

CHILD SUPPORT

C O N T E N T S

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A. Chapter Competencies

After studying chapter 10 the student should be able to:

1. identify the factors that the parties must consider when negotiating the child support terms of the separation agreement.
2. state the kind of jurisdiction a court needs to make a child support order and how the court can acquire this jurisdiction over a resident noncustodial parent.
3. state the seven main ways a state can acquire personal jurisdiction over a nonresident under the Uniform Interstate Family Support Act (UIFSA).
4. state when a court can acquire long arm jurisdiction over a nonresident.
5. state how the registration procedure works under the UIFSA when personal jurisdiction over a nonresident is obtained through the long arm method.
6. state how a state obtains personal jurisdiction over a nonresident under the UIFSA when personal jurisdiction *cannot* be obtained through the long arm method.
7. state the procedural requirements under the UIFSA for one state to modify the support order of another state.
8. identify the standards used to determine how much child support must be paid.
9. identify the factors that determine whether child support includes payment of college expenses.
10. state the effect of acquiring a second family on one's obligation to support children from the first family.
11. identify when a court with the power to modify a child support order will exercise this power.
12. state why Congress enacted title IV-D of the Social Security Act.
13. state the functions of a state IV-D agency.
14. state the functions of the Office of Child Support Enforcement within the U.S. Department of Health and Human Services.
15. identify leads that should be checked to determine the whereabouts of a noncustodial parent.
16. state the steps that can be taken by the State Parent Locator Service and the Federal Parent Locator Service to locate a missing parent.
17. state the function of the Family Violence Indicator (FVI).
18. state how a civil contempt proceeding can be used to try to enforce a child support obligation.
19. state how a writ of execution can be used to try to enforce a child support obligation.
20. state how prosecution for criminal nonsupport can be used to try to enforce a child support obligation.
21. state how income withholding and garnishment can be used to try to enforce a child support obligation.
22. state the requirements of employers under new hire reporting.
23. state how passport denial can be used to try to enforce a child support obligation.

24. state how license denial or revocation can be used to try to enforce a child support obligation.
25. state how the Tax Refund Offset Program can be used to try to enforce a child support obligation.
26. state how Unemployment Compensation Intercept can be used to try to enforce a child support obligation.
27. state how a Qualified Domestic Relations Order (QDRO) can be used to try to enforce a child support obligation.
28. state how a Qualified Medical Child Support Order (QMCSO) can be used to obtain health insurance for a child.
29. state how credit clouding can be used to try to enforce a child support obligation.
30. state how “freeze and seize” can be used to try to enforce a child support obligation.
31. state how posting security can be used to try to enforce a child support obligation.
32. state how a protective order can be used to try to prevent domestic violence.
33. define necessities and state when they can be purchased by one parent and charged to the other.
34. give examples of improper methods of enforcing the child support obligation.

The student should also know:

1. whether two parents can enter a binding agreement releasing one of them of responsibility for child support.
2. what is meant by a pendente lite order for child support.

A. Introduction

Here are some quotes you may want to use while covering chapter 10:

“We take from the deadbeat dads and give to their families.”

This quote is part of the heading of a newsletter called “The Robin Hood Report” published by a Los Angeles law firm specializing in child support collection.

“Need Job to Support Children” A lower court ordered an Indiana jobless man who was delinquent in his child support payments to carry a sign bearing this message while he walked on the lawn of the county courthouse. On appeal, this order was overturned as being too drastic.

National Law Journal, 39 (11/23/92). [Note, however, that courts have upheld using photographs of deadbeat parents on “Most Wanted” posters and World Wide Web sites.]

B. Poll

Ask the students in the class to write “YES” or “NO” on a piece of paper in response to the following question: Do you think that society is tough enough on divorced fathers who do not pay child support? Tell them that they do not have to write their names on the paper.

Then collect the answers from the students. Walk around the room and pick up the answers, one by one. First collect all the answers of the male students. Keep these answers in a separate pile. Next, collect all the answers of the female students. Then quickly tabulate the results to determine whether the men and women in the class responded differently.

C. Assignment 10.1 (*Straub v. B.M.T.*)

- a. Yes. The last footnote of Judge Miller’s majority opinion says in dictum, “We must be ever mindful of the best interests of this child. Thus, B.M.T. has a right to more than the basic necessities of life. Specifically, she has a right to the lifestyle that her parent’s combined income will furnish. This right may not be contracted away by her parents, and to do so is a violation of public policy. However, while we are not able to address every factual possibility, *we recognize an exception may lie where the custodial parent is so affluent as to render the contribution of the non-custodial parent’s income irrelevant to the child’s lifestyle.* In that case, the child’s lifestyle may not be an issue, and it might be argued that the parents would not be contracting away the best interests of the child. Here, however, because Todd’s only apparent income is her salary for teaching school, this appears to be a typical case wherein the child is entitled to the lifestyle that the combination of her parent’s incomes will afford.” (Emphasis added)

This dictum encourages sperm (or egg) donors of the future to claim that the custodial parent has more than sufficient resources to maintain the child’s lifestyle without needing the resources of the donor.

- c. As we shall see, a woman has a constitutional right to have an abortion. It is a right that is personal to her. No one can prevent her from having the abortion, and no one can force her to have the abortion. Hence, the father of the “child” cannot insist that an abortion take place.

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Logically, the support duty should fall on people who voluntarily became parents. For example, someone who donates his sperm to a sperm bank should not have to support a child of a woman who is impregnated by that sperm without the knowledge and consent of the donor. So too, if Helen raped George, the latter would not be obligated to support the resulting child.

In part (c) of Assignment 10.1, George appears to have voluntarily engaged in sexual intercourse with Helen. One is presumed to intend the natural consequences of one's acts. Here the natural consequence is pregnancy. George should support the child.

The case is more troublesome if Helen lied about using contraceptives. If George thought Helen was using contraceptives, then there was no need for him to use contraceptives. In effect, she encouraged him *not* to use male contraceptives (e.g., condoms) when she let him believe that she was using them. It is difficult to rationalize a support duty on George with these facts. George intended to have sexual intercourse. He did not intend, actually or presumptively, to produce a pregnancy. Arguably, he did not voluntarily father the child. Helen should be solely responsible for the child's support.

The court, however, may conclude that George's conduct involved the *risk* of parentage even if he erroneously believed that Helen was using contraceptives. To avoid the risk, he should use his own contraceptives or refrain from sexual intercourse altogether. In today's society, a court is not likely to be very sympathetic to George.

Suppose, however, that a court *is* sympathetic to George because of Helen's deception, but she is destitute or has died. Who should support the child? Now the choice is between the state which had nothing to do with the pregnancy, and George who did have something to do with it! What should the court do, assuming that George can afford to support the child? In these circumstances, it is unlikely that a court would rule that George had no obligation to support the child.

E. Assignment 10.3 (*Goldberger v. Goldberger*)

- a. The First Amendment is not absolute. You are not allowed to practice your religion in such a way as to violate the important rights of others, e.g., a child's (absolute?) right to the support of its parent.
- b. The guidelines tell us what categories of evidence will be relevant. The court listed the following factors that it would consider in determining the amount of potential income. The evidence an investigator should pursue is listed under each factor:
 1. age
 - his birth certificate
 2. mental and physical condition
 - doctor records
 - hospital records
 3. assets
 - public records available, e.g., corporate filings, county land records, litigation records
 4. educational background, special training or skills
 - newspaper stories on him that might go into his background, e.g., stories on awards given to him for his contribution to religious endeavors
 5. prior earnings
 - copies of tax returns of prior years
 6. efforts to find and retain employment
 - job applications
 7. the status of the job market in the area where the parent lives
 - United States Census Bureau/Department of Labor statistics; Maryland Department of Labor statistics
 8. actual income from any source
 - copies of tax returns of prior years

F. Ethics in Practice

In general, contingent fees are unethical if the amount of the fee is dependent on the amount of support collected. Richardson has arranged for a 40 percent contingent fee on child support arrears collected and a 10 percent contingent fee on all future child support collected.

Contingent fees in family law cases are frowned upon because of the conflict of interest an attorney might have in collecting the fee and in standing in the way of a reconciliation between the parties. In some states, however, the contingent fee in the collection of *arrears* is allowed since there is less likelihood of an interference with a reconciliation than in the case of future support.