
The Parental Duty To Support Disabled Adult Children

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Recommended Citation

DePaul College of Law, *The Parental Duty To Support Disabled Adult Children*, 9 DePaul L. Rev. 245 (1960)
Available at: <https://via.library.depaul.edu/law-review/vol9/iss2/11>

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have become the means of creating a large part of the demand that causes goods to depart from factories to the ultimate consumer."⁴³ The court then proceeded to point out the unfairness in allowing manufacturers to represent by such means that their products possess certain merits, the lack of which is not easily discovered, and then refusing to hold them liable on these representations just because there is no privity of contract.

CONCLUSION

In the light of *Toni, Baxter*, and similar decisions, where recovery was permitted on the warranty in an ad, perhaps *Cobb v. American Motors*—which launched this entire discussion—would not appear to be a true innovation on the privity rule. The distinction to be noted, however, is that in *Toni, Baxter*, and the like, there was some *physical harm* to the plaintiff as the result of the product not being as represented. In the *Cobb* case, however, plaintiff's action on the express warranty involved a purely *monetary* loss because the car did not give 32 miles per gallon of gas. It is almost self-evident that the courts would be more readily inclined to drop the privity requirement in cases of personal injury; with this in view, it can hardly be doubted that *Cobb* is the most liberal departure from the privity rule in the express warranty ad cases. Therefore, decisions of the *Toni* and *Baxter* variety have not gone as far as, but have rather served to augur an adjudication such as made in the *Cobb* case.

Will the Supreme Court of Louisiana uphold the *Cobb v. American Motors* decision? In the past ultimate consumers attempting to recover on representations in advertisements have found that the old trail of precedent leads to the blind alley of privity. It may be that in the future, however, they will find available a new highway in *Cobb v. American Motors*—a highway leading to recovery.

THE PARENTAL DUTY TO SUPPORT DISABLED ADULT CHILDREN

The family has often been described as the basic unit of our society. Throughout the history of the law, the courts and legislatures have endeavored to set forth the rights and duties of the various members of the family in relation to each other. One such duty is that of the parent to support his child. Only recently have the American courts been in agreement as to the child's right to such support and to its extent.

⁴³ *Baxter v. Ford Motor Co.*, 168 Wash. 456, 12 P.2d 409, 412 (1932).

THE EARLY LAW

The duty of the parent to support his children has undergone a considerable change in the history of the law. At early common law the duty of support owing from the parent to the child was thought of solely as a natural obligation and there was no legal obligation on the part of the parent to maintain his child.¹

The first statutory enactment that cast this burden of support upon parents was the Poor Law Act² which in its sixth section provided: "The father and grandfather and the mother and the grandmother, and the children of every poor, old, blind, lame, and impotent person, or other poor person not able to work, being of sufficient ability shall at their own charges relieve and maintain such poor person." This statute extended only to natural relatives and not relatives in law, but by a later amendment, the husband was held to have the duty to maintain his wife's children by a former marriage.³

Notice must be taken of the fact that the "poor law" does not form a satisfactory basis for liability on the part of a parent to third persons. However, the weight of authority in this country is to the contrary and holds that a third person may recover for necessities furnished to a minor child under proper circumstances.⁴

The early common law rule, that the duty of a parent to support his children was only a moral obligation, was principally sustained by early decisions in England and in some of the American states. These cases held that there was no legal obligation on the part of the parent unless by force of some statute.⁵

One of the courts in this country which gave its support to the doctrine admitted that at first glance this view seemed startling and opposed to the natural sense of justice, in that it did not provide for punishment for breach of such duty unless specifically set out in a statute. However, it was the opinion of the court that the common law considered moral obligations of this nature as better left in their performance to the impulses of nature.⁶ As Chancellor Kent observed: "The obligation of

¹ *Bazeley v. Forder*, 3 L.R. Q.B. 559, 37 L.J. Q.B. 237 (1868); For a treatment of the early law in this area, see: Cairns, *Eversley on Domestic Relations*, c. 2, § 3, p. 518, 519 (1937).

² 43 Eliz. c. 2, § 6 (1601).

³ 4, 5 Wm. 4, c. 76 (1834).

⁴ *Sisson v. Schultz*, 251 Mich. 553, 232 N.W. 253 (1930); *Simsin Garment Co. v. Schultz*, 182 Wis. 506, 196 N.W. 783 (1924); *Van Valkenburgh v. Watson*, 13 Johns (N.Y.) 480, 7 Am.Dec. 395 (1816); 2 Kent Comm. 190 (1867).

⁵ E.g., *Hollingsworth v. Swedenborg*, 49 Ind. 378, 19 Am. Rep. 687 (1875); *Hunt v. Thompson*, 4 Ill. 179, 36 Am.Dec. 538 (1840).

⁶ *Kelley v. Davis*, 49 N.H. 187, 6 Am.Rep. 499 (1870).

parental duty is so well secured by the strength of natural affection, that it seldom requires to be enforced by human laws."⁷

This view was subsequently repudiated by the majority of American courts.⁸ The prevailing view, at the present time, is that parents are, regardless of any statute, under a legal as well as a moral duty to support, maintain and care for their children.⁹ This obligation is sometimes spoken of as one under common law and sometimes as a matter of natural right and justice, and is often accepted as a matter of course without the assignment of any reason.

The primary and basic reason for the imposition of the duty is the inability of the infant children to provide for themselves. In *Brosius v. Barker*,¹⁰ the obligation was based on the helplessness of the child. The court discussed the fact that the child comes into the world helpless and incapable of protecting itself. Yet it was noted that in some jurisdictions the courts hold that the parents who have bestowed life upon these children have no legal obligation to support or preserve them. In rendering a decision in which they recognize the duty of a parent, the court called attention to the great weight of modern authority which repudiates the doctrine denying such liability and declares it to be opposed to the natural sense of justice.

While the courts now generally hold that the parent has a legal duty to support his children, even in the absence of statute, there is some conflict as to the extent of such duty. Some courts maintain that the common law went no further than to impose on the parents the duty of supporting their minor children, and that they owed no such duty to their adult children.¹¹ In *Napa State Hospital v. Flaherty*,¹² an action was brought against a father requiring him to pay for the support of his insane son who was in a state insane asylum. The *Napa* court stated in unequivocal terms that the right to maintain any action against the father for the support of an adult child, if any such right existed, was purely a creation of statute.

⁷ 2 Kent Comm. 189 (1867).

⁸ *Dunbar v. Dunbar*, 190 U.S. 340 (1902); *Osborn v. Weatherford*, 27 Ala.App. 258, 170 So. 95 (1936); *Butler v. Commission*, 132 Va. 609, 110 S.E. 868 (1922); *Gulley v. Gulley*, 111 Tex. 233, 231 S.W. 97 (1921); *Iroquois Iron Co. v. Industrial Commission*, 294 Ill. 106, 128 N.E. 289 (1920); *Porter v. Powell*, 79 Iowa 151, 44 N.W. 295 (1890).

⁹ *Ibid.*

¹⁰ 154 Mo.App. 657, 136 S.W. 18 (1911).

¹¹ *Littleton v. Littleton*, 295 Ky. 720, 175 S.W.2d 502 (1943); *Miller v. Miller*, 52 Cal.App.2d 443, 126 P.2d 357 (1942); *Manners v. State*, 210 Ind. 648, 5 N.E.2d 300 (1936).

¹² 134 Cal. 315, 66 Pac. 322 (1901). In this case recovery was had against the father for the support of his son on the basis of a California statute which provides that insane children in state hospitals are to be supported by their parents if the parents are of sufficient pecuniary ability. Cal. Stat. (1889) § 8, p. 330.

In following this strict view, some American courts hold that the parent has no duty to the adult child even though he may be incapacitated and is incapable of supporting himself.¹³ The court, in *Moss v. Moss*,¹⁴ held: "The duty of a parent to provide support for an adult son who is incapable of earning a livelihood because of bodily infirmity or by reason of mental disability is statutory. No legal liability existed at common law."¹⁵ In *Murrah v. Bailes*¹⁶ the Alabama Supreme Court stated: "It is obvious in order to establish liability against the father for the support of an adult child who is insane, in the absence of a contract, there must be some statute which authorizes the establishment of the liability."¹⁷

Many of the American courts now hold that a parent is under a duty to support an adult incapacitated child, but they differ on the ground upon which they base this opinion. In some of the states, the liability of a parent to an adult incapacitated child is based on statutes resembling the Poor Law Act which place upon relatives the duty to support a member of the family who cannot support himself and would otherwise be a public charge.¹⁸ Illinois has such a statute which provides: "The parents are severally liable for the support of any child or children under eighteen years of age or eighteen years or over, whenever such child is unable to maintain himself and is likely to become a public charge."¹⁹

Even in the absence of statute, there is a definite tendency for the courts to recognize such an obligation either through a modern sociological interpretation of the common law or on the basis of the humanitarian rule of family relations.²⁰ Representative of the rationale of a large number of decisions in which the duty was founded on the so-called humanitarian rule, is *Wells v. Wells*.²¹ The *Wells* court decided

¹³ *Beilstein v. Beilstein*, 31 Ohio 116, 61 N.E.2d 620 (1945); *Moss v. Moss*, 163 Wash. 444, 1 P.2d 916 (1931); *In re Northcutt*, 81 Ore. 646, 148 Pac. 1133 (1915); *Napa State Hospital v. Flaherty*, 134 Cal. 315, 66 Pac. 322 (1901).

¹⁴ 163 Wash. 444, 1 P.2d 916 (1931).

¹⁵ *Ibid.*, at 918. Washington had such a statute stating that "a poor person" shall be supported by the father, grandfather, mother, grandmother, children, grandchildren, brothers or sisters of such poor person if they or either of them be of sufficient ability. Rem. Comp. Stat. (1930) §9982.

¹⁶ 255 Ala. 178, 50 So.2d 735 (1951).

¹⁷ *Ibid.*, at 180.

¹⁸ Vt. Stat. (1959) c.33, §31.2; Mass. Laws (1957) c. 117, §6; Neb. Rev. State. c.68, §101 (Supp., 1957); Del. Code t.13, §501 (1953); Mich. Comp. Laws (1948) c.401, §2, 5; Ohio Stat. L.O.L. (1853) §7054.

¹⁹ Ill. Rev. Stat. (1959) c.23, §112.

²⁰ *Davis v. Davis*, 246 Iowa 262, 67 N.W.2d 566 (1954); *In re Glass' Estate*, 175 Kan. 246, 262 P.2d 934 (1953); *Van Tinker v. Van Tinker*, 38 Wash.2d 390, 229 P.2d 333 (1951); *Wells v. Wells*, 227 N.C. 614, 44 S.E.2d 31 (1947).

²¹ 227 N.C. 614, 44 S.E.2d 31 (1947).

that ordinarily the law presumes that when a child reaches the age of twenty-one he will be capable of maintaining himself. However, where this presumption is rebutted by the fact of mental or physical incapacity, the obligation of the father continues. The court based its decision entirely upon the public policy of the state and the "dictates of humanity."²²

Other courts recognize the obligation of support as being in the nature of a common law obligation.²³ Such a view was expressed by the court in *Van Tinker v. Van Tinker*,²⁴ where the court said: "These authorities, and many others which might be cited, pronounce the rule to be that the legal duty of a parent to support his normal children ceases at the age of majority, but if any of them are so defective as to be incapable of self-support he owes a continuing obligation of support as long as it is necessary. This obligation is one created by the common law."²⁵

The courts that find this duty by an extension of the common law rule seem to do so by rationalizing that the adult incapacitated "child" is just as helpless as an infant and should, therefore, be included under the common law rule which would entitle him to support by his parents. Such a view was expressed by the court in *Crain v. Mallone*.²⁶

The duty and obligation of a parent to care for his offspring does not necessarily terminate when the child arrives at age or becomes an adult; nor is it limited to infants and children of tender years. An adult child may from accident or disease be as helpless and incapable of making his support as an infant, and we see no difference in principle between the duty imposed upon the parent to support the infant and the obligation to care for the adult, who is equally, if not more, dependent upon the parent. In either case the natural as well as the legal obligation is the same, if the parent is financially able to furnish the necessary assistance.²⁷

Some jurisdictions, in imposing liability on a parent for an incapacitated adult child, make a qualification that the child for whom support is sought after majority, must have been incapacitated at the time of reaching majority.²⁸ Other courts require that the child have remained at the parent's home and, in addition, require that the child have remained as

²² *Ibid.*, at 35.

²³ *In re Glass' Estate*, 175 Kan. 246, 262 P.2d 934 (1953); *Cohen v. Cohen*, 6 N.J. Super. 26, 69 A.2d 752 (1949); *Zakrocki v. Zakrocki*, 115 Ind.App. 565, 60 N.E.2d 745 (1945); *Gaydos v. Domabyl*, 301 Pa. 523, 152 Atl.549 (1930); *Freestate v. Freestate*, 244 Ill.App. 166 (1927).

²⁴ 38 Wash.2d 390, 229 P.2d 333 (1951).

²⁵ *Ibid.*, at 334.

²⁶ 130 Ky. 125, 113 S.W. 67 (1908).

²⁷ *Ibid.*, at 68.

²⁸ *Crain v. Mallone*, 130 Ky. 125, 113 S.W. 67 (1908); *Mt. Pleasant v. Wilcox*, 2 Pa. Dist. 628 (1893).

a member of the family of the parent on whom the obligation is sought to be imposed.²⁹ These qualifications are not a precedent to statutory liabilities and are not required in the greatest number of cases decided on general principles.

CONCLUSION

In view of the many well settled decisions on the subject and the various statutes in effect in many states, it is clear that in the vast majority of jurisdictions the tendency is to impose upon the parent the duty to support an adult incapacitated child who cannot maintain himself. Such an expansion of liability is based either upon a construction of statutory law or a judicial expansion of common law.

²⁹ *Breuer v. Dowden*, 207 Ky. 12, 268 S.W. 541 (1925); *Blachley v. Laba*, 63 Iowa 22, 18 N.W. 658 (1884).

THE REQUIREMENT OF SCIENTER IN OBSCENITY STATUTES

INTRODUCTION

To the practitioner and law student, the state of mind of the accused at the time the activity in question occurred is a vital factor in determining criminal liability. In most instances determining the necessity, nature and existence of the *mens rea* is a perplexing problem in research, investigation and mental gymnastics. It is the purpose of this paper to investigate the mental element in statutes and ordinances pertaining to First Amendment rights; specifically, statutes and ordinances dealing with the control of distribution of obscene material.

Blackstone spoke of "vicious will" and a consequent unlawful act as constituting a crime.¹ The United States Supreme Court has said: "The existence of a *mens rea* is the rule of, rather than the exception to, the principles of Anglo-American jurisprudence."² Black's Law Dictionary succinctly defines *mens rea* as a guilty mind; a guilty or wrongful purpose; a criminal intent.³ Judge Learned Hand defined *mens rea* in *United States v. Crimmins*.⁴

Ordinarily one is not guilty of a crime unless he is aware of the existence of all those facts which make his conduct criminal. That awareness is all that is meant by the *mens rea*, the 'criminal intent,' necessary to guilt, as distinct from the additional specific intent required in certain instances . . . and even this general intent is not always necessary.⁵

¹ Blackstone's Commentaries, Bk. 4, p. 294 (1889).

² *Dennis v. United States*, 341 U.S. 494, 500 (1951).

³ Black's Law Dictionary 1178 (3rd ed., 1933).

⁴ 123 F.2d 271 (C.C.A. 2d, 1941).

⁵ *Ibid.*, at 272.