jul 11, 1986),
appeal dismissed, 504 N.E.2d 398, 512 N.Y.S.2d 1029 (N.Y. Dec 18, 1986);
Samuels v. Venegas, 513 N.Y.S.2d 136, 140-41 (N.Y.A.D. 1 Dept., Mar 19, 1987);
Keehn v. Keehn, 524 N.Y.S.2d 238 (N.Y.A.D. 2 Dept., Feb 01, 1988).
Montagnino v. Montagnino, 559 N.Y.S.2d 37, 39 (N.Y.A.D. 2 Dept., Jul 30, 1990);
Romansoff v. Romansoff, 562 N.Y.S.2d 523, 524 (N.Y.A.D. 2 Dept., Nov 26, 1990);
Howard v. Howard, 587 N.Y.S.2d 950, 951 (N.Y.A.D. 2 Dept., Sep 14, 1992);
Nolfo v. Nolfo, 590 N.Y.S.2d 902, 905 (N.Y.A.D. 2 Dept., Dec 07, 1992).

In most of the above-cited 14 New York cases following *Kaplan*, the father was *not* ordered to pay for his child's undergraduate college education.⁶

Despite the clarity of the three factors to consider in *Kaplan*, a judge in a trial court in New York state made nine findings to support his decision to order a wealthy father to pay for his children's college education, even when the children were older than 21 y of age. *Lord v. Lord*, 409 N.Y.S.2d 46, 49 (N.Y.Sup. 1978). Seven years later, another judge in a trial court in New York State diplomatically said: "New York courts have judiciously pruned the 'Lord' nine-point standard heavily emphasizing the social status of the parents to a three-prong standard in *Connolly, supra*." *Hoffman v. Hoffman*, 497 N.Y.S.2d 259, 261 (N.Y.Sup. 1985). The truth of the matter is that the three-prong standard comes from *Kaplan*, which opinion was cited by the judges in both *Lord* and *Hoffman*, and was not created in *Connolly*. I mention this example, to show how judges in trial courts sometimes just invent new law, when the judges are aware of clear precedents on the issue.

In November 1988, a little-noticed case in a New York appellate court mentioned that some of the established case law conflicted with statutes. *Hirsch v. Hirsch*, 534 N.Y.S.2d 681, 682-85 (N.Y.A.D. 1988). The court in *Hirsch* held that a parent could *not* be required to support a child after the child's 21st birthday, although a parent could make a legally binding contract to pay support after the child was 21 y of age.

In 1994, a New York appellate court recognized that these factors in *Kaplan* had been superseded by statute:

Traditionally, we have held that absent a voluntary agreement, a parent is not obligated to pay for the cost of a child's private schooling unless special circumstances exist (*see, Matter of Howard v. Howard*, 186 A.D.2d 132, 587 N.Y.S.2d 950; *Cooper v. Farrell*, 170 A.D.2d 571, 566 N.Y.S.2d 347; *Romansoff v. Romansoff*, 167 A.D.2d 527, 562 N.Y.S.2d 523). The relevant factors in making such a determination were said to be:

- (1) the educational background of the parents,
- (2) the child's academic ability, and

⁶ The exceptions, in which the father was ordered to pay for his child's college education, are *Kaplan*, *Connolly*, *Shapiro*, *Hoffman*, and *Montagnino*.

(3) the parents' financial ability to provide the necessary funds
(see, *Matter of Howard v. Howard, supra; Romansoff v. Romansoff, supra*).

While it is true that under *Manno v. Manno*, 196 A.D.2d 488, 491, 600 N.Y.S.2d 968, it was held that “the Court may properly direct a parent to contribute to a child's private college education, even in the absence of special circumstances”, neither the statute nor the *Manno* decision confers unfettered discretion to a court. Significantly, the court in *Manno v. Manno*, supra, at 491, 600 N.Y.S.2d 968, went on to say:

In determining whether to award educational expenses, the court must consider the circumstances of the case, the circumstances of the respective parties, the best interests of the children, and the requirements of justice.

Thus, the factors which made up the special circumstances test have, in effect, been subsumed by the factors set forth in *Manno*. The factors which a court must consider have changed, and now the court is required to consider the factors set forth in *Manno* in making a determination. In short, there must be a reason for requiring the payment of educational expenses consistent with the statute and the *Manno* decision. Although the special circumstances test has been replaced, there must nevertheless be a balancing of several factors, including but not limited to those which were essential to the traditional “special circumstances” test (see, e.g., *Hirsch v. Hirsch*, 142 A.D.2d 138, 534 N.Y.S.2d 681). *Cassano v. Cassano*, 612 N.Y.S.2d 160, 161-62 (N.Y.A.D. 2 Dept. Apr 25, 1994), *aff'd*, 651 N.E.2d 878, 628 N.Y.S.2d 10 (N.Y. May 09, 1995).

After *Cassano* in 1994, courts in New York State routinely held that children over the age of 21 y were *not* entitled to support of their college education by their parents. *Cohen v. Rosen*, 621 N.Y.S.2d 411 (N.Y.A.D. 3 Dept., Jan 19, 1995), *appeal denied*, 655 N.E.2d 703, 631 N.Y.S.2d 606 (N.Y. Jul 05, 1995); *Brough v. Brough*, 727 N.Y.S.2d 555 (N.Y.A.D. Jul 26, 2001)(“special circumstances” again).

New York has a harsh rule, because on their 21st birthday, the supported child is likely in the middle of their penultimate or final year of undergraduate college and suddenly with less financial support. It does not make sense to me for a court to order a parent to pay for the first two or three years of an undergraduate education and then suddenly cut a successful student adrift because he/she is too old (i.e., over 21 y of age).

New Jersey law

A March 1971 case in the New Jersey Supreme Court concluded:

The concept of what is a necessary education has changed considerably in recent years. While a 'common public school and high school education' may have been sufficient in an earlier time, see *Ziesel v. Ziesel*, 115 A. 435 (E. & A. 1921), the trend has been towards greater education. Our courts have recognized this trend by including the expenses of a college education as part of child support where the child shows scholastic aptitude and the parents are well able to afford it. [six citations omitted]
Khalaf v. Khalaf, 275 A.2d 132, 137 (N.J. 1971).

In a February 1982 case, the New Jersey Supreme Court explained in detail why parent(s) should financially contribute to their child's college education:

Generally parents are not under a duty to support children after the age of majority. Nonetheless, in appropriate circumstances, the privilege of parenthood carries with it the duty to assure a necessary education for children. Frequently, the issue of that duty arises in the context of a divorce or separation proceeding where a child, after attaining majority, seeks contribution from a non-custodial parent for the cost of a college education. In those cases, courts have treated "necessary education" as a flexible concept that can vary in different circumstances. *Khalaf v. Khalaf*, 58 N.J. 63, 71- 72, 275 A.2d 132 (1971) (directing father to pay \$3,200 per year towards son's college expenses); *Limpert v. Limpert*, supra, 119 N.J.Super. at 442-443, 292 A.2d 38 (father directed to continue weekly support payments for 20-year-old son as long as son was full-time student in regular courses towards undergraduate degree); *Nebel v. Nebel*, 99 N.J.Super. 256, 261-263, 239 A.2d 266 (Ch.Div.), *aff'd o. b.*, 103 N.J.Super. 216, 247 A.2d 27 (App.Div. 1968) (on motion of wife, husband ordered to pay \$1,500 per year towards son's college costs); *Jonitz v. Jonitz*, 25 N.J.Super. 544, 556, 96 A.2d 782 (App.Div. 1953) (although finding that the facts did not warrant an award solely for college expenses, court ordered continued support of son while son enrolled as student); *Cohen v. Cohen*, 6 N.J.Super. 26, 30, 69 A.2d 752 (App.Div. 1949) (in dicta, court noted broad power to award support including costs of an advanced education in appropriate cases); *Sakovits v. Sakovits*, 178 N.J.Super. 623, 630, 429 A.2d 1091 (Ch.Div. 1981) (court declined to order father to pay school expenses of 22-year-old son because son waited four years to begin college, had accepted \$3,200 from father to start a business, and father had relied on son's expressed intent not to go to college in structuring his finances); *Ross v. Ross*, 167 N.J.Super. 441, 444-446, 400 A.2d 1233 (Ch.Div. 1979) (father directed to continue weekly support payments for 23-year-old daughter until she completed law school); *Schumm v. Schumm*, 122 N.J.Super. 146, 148-150, 299 A.2d 423 (Ch.Div. 1973) (father's motion to vacate support order when son reached 18 denied because son in college); *Hoover v. Voightman*, 103 N.J.Super. 535, 539-540, 248 A.2d 136 (Cty.Ct. 1968) (father ordered to continue support payments to all children, including 18-year-old college freshman).

In the past, a college education was reserved for the elite, but the vital impulse of egalitarianism has inspired the creation of a wide variety of educational institutions that provide post-secondary education for practically everyone. State, county and community colleges, as well as some private colleges and vocational schools provide educational opportunities at reasonable costs. Some parents cannot pay, some can pay in part, and still others can pay the entire cost of higher education for their children. In general, financially capable parents should contribute to the higher education of children who are qualified students. In appropriate circumstances, parental responsibility includes the duty to assure children of a college and even of a postgraduate education such as law school.

In evaluating the claim for contribution toward the cost of higher education, courts should consider all relevant factors, including

- (1) whether the parent, if still living with the child, would have contributed toward the costs of the requested higher education;
- (2) the effect of the background, values and goals of the parent on the reasonableness of the expectation of the child for higher education;
- (3) the amount of the contribution sought by the child for the cost of higher education;
- (4) the ability of the parent to pay that cost;
- (5) the relationship of the requested contribution to the kind of school or course of study sought by the child;
- (6) the financial resources of both parents;

- (7) the commitment to and aptitude of the child for the requested education;
- (8) the financial resources of the child, including assets owned individually or held in custodianship or trust;
- (9) the ability of the child to earn income during the school year or on vacation;
- (10) the availability of financial aid in the form of college grants and loans;
- (11) the child's relationship to the paying parent, including mutual affection and shared goals as well as responsiveness to parental advice and guidance; and
- (12) the relationship of the education requested to any prior training and to the overall long-range goals of the child.

Newburgh v. Arrigo, 443 A.2d 1031, 1038-39 (N.J. 1982).

In my opinion, this list of a dozen factors to consider is far too complicated. During the 1980s, Pennsylvania had only five factors to consider, and *Kaplan* in New York State had only three factors to consider.

In December 2000, a New Jersey appellate court ruled that there was no "ceiling" on the amount that a divorced parent could be ordered to pay for their child's education. *Finger v. Zenn*, 762 A.2d 702, 706-07 (N.J.Super.A.D. 2000), *appeal denied*, 772 A.2d. 935 (N.J. 2001).

Massachusetts law

In Massachusetts, a statute says:

Upon a judgment for divorce, the court may make such judgment as it considers expedient relative to the care, custody and maintenance of the minor children of the parties

....

The court may make appropriate orders of maintenance, support and education of any child who has attained age eighteen but who has not attained age twenty-one and who is domiciled in the home of a parent, and is principally dependent upon said parent for maintenance.

The court may make appropriate orders of maintenance, support and education for any child who has attained age twenty-one but who has not attained age twenty-three, if such child is domiciled in the home of a parent, and is principally dependent upon said parent for maintenance due to the enrollment of such child in an educational program, excluding educational costs beyond an undergraduate degree.

Massachusetts Statute, Chapter 208, § 28.

This statute has been interpreted or applied to order support of college students who are less than 23 y of age in the following cases:

- *Kotler v. Spaulding*, 510 N.E.2d 770 (Mass.App. 1987);
- *Larson v. Larson*, 551 N.E.2d 43, 45 (Mass.App. 1990);
- *Stolk v. Stolk*, 574 N.E.2d 429 (Mass.App. 1991);
- *McCarthy v. McCarthy*, 633 N.E.2d 405, 407-08 (Mass.App. 1994);
- *Child Support Enforcement Div. of Alaska v. Brenckle*, 675 N.E.2d 390, n. 15 (Mass. 1997);
- *Passemato v. Passemato*, 691 N.E.2d 549 (Mass. 1998);
- *Cabot v. Cabot*, 774 N.E.2d 1113 (Mass.App. 2002);

- *Eccleston v. Bankosky*, 780 N.E.2d 1266 (Mass. 2003)(post-minority support for college education of child in foster care);

a few cases in other states

The Mississippi Supreme Court in 1960 upheld an order of increased child support to pay for part of the child's college expenses. In concluding, the Court remarked:

A contrary view may have been justified in former times when the needs of the family, and of society, and of government were less exacting than they are today. But we are living today in an age of keen competition, and if the children of today who are to be the citizens of tomorrow are to take their rightful place in a complex order of society and government, and discharge the duties of citizenship as well as meet with success the responsibilities devolving upon them in their relations with their fellow man, the church, the state and nation, it must be recognized that their parents owe them the duty to the extent of their financial capacity to provide for them the training and education which will be of such benefit to them in the discharge of the responsibilities of citizenship. It is a duty which the parent not only owes to his child, but to the state as well, since the stability of our government must depend upon a well-equipped, a well-trained, and well-educated citizenship. We can see no good reason why this duty should not extend to a college education. Our statutes do not prohibit it, but they are rather susceptible of an interpretation to allow it. The fact is that the importance of a college education is being more and more recognized in matters of commerce, society, government, and all human relations, and the college graduate is being more and more preferred over those who are not so fortunate. No parent should subject his worthy child to this disadvantage if he has the financial capacity to avoid it.

Pass v. Pass, 118 So.2d 769, 773 (Miss. 1960).

Regarding the remark by the Mississippi Supreme Court that a parent owes this duty to the state, a law professor remarked:

... if a college-educated population is clearly beneficial to the *state*, then arguably the state, rather than the student's parents, should pay for such education. Yet, although nearly all states provide a publicly-subsidized state universities, only California has undertaken a sweeping commitment to providing higher education at public expense.⁷

A Florida appellate court in 1978 declined to order a divorced parent to pay for his adult child's college education. Unlike courts in New Jersey and Pennsylvania, in Florida a parent's duty to a healthy child absolutely ceases when the child becomes an adult.

A child attending college full time in an active and sincere pursuit of an advanced education may certainly be dependent upon his parents for support. *Finn v. Finn*, [312 So.2d 726 (Fla. 1975).] The question remains whether there exists any duty on the part of the parent to provide his children with a college education. We think not.

The question of whether a parent owes a duty to a healthy natural adult child is one over which confusion exists among the courts of this state. [FN3] No such duty is imposed on a child's natural guardian since these statutory duties are extinguished upon the child's emancipation. Moreover, it is clear that the children of a sound, harmonious marriage have no right to require their parents, no matter the degree of wealth they enjoy, to furnish a college

⁷ Marvin M. Moore, "Parents' Support Obligations to Their Adult Children," 19 Akron Law Review 183, 188 (Fall 1985).

education. It can hardly be contended that the law places upon the divorced parent any greater obligation toward his children than he has in the absence of divorce. In fact, such an interpretation may give rise to valid constitutional infirmities in that the state would have no reasonable grounds to treat the adult children of divorced parents any differently than the adult children of married parents. While we are fully aware that in our sophisticated, technological society, advanced education is a valuable asset, our system has not as yet imposed a duty on any parent to provide a complete college education for his children. Although a parent may suffer a moral obligation to assist children in acquiring an advanced education, we find nothing in either the jurisprudence or the statutes of this state which makes such a moral obligation legally enforceable. A parent does not owe a duty to an adult child to provide a college education. With this view, a multitude of jurisdictions in these United States agree. [FN4]

FN3. See, e. g., *Finn v. Finn*, 312 So.2d 726 (Fla. 1975); *Daugherty v. Daugherty*, 308 So.2d 24 (Fla. 1975); *Watterson v. Watterson*, 353 So.2d 1185 (Fla. 1st DCA 1977); *Coalla v. Coalla*, 330 So.2d 802 (Fla. 2d DCA 1976); *Dwyer v. Dwyer*, 327 So.2d 74 (Fla. 1st DCA 1976); *Krogen v. Krogen*, 320 So.2d 483 (Fla. 3d DCA 1975); *Kowalski v. Kowalski*, 315 So.2d 497 (Fla. 2d DCA 1975); *Briggs v. Briggs*, 312 So.2d 762 (Fla. 4th DCA 1975); *White v. White*, 296 So.2d 619 (Fla. 1st DCA 1974).

FN4. Example given, *Golden v. Golden*, 230 Ga. 867, 199 S.E.2d 796 (1973); *Jenkins v. Jenkins*, 233 Ga. 902, 214 S.E.2d 368 (1975); *Krone v. Krone*, 503 P.2d 359 (Colo.Ct.App. II 1972); *Miller v. Miller*, 459 S.W.2d 81 (Ky.Ct.App. 1970); *Young v. Young*, 413 S.W.2d 887 (Ky.Ct.App. 1967); *Price v. Price*, 51 Mich.App. 656, 215 N.W.2d 756 (Ct.App. 3d 1974); *Genda v. Superior Ct., County of Pima*, 103 Ariz. 240, 439 P.2d 811 (1968); *Laws v. Laws*, 432 P.2d 632 (Colo. 1967); *Miller v. Miller*, 52 Cal.App.2d 443, 126 P.2d 357 (Cal.App. 1942); *Block v. Lieberman*, 506 S.W.2d 485 (Mo.Ct.App. 1974); *Childers v. Childers*, 15 Wash.App. 792, 552 P.2d 83 (1976); *Jensen v. Jensen*, 438 P.2d 1013 (Oregon 1968).

Kern v. Kern, 360 So.2d 482, 484-85 (Fla.App. 1978).

The Florida Supreme Court in 1984 declined to order a divorced parent to pay for his emancipated daughter's undergraduate college tuition:

We agree that a trial court may not order post-majority support simply because the child is in college and the divorced parent can afford to pay. [citations omitted]

....

While most parents willingly assist their adult children in obtaining a higher education that is increasingly necessary in today's fast- changing world, any duty to do so is a moral rather than a legal one. Parents who remain married while their children attend college may continue supporting their children even beyond age twenty-one, but such support may be conditional or may be withdrawn at any time, and no one may bring an action to enforce continued payments. It would be fundamentally unfair for courts to enforce these moral obligations of support only against divorced parents while other parents may do as they choose.

Gravin v. Gravin, 450 So.2d 853, 854 (Fla. 1984).

A case in Connecticut explicitly held that the "best interests of the child" standard does *not* apply to deciding whether a parent can be ordered to pay for the educational expenses of an adult child (i.e., a child who is older than the age of majority). *Bonhotel*, 781 A.2d 318, 322-23

(Conn.App. 2001). Such a holding would seem to be obvious, but opinions in courts of some states continue to mention this inappropriate standard. If the “best interest of the child” were truly the appropriate standard, then courts should always order a parent to pay for the child’s continuing education, because such education is always in the best interest of the child. The proper standard also includes consideration of whether support would be an undue financial hardship on the parent and whether the student has both the aptitude and diligence to successfully complete the proposed education.

equal protection

Above, it was mentioned that the Florida Supreme Court in 1984 declared a state statute unconstitutional because it gave more rights to children of divorced parents than to children of married parents. *Grapin v. Grapin*, 450 So.2d 853, 854 (Fla. 1984). In 1995, the Pennsylvania Supreme Court did the same. *Curtis v. Kline*, 666 A.2d 265 (Pa. 1995). However, courts in nine other states have upheld similar statutes:

- *Childers*, 575 P.2d 201 (Wash. 1978);
- *Kujawinski v. Kujawinski*, 376 N.E.2d 1382, 1389-1391 (Ill. 1978);
- *In re Marriage of Vrban*, 293 N.W.2d 198, 202 (Iowa 1980)(“The legislature could consider these facts and decide there is no necessity to statutorily require married parents to support their children while attending college but that such a requirement is necessary to further the state interest in the education of children of divorced parents. The differences in the circumstances between married and divorced parents establishes the necessity to discriminate between the classes. The statute is neither arbitrary nor unreasonable.”);
- *Ex parte Bayliss*, 550 So.2d 986, 995 (Ala. 1989);
- *Neudecker v. Neudecker*, 566 N.E.2d 557, 563-64 (Ind.App. 1991);
Reeves v. Reeves, 584 N.E.2d 589 (Ind.App. 1992);
- *LeClair*, 624 A.2d 1350 (N.H. 1993);
- *McFarland v. McFarland*, 885 S.W.2d 897 (Ark. 1994)(briefly considers *Vrban* and says me too);
- *In re Marriage of Kohring*, 999 S.W.2d 228 (Mo. 1999);
- *In re Marriage of McGinley*, 19 P.3d 954 (Or.App. 2001);
In re Marriage of Crocker, 22 P.3d 759 (Or. 2001).
- *Johnson v. Louis*, 654 N.W.2d 886, 890-91 (Iowa 2002)(mother never married father, father was still legally obligated to pay for his adult child’s college education).

The reason for the different results outside of Florida and Pennsylvania is that the other courts apparently assumed, without any cited evidence, that married parents always gave financial support to their child's college education, while the noncustodial divorced parent often did *not* give financial support to his/her child's college education. With this assumption, there was a rational basis for the legislature to enact the statute. The behavior of divorced parents is well known to judges in divorce courts, but there is little evidence that married parents always support their child's college education. *Vrban* was an exception in that the Iowa Supreme Court cited three articles to show that married parents paid for their children's college education, but that Court offered no evidence (i.e., no legislative history) that the legislature had actually considered such facts when writing the statute.

Given the many dozens of reported cases about courts ordering a divorced parent to pay for part of their child's college education, it is surprising to me that cases in only eleven states have considered a constitutional challenge to the statute or common law.

common law about estrangement

Because my reading of cases on a child's repudiation of their parent suggests that the law of estrangement is remarkably consistent amongst the states that I searched, I am presenting some cases in chronological order, combining cases from several different states. For estrangement to emancipate an adult child, both of the following must occur:

1. the child must repudiate the parent *after* the child reaches the age of majority, repudiation prior to the age of majority followed by a subsequent reconciliation does not emancipate an adult child.
2. misconduct by the parent must not reasonably cause the repudiation.

In a 1982 case, a child had repudiated their parent, thereby removing the estranged parent's duty to pay for the child's college education, a trial judge in New York State said:

However, her 19-year old son refuses to visit with, communicate with, or have anything at all to do with his father, for whom he has lost respect because he has a relationship with a woman. The Court of Appeals has held that a father providing maintenance and support for a twenty-year old college student may establish and impose reasonable regulations for his child, and the child's failure to comply may create a forfeiture of her right to support. (*Roe v. Doe*, 29 N.Y.2d 188, 324 N.Y.S.2d 71, 272 N.E.2d 567 (1971)).

In this Court's view, the unjustified refusal of a 19-year old college student to visit, call, write, or even see his father should likewise create a forfeiture of his right to child support under Article 4 of the Family Court Act.

....

This Court finds no special circumstances which would obligate respondent father under F.C.A. § 413 to furnish a college education to his 19-year old son, and also finds an unjustified and arbitrary refusal by the 19-year old son to have anything to do with his father. *Barbara M. v. Harry M.*, 458 N.Y.S.2d 136, 139 (N.Y.Fam.Ct. 1982).

In 1989, Pennsylvania had a reported case that involved an adult son who had repudiated his mother by spitting in her face once, and physically attacking her at least twice. Consequently, the court in *Milne* ruled that the son was estranged from the mother, and the mother no longer owed him support for his undergraduate college expenses. The court noted, in a tediously verbose and repetitive opinion:

We refuse to champion the importance of post- secondary education over that of adult responsibility.

Milne v. Milne, 556 A.2d 854, 859 (Pa.Super. 1989), *appeal denied*, 568 A.2d 1248 (Pa. 1989).

If as an adult, a child repudiates a parent, that parent must be allowed to dictate what effect this will have on his or her contribution to college expenses for that child. [footnote omitted] We will not provide such a child with the means of inflicting yet another blow to a parent who has already suffered the deeply painful rejection of his or her child. Just as divorcing parents run the risk of alienating their children, adult children who willfully abandon a parent must be deemed to have run the risk that such a parent may not be willing to underwrite their educational pursuits. Such children, when faced with the answer "no" to their requests, may decide to seek the funds elsewhere; some may decide that the time is ripe for reconciliation. They will not, in any event, be allowed to enlist the aid of the court in compelling that parent to support their educational efforts unless and until they demonstrate a minimum amount of respect and consideration for that parent.

Milne at 865; quoted with approval in *Powell v. Conway*, 562 A.2d 324, 326 (Pa.Super. 1989).

The court also explained why it considered only repudiation or estrangement that occurred *after* the child reached the age of majority. *Milne* at 860-61.

There was a similar appellate case in New Jersey in May 2002 in which a father had been physically abusive and threatening to the mother, which traumatized the two children, Alyssa and Justin. The father and mother were separated in 1983 and divorced in 1987. In 2000, the mother sought to have the father pay for half of Alyssa's college expenses, after Alyssa had already graduated from college. The trial court ordered the father to pay \$ 35,000 of Alyssa's student loans and the father appealed. The appellate court characterized Alyssa's relationship with her father:

... at age sixteen Alyssa made it clear that she did not consider defendant to be her father and she did not want to see him. She reiterated that sentiment at age twenty-two. Even when she attended the funeral of defendant's mother, Alyssa did not utter a word to him. She also stated that she did not "feel comfortable" receiving letters from defendant.

During the period between 1987 and 1994 defendant sent postcards, packages, holiday cards, and monthly or bi-weekly letters to the children. He did not telephone the children, because he was told that they did not want to speak with him. With the exception of returning the written cards and letters to defendant with a note, which read: "we don't want to hear from you. We don't want anything to do with you," Alyssa did not respond to her father's communications. These communications stopped in 1994 when Alyssa moved with her maternal grandparents and plaintiff [the plaintiff is Alyssa's mother] to Vermont. Plaintiff did not provide defendant with her telephone number or address when she moved with the children.

Gac v. Gac, 796 A.2d 951, 953 (N.J.Super.A.D. 2002).

When she was 16 y old, Alyssa wrote a letter to the trial court in 1994 opposing her father's attempts to have some contact with his children:

I was told about the situation concerning [defendant]. I would like to say a few things to you to impress my feelings about having you set up visitation with my father. I do not feel, under *any circumstances* that I should be forced to visit [him]. I use the word "forced" because visiting [defendant] would be against my wishes. He has never been a father to me, and for him to say he wants to start now is not only pitiful, but insulting. The only father figure in my life is my grandfather he gives me more love and support, and is more of a father to me than [defendant]. I hope you understand what I am saying and how I feel.

Gac, 796 A.2d at 953-54.

The appellate court then discussed the applicable law about these facts:

We do not read *Moss [v. Nedas*, 674 A.2d 174 (N.J.Super.A.D. 1996)] as holding that a child's rejection of a parent's attempt to establish a mutually affectionate relationship invariably eradicates the parent's obligation to contribute to the child's college education. In this case, for example, a judge could reasonably find from the evidence that defendant's abusive conduct during the marriage so traumatized the children as to render nugatory any real possibility of a rapprochement. In that event, it would not be reasonable to penalize Alyssa for the defendant's misconduct. Nor would it be reasonable to reward defendant by removing his financial obligation to contribute to his daughter's college costs. There are indeed circumstances where a child's conduct may make the enforcement of the right to contribution inequitable, but here it is claimed that it was the defendant himself who was the architect of his own misfortune.

Unfortunately, the Family Part judge made no finding, one way or the other, respecting this issue. To the contrary, the judge specifically disavowed any attempt to determine the truth or falsity of the allegations concerning violence and abuse or the psychological sequelae that allegedly followed.

We are thus constrained to reverse the order entered and remand the matter for further consideration. The parties should be afforded the opportunity to supplement the record with additional relevant testimony and material. The Family Part judge is to apply the *Newburgh* criteria and to make explicit findings of fact and conclusions of law.

Gac, 796 A.2d at 958.

divorce separation agreements

There are some reported cases in which there was a divorce when the child was less than 17 y of age and the husband and wife agreed to a written separation agreement that contains rather standard language that the father will pay for the child's college education. Then, when the child attends an expensive private college or university, the father files suit to release him from that expensive obligation. The father may be eager to end the divorce litigation with a separation agreement. But, despite that eagerness, he should negotiate *very carefully* (and with the advice of an experienced attorney) the sentence(s) about his children's college expenses that are contained in such a separation agreement. Courts routinely uphold the validity of such written separation agreements and enforce those agreements. It is certainly possible that such a written agreement could require the father to pay more of his children's educational expenses than the law requires.

The full cost of tuition, fees, room and meals in on-campus housing for *one* undergraduate student at either Harvard or MIT is approximately US\$ 38,000/year.⁸ The total cost of an undergraduate education for one child at one of these prestigious institutions exceeds US\$ 165,000 when the costs of books and personal expenses are added, and would be much higher if the student has an automobile. Such enormous costs of higher education makes standardized, one-size-fits-all language about children's educational expenses *inappropriate* in a divorce separation agreement.

4. Support of Graduate Education

The general rule is that parent(s) have no legal obligation to financially support their child's education beyond a bachelor's degree: there is no duty for parents to pay for *either* law school, medical school, *or* graduate school. However, there are a *few*, isolated reported cases (which are mentioned below, beginning at page 24) that do legally obligate parents to pay for graduate or professional education. The cases that I have found that mention there is no legal obligation of a parent to pay for a child's education beyond a bachelor's degree are listed below, in chronological order.

Epstein v. Kuvin, 95 A.2d 753 (N.J.Super.A.D. 1953).

This case interpreted a will that provided for the "college education" of the decedent's grandson, and did not include payments during his subsequent medical school education.

Greenberg v. Greenberg, 279 N.Y.S.2d 363 (N.Y.A.D. 1967).

In a terse opinion, an appellate court in New York State granted a father's motion to stop paying child support to a son who was in graduate school. The only reasons given by the appellate court were:

Defendant's obligation to support his child, absent exceptional circumstances, terminated when the child attained his majority (*Sloan v. Sloan*, 286 App.Div. 1102, 145 N.Y.S.2d 797).

The fact that the son is pursuing postgraduate work is not an unusual circumstance (*Halsted v. Halsted*, 228 App.Div. 298, 239 N.Y.S. 422).

The court did not mention that the *Halsted* decision was made in the year 1930 and that *Halsted* concerned a child who was in undergraduate college.

Colantoni, 281 A.2d 662 (Pa.Super. 1971).

Father in Pennsylvania was *not* obligated to pay for medical school expenses for his 24 y old son who was married and living in West Virginia, because his son was emancipated. The fact that the father did pay for the first year of medical school did not create an obligation to pay also for subsequent years in medical school. Father was a physician, who could afford to pay for his son's medical school "without undue hardship".

⁸ This was the amount for the academic year that begins in September 2003.

Brown, 474 A.2d 1168 (Pa.Super. 1984).

A trial court in Pennsylvania ordered the father to pay US\$ 150/month for the law school expenses of his 22 y old son:

The trial court found the crucial elements to be the demands of a law school curriculum, appellee's family and financial obligations, appellant's undisputed ability to make monetary contributions, and a familial norm of erudition evidenced by appellant's advanced degrees.

Brown, at 1170.

The appellate court reversed the trial court, and said:

Although, as the lower court implies, citing *Commonwealth ex rel Grossman v. Grossman*, 188 Pa.Super. 236, 146 A.2d 315 (1958), it is the obligation of the courts to ensure that the disadvantages visited upon children by the divorce of their parents are minimized, there must be a terminus beyond which the obligation to support does not extend. It is not necessarily the case, for example, that were the parents' marriage intact they would wish to support an adult child capable of self-reliance through professional training even were support economically practical. In this instance not only the marriage but ties with the son are considered to be "severed and irrevocable" (H.T. 12).

Case law sets the limits of parental obligation at college or majority, absent some dysfunction on the child's part warranting extension, and provides flexibility such as to accommodate, where necessary, other exceptions. However, to expand these boundaries to the extent contemplated here extends responsibility in perpetuity. We find, therefore, that no duty of support is owed appellee by his father as no showing of dependency has been made, nor does law school qualify as college such as to continue appellant's obligation to support his son.

The Order of the Lower Court is reversed.

Ibid.

The appellate court also said that "college" in the cases about a divorced parent's duty to pay for post-secondary education meant only undergraduate college, and did not include education beyond a bachelor's degree.

In re Marriage of Belsby, 754 P.2d 1269 (Wash.App. 1988).

In 1986, when the son was 16 y of age and in high school, a trial court in Washington state modified a child support order to require the father to pay \$ 350/month during the son's undergraduate education and "continue in that amount until such time as Brian ceases to be a fulltime student, barring unforeseen emergencies, to the year 1994, to include graduate studies." The order of the trial court gave the son child support for 6½ y after the son reached the age of majority. The appellate court modified the order to include only the son's undergraduate education, and postponed any discussion of ordering the father to support his son's education in graduate school:

We are convinced it would only be a rare circumstance where it would be proper to order support for a graduate education while a child is still in, or just graduated from, high school. It would be very difficult for a court at the time one graduates from high school to anticipate the many unforeseen circumstances that can occur during the undergraduate degree program. It is more reasonable and logical that the determination for graduate support be made at or near the completion of the undergraduate program. Should Brian demonstrate ability and desire to attend law school or other graduate studies at the time he completes his

undergraduate education, there may be a factual finding where dependency would be proper. *In re Marriage of Belsby*, 754 P.2d 1269, 1272 (Wash.App. 1988).

The appellate court then remarked in dicta:

Policy considerations also persuade us judicial restraint is necessary. We note a second major factor mentioned in *Childers*, at 599, 575 P.2d 201, [206 (Wash. 1978)] is the necessity of the education. *Childers'* analysis at this point is public policy oriented; there is discussion on whether a 4-year degree is necessary. We are not persuaded that a graduate education is necessary to equip all citizens for life. *Childers*, at 599, 575 P.2d 201, also states the type and extent of educational support is to be determined under the facts of each case. Another, but far from dominating, factor concerns the parents' education. In this instance neither of Brian's parents has a graduate degree.

Ibid.

I find it strange that the appellate court mentions the educational level of the parents as a relevant factor. In my opinion, *if* courts are willing to order a parent to pay for part of their child's education in graduate school, then there are only two critical factors to consider: (1) the academic ability and diligence of the student, and (2) whether the parents can afford to pay some of their child's educational expenses. Considering the parent's educational level is relevant only if sons of laborers are to become laborers, and sons of physicians are to become physicians. Our society has properly rejected such hereditary class distinctions.

delCastillo, 617 A.2d 26 (Pa.Super. 1992).

A custody and support agreement stated that the father would provide support for his son's education "beyond the high school level". The son sued his father for support during graduate school. Both the trial court and the appellate court found that this ambiguous phrase included an undergraduate education, but *not* education beyond the bachelor's degree. In this case, the son was 27 y old and married. The appellate court hyperbolically noted that if it ordered the father to pay for this son's graduate education, then

the obligation to support son could conceivably continue *ad infinitum*. A trial court, sitting in equity, cannot allow this absurd and unreasonable result. [citation omitted] We, therefore, find no abuse of discretion by the trial court, and limit the father's "beyond high school" educational responsibilities to the son's pursuit of a bachelor's degree.

delCastillo at 29.

A literal interpretation of the contract clearly shows that the father is obligated to pay for his son's graduate education, even if it be *ad infinitum*. And the dissenting opinion mentions a fact ignored by the majority opinion: The father was a successful physician who had intended his son to become a physician, and, at the time the written support agreement was signed, the father did intend to pay for his son's graduate education. *delCastillo* at 30 (Popovich, J., dissenting). Thus, the majority's equitable argument can only mean that a graduate education is seen by these judges as extraordinary and *unnecessary*.

Fletcher v. Cole, 690 So.2d 444, 448 (Ala.Civ.App. 1997).

Ex-husband agreed to pay \$ 50,000 to ex-wife upon her marriage to another man, trial court ordered half of this amount to be spent on son's post-graduate education. Appellate court reversed that order of the trial court.

parents rarely required to pay for graduate education

Commonwealth ex rel. Schmidt v. Schmidt, 296 A.2d 855 (Pa.Super. 1972).

Court ordered adult daughter to pay \$ 1404/year for her education in veterinary medicine. This short opinion is not clear on whether the daughter was enrolled in undergraduate college or was enrolled in graduate program leading to a doctor of veterinary medicine degree.

Ross v. Ross, 400 A.2d 1233 (N.J.Super.Ch.Div. 1979).

A judge in a New Jersey trial court ordered a father to continue paying child support of \$910/year to a daughter who was attending a private law school. The daughter would be approximately 25 y old when she graduated from law school and was finally emancipated. As explained above, New Jersey has been ahead of other states (e.g., New York and Pennsylvania) in declaring higher-education to be a necessity, so it is not surprising that a court in New Jersey would be the first to order parents to pay for part of their child's education after a bachelor's degree.

Newburgh v. Arrigo, 443 A.2d 1031, 1038 (N.J. 1982).

Dicta: "In appropriate circumstances, parental responsibility includes the duty to assure children of a college and even of a postgraduate education such as law school."

Anderson v. Anderson, 522 N.W.2d 476 (N.Dak. 1994).

Father ordered to pay for his daughter's costs of attending law school.

Verdrager v. Verdrager, 741 N.Y.S.2d 710 (N.Y.A.D. 2002).

In a terse opinion without reasons, an appellate court in New York State in May 2003 affirmed a trial court's decision to order a father to pay for his daughter's expenses in law school.

5. Conclusion

The legal obligation of divorced parent(s) to pay for at least part of their child's post-secondary education differs amongst the states and is also changing with time in each state. A written divorce separation agreement can legally obligate a parent to provide more support to a child's post-secondary education than the law would otherwise require, so those agreements should be very carefully drafted. A wealthy parent with child(ren) who might possibly want to attend expensive private colleges may wish to consult with an attorney who specializes in higher-education law (in addition to an experienced divorce attorney), so that the divorce separation agreement is carefully crafted and avoids the kinds of ambiguities that caused many past reported cases in this area of law.

The lowering of the age of majority from 21 y to 18 y of age may have made it more difficult to justify a legal obligation of parents to pay for their child's undergraduate college education. This result is ironic, because the lowering of the age of majority was the result of protests by

college students who were old enough to be drafted to fight (and die) in the Vietnam war, but then not old enough to either vote, purchase alcoholic beverages, or be considered an adult by the law.

In Pennsylvania and New York State during 1963-92, when the courts often ordered divorced parents to pay for part of their child's undergraduate college education, there was an amazingly large number of reported appellate cases on that issue. Apparently, ordering a parent to pay for their child's college education was very distasteful to many parents. One of the reasons for this reaction by parents is that a college education in the USA has become exorbitantly expensive, particularly at private colleges and universities. If state governments really believe that a college education is a "necessity", so that divorced parents can be ordered to pay for their child's college education, than those state governments also ought to allocate more money to state colleges and universities, so that the cost of tuition will be affordable to nearly everyone.

If a state legislature or judiciary wants to order parents to pay for at least part of their child's post-secondary education, then they should consider copying the five factors that were valid common law in Pennsylvania during 1963-92. Those five factors were both simple and an adequately complete policy. The only change to this old common law in Pennsylvania that I would urge is that judges put more emphasis on considering the academic aptitude, diligence, and academic performance of students.

Let me say explicitly that I will *decline* to represent students who are suing their parent(s). Such litigation is *very* distasteful to me.

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