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## Conflict of Laws - Courts - Enforceability of Parent Support Act in Foreign Court

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## RECENT CASES

CONFLICT OF LAWS — COURTS — ENFORCEABILITY OF PARENT SUPPORT ACT IN FOREIGN COURT. — Defendant's mother was confined to a mental institution in California. A state statute imposed liability upon defendant for the support of his parent. Defendant moved to Texas where no similar statute was in force. The plaintiff brought suit against him there to recover its expenses in caring for the mother. The Texas Supreme Court, three justices dissenting, held that the liability of the son could be enforced against him only to the extent it had accrued before his change of residence. *State v. Copus*, 309 S.W.2d 227 (Texas 1958).

The majority decision was based on public policy<sup>1</sup> as well as on judicial opinions which hold that legal support liabilities are determined by the laws of the residence of the obligor at the time the obligation is incurred.<sup>2</sup>

The public policy as to the legal liability of the parent to support his minor child is much different than policy as to the liability of the adult child to support his parent. The responsibility of the father to support his minor child was recognized at common law.<sup>3</sup> With relatively minor variations this responsibility exists in every state. The common law did not recognize the responsibility of the adult child to support his parents.<sup>4</sup> At least thirty-three states have statutes making such support a legal duty, but the statutes vary as to the conditions under which the legal duty will be enforced.<sup>5</sup>

The dissenting justices relied primarily on public policy<sup>6</sup> and the Uniform Reciprocal Support Act of Texas, which gives the obligee an election to impose either the laws of the state in which the obligor resides, or those where the obligee resides.<sup>7</sup> However, the plaintiff did not bring its suit under the provisions of this act, nor comply with it, so the majority of the court held the act should not apply. At the time of the decision in the instant case, the Texas legislature had not amended the statute to conform with changes made in the Uniform Support Act by the National Conference on Uniform Laws.<sup>8</sup> This amendment provides that the duties of support are those imposed or imposable under the laws of the state where the obligor was present during the period for which support is sought.<sup>9</sup>

The majority in this case refused to invoke the rule that the validity and

1. In the words of Justice Culver, "Citizens of a state share equally in the burdens and privileges of citizenship regardless of when or how that status is attained. To say that the support statute compelled liability for that period of time after respondent moved to Texas would seem to deny to him equality with other citizens of the state."

2. *Yarborough v. Yarborough*, 290 U. S. 202 (1933); *Berkley v. Berkley*, 246 S.W.2d 804 (Mo. 1952). See also Restatement, Conflict of Laws, § 475.

3. *Niewiandemski v. United States*, 159 F.2d 683 (6th Cir. 1947); *Jensen v. United States*, 78 F. Supp. 974 (S. D. Me. 1948).

4. *Duffy v. Yordi*, 149 Cal. 140, 84 Pac. 838 (1906); *In re Salm Guardianship*, 282 N. Y. 765, 27 N.E.2d 46 (1940).

5. See Uniform Laws Annotated 9 C, Misc. Acts, p. 10; Mandelker, *Family Responsibility Under the American Poor Laws*, 54 Mich. L. Rev. 497 (1956). See also N. D. Rev. Code § 14-0910 (1943), which provides that a child is liable to support his indigent parents to the extent of his ability to provide.

6. Justice Greenhill said, ". . . Texas should not become a haven for deserting providers who ignore or repudiate their duty of support."

7. See historical note, Uniform Laws Annotated 9 C, Misc. Acts p. 26.

8. The North Dakota statute has been so amended. See N. D. Rev. Code § 14-1207 (Supp. 1957).

9. See Uniform Reciprocal Support Act § 7, Uniform Laws Annotated 9 C, Misc. Acts, p. 26.

interpretation of a contract should be determined according to the laws of the state where the contract is made,<sup>10</sup> contending that the obligation to support is not a matured contract, but a continuing liability.

Most authorities maintain that the statute of a foreign jurisdiction should be enforced, if doing so would not be against public policy.<sup>11</sup> While in the instant case the Texas Court was of the opinion that the California statute was not repugnant to the public policy of Texas, it appears that in some instances such statutes are of such nature as to be contrary to the public policy of another state. Statutes requiring an adult child to support his indigent parents vary as to the financial need of the parent,<sup>12</sup> the past and present conduct of the parent,<sup>13</sup> the marital condition of the daughter,<sup>14</sup> and the financial ability of the child to support the parent.<sup>15</sup>

There is a great difference in the laws of the various states which make the adult child responsible for the support of his indigent parent, as well as in the administration of these laws. Due to these differences it appears that the action of the National Conference on Uniform Laws in amending section 7 of the Uniform Reciprocal Support Act was sound in providing that the laws of the state in which the obligor lives should apply in support cases. The majority decision in the instant case was in accordance with this amended act and appears to be sound from the standpoint of public policy as well as legal precedent.

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10. See *Holder v. Aultman*, 169 U. S. 81 (1898); *Baxter Nat'l Bank v. Talbot*, 154 Mass. 213, 28 N.E. 163 (1891).

11. *Texas & Pac. Ry. Co. v. Cox*, 145 U. S. 593 (1892); *Howarth v. Lombard*, 175 Mass. 570, 56 N.E. 888 (1900); *Corrington v. Crosby*, 54 N. D. 615, 210 N.W. 342 (1920).

12. In many states the test for family responsibility is the same as the test for need of public assistance. See *Mandelker, Family Responsibility Under the American Poor Laws*, 54 Mich. L. Rev. 497, 514 (1956).

13. In the absence of statute, misconduct by a parent does not ordinarily relieve the child of the responsibility of support. See *Hummel v. Hummel*, 22 N.Y.S.2d 977 (N.Y. Dom. Rel. Ct. 1940). In that case a son was compelled to contribute to the support of his father who drank excessively. Gen. Code of Ohio § 12431, Rev. Code § 2901.4 provides that no person shall be required to support his parent, if the parent refused or neglected to support him while he was under sixteen years of age.

14. A son-in-law is not liable for the support of his wife's parents; and unless she has an income of her own, a married woman is not usually held liable for the support of her indigent parents. In *Commonwealth v. Goldman*, 179 Pa. Super. 521, 118 A.2d 271 (1955), the court held that a married daughter with a three year old child whose husband received \$7,500 per year did not have to contribute to the support of her indigent parents. In *Dunway v. Commissioner of Pub. Welfare*, 174 Misc. 735, 22 N.Y.S.2d 69 (Co. Ct. 1940), the court held that a daughter receiving \$300 per month alimony for the support of herself and child was not required to contribute to the support of her indigent father. *But see Moore v. Palen*, 228 Minn. 148, 36 N.W.2d 540 (1949), where damages were awarded to the parents of a married woman on the basis of her potential ability to contribute to their support.

15. In *Mendelson v. Mendelson*, 192 Misc. 1014, 80 N.Y.S.2d 913 (N.Y. Dom. Rel. Ct. 1948), a 27 year old unmarried daughter earning \$30 per week and contributing the major portion of the support of her divorced mother, was ordered to contribute \$4.30 per month to the support of her father. In some states the minimum earnings which an adult child must have before being held liable for the support of an indigent parent is determined by statute. See *Mont. Rev. Code Ann.* § 411.425 (1953). The Oregon Code provides a graduated scale of liability for support, depending upon income and number of dependents in the immediate family of the adult child. A married man with a wife and two children would not be liable to contribute if the net as established for income tax purposes is less than \$5,000 per year.