

course and will be published shortly in the forthcoming volume of Walgreen Lectures on "The War and the Law." In the course on military law as well as in the other courses, extensive use has been made of the comparative method for the purpose of elucidating the rules and institutions of present American law.

Recently comparative law has been used in the Army Specialist Training Program, Area and Language Studies, in which the holder of the chair took a part during the Summer Quarter of 1943.

For the academic year 1943-44 the present holder of the chair has accepted an invitation to act as visiting professor of law and political science at the University of Puerto Rico at Rio Piedras, Puerto Rico. The island of Puerto Rico constitutes one of the few regions where the two principal legal systems on the earth, viz., the Common Law and the Civil Law, have been mutually interpenetrating each other. Hence it constitutes a rare laboratory for comparative law research. The holder of the chair expects that his stay on the island will afford him a rare opportunity for observation.

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## FAMILY ALLOWANCES FOR THE DEPENDENTS OF SERVICEMEN

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Family allowances in addition to the regular pay of men in the armed forces have been provided for under the Servicemen's Dependents Allowance Act of 1942, which became a law June 23, 1942.<sup>1</sup> Payments under this act have been made since September 1, 1942.<sup>2</sup> Recently, on October 26, 1943, the President signed a law which provided a number of amendments to the original act.<sup>3</sup> These amendments became effective on

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<sup>1</sup> Public Law 625, 77th Cong., 2d sess. (56 Stat. 381; 37 U.S.C. 201).

<sup>2</sup> The original act provided for payments to be started not prior to November 1, 1942. A later amendment advanced the initial payment date to September 1, 1942. Public Law 705, 77th Cong., 2d sess., approved August 20, 1942.

<sup>3</sup> Public Law 174, 78th Cong., 1st sess. (S. 1279) was introduced on June 28, 1943. Hearings were held on the same day. The bill was reported on July 2 with amendments and passed the Senate July 8. See Senate Committee on Military Affairs, Report No. 383, Servicemen's Dependents Allowance Act Amendments, July 2, 1943. See also Senate Committee on Military Affairs, Hearings on Servicemen's Dependents Allowance Act Amendments, June 28, 1943.

The same bill with amendments was reported in the House on October 7. See House Committee on Military Affairs, Report No. 734, Allowances and Allotments for Dependents of Military Personnel, September 29 and 30, October 1 and 5, 1943.

The bill was considered and passed by the House by a unanimous vote of 389-0 on October 18, and the Senate concurred with the House amendments on October 19.

November 1, 1943, and were enacted after both houses of Congress had considered many bills which sought to broaden the eligibility conditions and increase the rates of the family allowances.

It appears to be appropriate at this time to analyze some of the principles that have to be considered in determining family allowance legislation which will meet the primary need of protecting the families of fighting men in time of war. At the same time an examination may be made of the original act in order to see how far it embodied these principles and how the recent amendments improve the system. In any analysis, attention must be directed to four major aspects of such legislation: (1) the classes of men in the armed forces to be included, (2) the categories of dependents directly affected to whom protection should be extended, (3) the size of the benefit allowance to be granted to the various dependents, and (4) the operating problems confronting the administrators of the law.

#### MEMBERS OF THE ARMED FORCES

In any discussion of a family allowance system a distinction is usually assumed between commissioned officers, warrant officers, and enlisted men. The term "enlisted man" includes any man who has been drafted (inducted) as well as anyone who has enlisted (volunteered). The term also includes noncommissioned but not warrant officers or commissioned officers. Enlisted men in both the Army and Navy are classified in seven salary grades with sub-classifications within grades. The first five enlisted grades in the Army include noncommissioned officers and the first four enlisted grades in the Navy include petty officers.

One of the troublesome problems of drafting legislation to provide family allowances for certain grades and not others is the probable effect on the man who is promoted from the highest grade in which allowances are granted into the lowest grade in which they are not granted. In this instance the higher the grade included in the allowance system the less will be the hardship caused by promotion. In some cases the change may act as a deterrent influence on the desire for promotion.

The Servicemen's Dependents Allowance Act of 1942, as originally passed, provided for the payment of family allowances to the dependents of enlisted men of the lowest four grades. In the Army, these grades are: private, private first class, technician fifth grade, corporal, technician fourth grade, and sergeant. Enlisted men of the first three grades who have dependents were entitled under existing law to receive government quarters or a rental allowance of \$37.50 per month in lieu thereof.

Under the amended law men in the first three grades are given the

option to choose whether they wish their dependents to receive the family allowances or the monetary allowance which is now paid if quarters are not furnished to them. This also takes care of cases where the quarters allowance was inadequate for large families. In addition, much of the administrative effort formerly made to stop the payment of the family allowances promptly upon promotion of a man from the fourth grade to the third grade is eliminated. An enlisted man's election is irrevocable during the period of entitlement to the family allowance. This right of election, however, exists only in favor of those enlisted men in the first three pay grades who are receiving a monetary allowance in lieu of quarters for dependents, or who are entitled thereto and have filed application therefor at the date of approval of the amendments. It does not exist in regard to men promoted after approval of the amendments. In the case of any enlisted man whose dependents are receiving family allowances and occupying public quarters, a deduction from or charge to his pay is made at the rate of 90 cents per day.

Since September 1, 1943, when the Women's Army Corps became an integral part of the Army, the benefits of the original act were extended to eligible enlisted women. Under the amendments it became desirable to make the rights of these members of the armed forces as nearly the same as those provided for male personnel as was practicable. Some distinctions were necessary in view of the primary obligation of a father to support his child and wife not extending to the mother as to her child and husband.

#### CONCEPT OF DEPENDENCY

Dependency is usually described in terms of personal relationship between the soldier and the dependent, age or physical capacity of dependent, and degree of support provided by the soldier for the dependent. These are combined in statutory clauses in accordance with legislative opinion on their relative importance as yardsticks of dependency. In framing dependency clauses, the term "dependent" may be defined with precision or used as a general concept to be limited subsequently by administrative regulation. Normally, it is the practice to attempt to diminish the area of administrative discretion by setting forth in some detail the relationships, legal, personal, and financial which constitute dependency.

Of paramount importance among the factors contributing to dependency is the personal relationship between the soldier and the dependent. Mention is usually made of the particular relatives and other individuals who are eligible for the benefits. The terms descriptive of personal relationships may vary in explicitness, ranging from the use of a general word

like "child" to a listing of all kinds of children, i.e., stepchildren, half-brothers, adopted children, illegitimate children.

In the original Act the eligible dependents to whom a family allowance was payable were divided into two classes. Class A dependents included the wife, the child, and the former (divorced) wife of the enlisted man. Class B dependents included any person who was the parent, grandchild, brother, or sister of the enlisted man. The amendments have eliminated the category of "grandchild." From this it appears that the terms were broadly phrased. However, in a separate section of the act each term was clarified and defined. Whether the enumeration of very detailed relationships serves to provide broad coverage in application is a moot point. It may conceivably result in an interpretation that all categories not definitely specified are clearly excluded.

Dependency clauses may set forth not only the degrees of personal relationship between the soldier and the dependent but also specific requirements as to age and mental or physical condition of the dependent. Age limitations usually characterize child dependency. On the other hand, grants may be made on behalf of children who satisfy alternative physical disability conditions. Under the initial act, the terms "child," "grandchild," "brother," and "sister" were limited to unmarried persons either (1) under eighteen years of age, or (2) of any age, if incapable of self-support by reason of mental or physical defect.

The fundamental test of dependency is a financial one. Use of the term "dependency" implies the existence of some financial relationship. It would therefore appear to be necessary for the beneficiary to be made to prove that he or she relies for at least the major part of his or her maintenance upon the soldier. Variations in the required degree of dependency are usually expressed in broad terms. The requirement might be that the soldier must provide for the "complete support" of the dependent. Or it might be necessary for the dependent to derive "chief support" from the soldier. The phrase "wholly or mainly maintained by the soldier" could also be employed to denote dependency.

Class A relatives do not need to be dependent upon the soldier in order to be eligible for a family allowance. No change has been made by the amendments in this respect. Even though an enlisted man's class A relatives are gainfully employed, financially independent, maintained in an institution at public expense or have executed waivers of dependency upon the enlisted man, these factors have no bearing on their eligibility for family allowance. On the other hand, class B dependents must be found to be dependent upon the soldier for a "substantial portion" of their

support in order to be eligible. It therefore devolves upon the administrators of the law to determine just how much support constitutes a "substantial portion" in order to entitle class B dependents to receive an allowance.

The amendments provide that there are to be three classes of dependents, class A, class B, and class B-1, instead of the former two classes. A new class B-1 is created consisting of parents, brothers, and sisters dependent upon the enlisted man for their "chief support" and not merely for a "substantial portion" of their support. The persons in the two classes, class B and class B-1, are the same. The difference between the two classes is in the degree of dependency. "Substantial portion of his support" covers cases in which this criterion of chief support is not reached and yet the degree is "substantial." The new class B-1 makes available a larger family allowance for parents, brothers, and sisters.

It should be noted that the family allowances payable to class A relatives are payable upon the application of the enlisted man, the dependents, or any other person on behalf of the dependents. The family allowance payable to class B or class B-1 dependents are payable only upon the application of the enlisted man or upon the application of the dependents with the consent of the enlisted man. Family allowances payable to class B or class B-1 dependents may be terminated at any time by the enlisted man.

The argument usually advanced against including parents in the primary allowance group without a means test is that many parents are not dependent, may not be in need of assistance and will in actual practice add their allowances to the man's own pay. The committees of Congress recently concluded that by far the greatest number of cases in which hardship has arisen among dependents as a result of alleged inadequacy of the rates of allowances prescribed in the original act arose in regard to parents who are dependent upon a soldier for their "chief support." Also, the committees believed that in the majority of cases in which family allowances were being paid to class B dependents (under the original law), such allowances were too generous.

Because the primary obligation of a father to support his child and wife does not extend to a mother as to her child and husband, specific provision had to be made for class A dependents of enlisted women. Accordingly, the "chief support" test is applied to such class A dependents of female enlisted personnel. If such a dependent is dependent upon the enlisted woman for his or her chief support, the payment of the allowance is mandatory. In such a case, the dependent husband will be entitled to

the same amount as is provided for a wife. The rights of class B and class B-1 dependents of enlisted women are identical with those of enlisted men.

#### AMOUNT OF ALLOWANCES

Three practical problems occur in establishing the size of a family allowance. Decisions must be reached (1) as to the specific sum to be granted on behalf of each dependent or type of dependent, (2) as to the amount to be deducted from the soldier's pay and the amount to be contributed by the Government, and (3) as to the advisability of setting a maximum contribution by the Government where there are a large number of dependents.

The benefit on behalf of a given dependent may vary with the type of dependent or with the number of dependents relying upon the soldier for support. Several methods of paying allowances are available: (1) a flat sum may be granted to the dependents of each soldier regardless of the number of dependents which a soldier has who are eligible; (2) a uniform payment may be given on behalf of each dependent with or without a maximum contribution by the Government; (3) variations may be established in the rates of family allowances. Each of these methods contemplates a compensation as distinguished from an assistance program where no determination is made of the dependent's need for the compensation.

The original act set forth the amount of the government contribution to class A and to class B dependents. The amendments set forth not only a new rate structure, but introduce certain changes in the rate structure. Instead of setting forth the government contribution to the various classes of dependents, as does the original act, the total family allowance payable to such dependents is stated. This has definite advantages: (1) the exact amount which any dependent will receive is easily ascertainable; (2) such amount will not be reduced by the addition of other dependents. While under the original law, the government contribution to class A dependents was fixed, the man's contribution might be divided between them. Under the new rate structure, the government contribution is the difference between the man's contribution and the family allowance.

Since no general increase in the rate structure is made by the amendments, the enlisted man's contribution is not increased. This remains at \$22 if he has class A or class B or class B-1 dependents, \$27 if he has class A and class B or class B-1 dependents. It is to be noted that the enlisted man may, and in many cases where he has major family re-

sponsibilities does, augment the family allowance by voluntary remittances in the form of an allotment of his pay.<sup>4</sup>

The amendments do not make any change in the family allowance provided for a wife without a child; the original provision of \$50 per month continues. In many instances, however, the wife will receive more than under the original act because she will receive \$50 irrespective of allowances to other dependents. Under the original act the allowance to the wife, in some cases, was less than \$50, because there were other class A dependents among whom the man's contribution had to be apportioned. Under the new rate schedule the wife receives \$50 in all cases. The family

<sup>4</sup> A comparison of the old and the new rates for family allowances is as follows:

Dependent	Old	New
Wife.....	\$50	\$50
Wife and 1 child.....	62	80
Wife and 2 children.....	72	100
Additional children (each).....	10	20
Child but no wife.....	42	42
Additional children but no wife (each).....	10	20
Wife divorced.....	42	42
Wife divorced and 1 child.....	62	72
Additional children wife divorced (each).....	10	20
1 parent (dependent for chief support):		
Where there is no class A dependent.....	37	50
Where there is class A dependent.....	20	50
1 parent (dependent for substantial support):		
Where there is no class A dependent.....	37	37
Where there is class A dependent.....	20	37
2 parents (dependent for chief support):		
Where there is no class A dependent.....	47	68
Where there is class A dependent.....	30	68
2 parents (dependent for substantial support):		
Where there is no class A dependent.....	47	37
Where there is class A dependent.....	30	37
1 parent and 1 brother or sister (dependent for chief support):		
Where there is no class A dependent.....	42	68
Where there is class A dependent.....	25	68
1 parent and 1 brother and sister (dependent for substantial support):		
Where there is no class A dependent.....	42	37
Where there is class A dependent.....	25	37
Additional brothers or sisters (each):		
Dependent for chief support.....	5	11
Dependent for substantial support.....	5	0
1 brother or sister but no parent (dependent for chief support):		
Where there is no class A dependent.....	27	42
Where there is class A dependent.....	10	42
1 brother or sister but no parent (dependent for substantial support):		
Where there is no class A dependent.....	27	37
Where there is class A dependent.....	10	37
Additional brothers or sisters (each):		
Dependent for chief support.....	5	11
Dependent for substantial support.....	5	0
Limitation on allowance to a family consisting of parents, brothers or sisters (dependent for chief support):		
Where there is no class A dependent.....	72	None
Where there is class A dependent.....	55	None
Limitation on allowance to family consisting of parents, brothers, or sisters (dependent for substantial support):		
Where there is no class A dependent.....	72	37
Where there is class A dependent.....	55	37

It will be noted that in the case of the former (divorced) wife the allowance in no case is to exceed the amount of the alimony awarded. This remains the same as under the original law.

The amendments provide that allowances can be claimed for either class B-1 or class B dependents but may not be paid to both groups.

allowance for a wife with one child is increased from \$62 to \$80; for a wife with two children, from \$72 to \$100; for a wife with three children, from \$82 to \$120. An additional \$20 is provided for each additional child.

Allowances for all children, however, are not increased. The original law provided that a child where there was no wife should receive \$42 per month (\$20 from the Government and \$22 from the man), that where there were two children but no wife the allowance should be \$52 (\$30 from the Government and \$22 from the man); and \$10 additional from the Government for each additional child. No change has been made by the amendments in the allowance provided for a child where there is no wife. However, the allowance for the second child in this situation has been increased from \$10 to \$20. Under the original law a former (divorced) wife received \$42 per month (\$20 from the Government and \$22 from the man) provided there existed in her favor an effective alimony decree giving her \$42 per month or more. There has been no change made in this respect.

Under the original law a dependent mother or father received \$37 per month (\$22 from the son and \$15 from the Government) if the son had no class A dependents. If the son had two parents, the Government contribution was \$25. For each brother, sister, or grandchild, the Government added \$5. But in no case was the government contribution for class B dependents to exceed \$50.

The amendments provide that class B dependents are to receive \$37 as a total irrespective of number and irrespective of whether there are class A dependents. On the other hand, provision is made to pay Class B-1 dependents allowances relatively adequate to those paid to class A dependents. The allowance to class B-1 dependents will be the same whether or not there are class A dependents. The rates for a class B-1 dependent are based on the premise that a mother dependent upon a son for chief support should receive the same amount as a wife. Accordingly, one parent in class B-1 will receive \$50 per month. Two parents are to receive \$68. A parent with a brother or sister is to receive \$68 with an additional \$11 for each brother and sister. A brother or sister, but no parent, dependent for chief support, will receive \$42 per month, with an additional \$11 for each additional brother or sister.

Another new feature introduced by the amendments deserving attention is the provision for an initial family allowance to be paid as soon as practicable after a man enters upon active service in a pay status. The full amount of this initial family allowance will be paid by the Government, and no deduction in or charge to the pay of the enlisted man will be made for such payment. The initial allowance is to be paid only to

class A dependents (excluding a former [divorced] wife) and to class B-1 dependents; in other words, only to those who are likely to be in immediate need of benefits.

#### ADMINISTRATION OF FAMILY ALLOWANCES

Some indication of the specific operating problems involved in the administration of family allowances may be gleaned from the actual experience of the War Department Office of Dependency Benefits, an activity of the Army Service Forces in Newark, N.J. The ODB handles the family allowance system for men in the Army. It occupies a new twenty-two story building in the heart of Newark, New Jersey, which permits administrative efficiency of a high order. The organization is now composed of approximately 10,000 individuals and is directed by Brigadier General Harold N. Gilbert. The scope of the present organization was planned on a scale which has accomplished a tremendous task in a relatively short space of time. The figures speak for themselves. Thus out of almost four million family allowance applications so far received, over three million have already been approved and are being paid. As of the end of September, 1943, a total of 21,779,952 checks had been issued as family allowance payments. These checks represented an expenditure of \$1,200,891,242.29. This sum is made up of two items—the soldiers' contribution in the amount of \$527,664,235.34 and the Government's contribution in the amount of \$673,227,006.95. It should be noted that the Government's contribution has averaged about 55 per cent of the total payment. In less than a year and one half of operation over forty million pieces of mail, exclusive of checks, have been handled.

The family allowances are paid only after the filing of an application on an official form. Ordinarily, the application is filed by the serviceman, but this may be done by a dependent or someone acting on behalf of the dependent. The family allowance applications are still pouring into the ODB at the rate of over 7,000 per day. The determination of all facts, including the fact of dependency, is made by the director of the Office of Dependency Benefits, and such determination is final and conclusive for all purposes and is not subject to review in any court or by any accounting officer of the Government. The only exception is that the Secretary of War may at any time, on the basis of new evidence submitted or for other good cause, reconsider or modify any such determination and may waive a recovery of money erroneously paid as benefits under the act whenever he finds that such recovery would be against equity and good conscience.

All facts of relationship and dependency claimed on a family allowance application must be supported by the submission of appropriate documentary evidence with the application. In cases involving court decrees or written agreements, certified copies of such court decrees or written agreements are, in general, the only acceptable evidence. In all other cases, certified copies of public or church records are preferable to establish such facts as birth, marriage, death, etc. Where such documents are not obtainable, the best available evidence will be submitted, as, for example, affidavits from persons familiar with the facts. All documentary evidence submitted becomes a part of the records of the War Department, and no assurance may be given that it will be returned. Duly certified copies may therefore be submitted instead of the originals. The term "duly certified copy" contemplates primarily a legally certified copy of the record, the certificate being that of the civil official in whose custody the record is kept. The Office of Dependency Benefits will also accept photostatic copies of documentary evidence provided the original document shows no erasures, alterations, or irregularities and appears in all respects to be genuine. Much time could be saved and payments could reach the beneficiaries much quicker if more of the documentary evidence were properly submitted in the first instance. In all too many cases, it is necessary to communicate with the applicant or one of the beneficiaries for additional or correct documentary proof before an allowance may be authorized. The Office of Dependency Benefits has made arrangements with many state and local official agencies whereby documentary evidence is furnished without cost if it is to be used in connection with a family allowance application.

Although the law cites a number of categories of eligible dependents, the terms used are not sufficiently definite to eliminate questions over the inclusiveness of phrases such as "adopted child." A child has not been "adopted" under the law, for example, unless the claimant has permanently assumed the rights and duties of parenthood with respect to the child. Maintenance of the child, while important as evidence of the claimant's status as a parent, is not adequate proof of adoption. Likewise, many persons seem to think that the payments are due them simply because they are the father or mother of a soldier. In one instance, the widow of a Spanish-American War veteran applied for her family allowance based on her deceased husband's service.

There are many thousands of individuals who do in fact meet the requirements of the law and who normally would receive the benefits provided, but their payments are being delayed because of their failure

to understand exactly what proof must be submitted. A large number of cases have occurred where subsequent changes in the status of the soldier's eligible relatives or dependents, including persons to be added to or removed from the list of beneficiaries, have not been properly reported. For example, an application for a family allowance has been made for a wife, some time later a child is born for whom a family allowance is also desired. The change should be reported on the official change of status form and documentary evidence should be submitted in support of the change. The evidence required is the same as that required in making similar claims on original applications.

The original legislation for family allowances for the dependents of men in the armed forces was enacted soon after the need for the same became apparent. It is to be recognized that for some the allowances provided for even under the liberal amendments will be insufficient to meet needs because the allowances are uniform for dependents of specified types and do not take into account wide differences in living costs and family circumstances. On the other hand, there are many who do not need any family allowance at all because of adequate income from other sources. It is difficult if not impossible to do exact justice to all in such a tremendous emergency undertaking. The amendments certainly do serve to achieve to some further degree the utilitarian principle of the greatest good for the greatest number. The system now in operation under the Servicemen's Dependents Allowance Act of 1942, as amended, is certainly the most liberal wartime provision ever made by any government in the history of the world for its fighting forces,<sup>5</sup> with a resultant vast benefit to their welfare and morale.

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### RECENT DEVELOPMENTS IN THE "VESTED RIGHTS" THEORY OF CONTRACTS

Advocated by Beale, the Restatement, and the Hornbook as just and logical,<sup>1</sup> the principle that a contract should be, and must be, governed by the "law" of the state where it was "made" (i.e., "where the last act necessary to make it a binding agreement takes place"<sup>2</sup>) has long been

<sup>5</sup> For a survey of the allowance systems in other countries in 1940, see Marianne Sakmann, *Foreign Provisions for the Dependents of Mobilized Men*, *Social Security Bulletin*, Vol. 4, No. 4, April, 1941.

<sup>1</sup> 2 Beale, *A Treatise on the Conflict of Laws* 1091 (1935), hereafter cited as Beale; Rest., *Conflict of Laws* § 311 (1934), hereafter cited as Rest.; Goodrich, *Handbook of the Conflict of Laws* 274 (1938), hereafter cited as Goodrich.

<sup>2</sup> Goodrich, p. 262.