SURVEY OF IOWA LAW

IOWA DEATH DAMAGES

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With the passage of the amendment to Section 613.11 of the Code of Iowa, 1962, the 61st General Assembly dramatically affected the value of death cases in Iowa. This amendment, which is now embodied in Section 613.15[1] of the Code of Iowa, 1971, has given Iowa perhaps the most liberal death damage statute in the United States.[2] A prior article[3] discussed the history of the Iowa law of death damages up to and including the amendment to Section 613.11. The purpose of this survey of death damages is to provide an overview of the cases decided since this amendment, including some discussion of the recent enlargment of the measure of recovery in the case of the death of a minor.

I. Measure of Recovery Under Section 613.15

The first case to be decided under Section 613.15 was *Schmitt v. Jenkins Truck Lines, Inc.*[4] In *Schmitt*, actions were brought by the administrators

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1 Iowa Code § 613.15 (1971) provides:

> In any action for damages because of the wrongful or negligent injury or death of a woman, there shall be no disabilities or restrictions, and recovery may be had on account thereof in the same manner as in cases of damage because of the wrongful or negligent injury or death of a man. In addition she, or her administrator for her estate, may recover for physician's services, nursing and hospital expense, *and in the case of both women and men, such person, or the appropriate administrator, may recover the value of services and support as spouse or parents or both*, as the case may be, in such sum as the jury deems proper; provided, however, recovery for these elements of damage may not be had by the spouse and children, as such, of any person who, or whose administrator, is entitled to recover the same. (Emphasis supplied.)

Prior to the amendment, Iowa Code §613.11 (1962) provided:

> In any action for damages because of the wrongful or negligent injury or death of a woman, there shall be no disabilities or restrictions, and recovery may be had on account thereof in the same manner as in cases of damage because of the wrongful or negligent injury or death of a man. *In addition she, or her administrator for her estate, may recover* for physician's services, nursing and hospital expense, and *the value of her services as wife, or mother, or both, as the case may be*, in such sum as the jury deems proper; provided, however, recovery for these elements of damage may not be had by the husband, as such, of any woman who, or whose administrator, is entitled to recover same. (Emphasis supplied.)

2 Druker, *The Question of Damages Resulting From Recent Legislative Changes*, 15 Drake L. Rev. 107, 109 (1966).

3 *Id.*

4 260 Iowa 556, 149 N.W.2d 789 (1967).

of the estates of Dorothy T. and Theodore G. Schmitt, husband and wife, who died simultaneously in a collision between their automobile and a tractor-trailer unit on January 15, 1965—prior to the effective date of Section 613.15. The Schmitts were survived by six minor children. Prior to trial, one of the defendants filed an application for separate adjudication of law points which raised the questions of whether the amendment operated retrospectively and, if so, whether the plaintiffs could introduce evidence as to the loss of services and support as between the spouses where neither had survived the accident. The trial court held that the amendment applied prospectively only and that evidence of loss of support and services as between the spouses could not be introduced.

The supreme court reversed as to the first issue on the ground that the amendment was remedial in nature and therefore applied both retrospectively and prospectively.[5] As to the second issue, however, the supreme court agreed with the trial court in holding that "there can be no recovery on behalf of or for a nonexistent person."[6] The case was then remanded for trial.

Upon remand, the jury returned a verdict of $264,162.74 for the estate of the wife, and a verdict of $302,577.94 for the estate of the husband. On appeal, the supreme court, although equally divided on the issue of damages, affirmed.[7] In order to understand this conflict within the court concerning the issue of whether the evidence supported verdicts of this size, it is necessary to review the elements of recovery permitted under Section 613.15 in the context of the factual situation presented to the court.

The court summarized a portion of the lay testimony as follows:

> Dorothy Schmitt, 38 and in general good health at death, had a life expectancy of 33.97 years. Her husband, 44, a high school graduate who had further training in business college, night school and correspondence courses, had engaged in electrical engineering work before moving to Webster City. He was in general good health and had a life expectancy of 28.67. They are survived by six minor children ranging in age from 5 - 19.
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> The Schmitt family moved to Webster City in 1962. As superintendent of public utilities there, Mr. Schmitt was responsible for management and operation of its electrical power plant, including its distribution or line department, water plant and distribution system, sewage disposal plant and its system. He had served as acting city manager for a few months at a salary of $10,000 a year. As superintendent for the balance of 1964 to the date of death he was paid on the basis of $9,620 per year.[8]

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[5] *Id.* at 793.

[6] *Id.*

[7] Schmitt v. Jenkins Truck Lines, Inc., 170 N.W.2d 632 (Iowa 1969). Pursuant to *Iowa Code* § 684.10 (1971) when the court is equally divided on an issue, the decision of the lower court is affirmed by operation of law.

[8] Schmitt v. Jenkins Truck Lines, Inc., 170 N.W.2d 632, 652-53 (Iowa 1969).

Several friends and acquaintances of the Schmitts testified as to their personal attributes. Mrs. Schmitt was characterized as a person who was an unusually good mother, an accomplished seamstress who made most of her own and her children's clothing, a skilled homemaker and an active participant in community affairs. Mr. Schmitt was characterized as an industrious worker with good personal habits who was devoted to his family.[9] Since these attributes are not particularly atypical of most family units, the significance of this case arises from the amount of damages which was awarded by the jury.

Under Section 613.15, the measure of damages recoverable by the estate is: (1) the present worth or value of the estate which the decedent would reasonably be expected to have saved and accumulated between the time of his death and the end of his natural life, had he lived; (2) interest on the reasonable funeral expenses for the length of time such expenses were prematurely incurred, not to exceed either the reasonable cost of the funeral for a person of decedent's social and financial standing or the amount claimed therefor; (3) recovery of damages sustained by the wrongfully injured person from the time of his injury until the date of his death, including medical, hospital and nursing bills, pain and suffering, and loss of income or wages; and (4) the present worth of the value of the services and support which the decedent presumably would have contributed to his spouse and children, or both, but for the untimely death.[10]

In the *Schmitt* case the decedents were killed instantaneously and therefore the elements of damage set out in item (3) above would not be applicable. The evidence in the case would not support a significant verdict with respect to the present worth or value of the estates which the decedents would reasonably have been expected to have saved and accumulated during their natural lives had they lived. The amount of the verdict which would be attributable to the interest on the reasonable funeral expenses would be inconsequential, and therefore the largest part of the verdict represented the present worth of the value of the services and support which the parents would have contributed to the six minor children but for their untimely death.[11]

With the facts of the *Schmitt* case in mind, together with the size of the verdict, one must consider what factors should be considered by the jury in making a determination of the present worth value of loss of services and support. Neither services nor support include grief, mental anguish or suffering of survivors.[12] Loss of support refers only to a pecuniary loss and pursuant to the instructions in the *Schmitt* case, the factors to be considered would be prob-

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9 *Id.* at 653-54.
10 *Id.* at 661.
11 *Id.* at 661-62.
12 Cerny v. Secor, 211 Iowa 1232, 234 N.W. 193 (1931). *See also* DeMoss v. Walker, 242 Iowa 911, 915, 48 N.W.2d 811, 814 (1951), decided under *Iowa Code* § 613.11, where the court states: "Neither the next of kin nor the representative of the estate can recover from the defendant on the basis of sentiment or solace for grief or for loss of society."

able future earnings based upon the decedent's past earnings, occupation, experience, capabilities, health, ability, and disposition to work during the decedent's life expectancy reduced to its present worth.[13] These factors must be considered in the context of the loss to the survivors of the family unit. Under the facts in the *Schmitt* case, loss of support should be considered in light of the expenditures which the decedents would have incurred for their own personal needs, the amount which they would have expended on each other, since neither survived, and such miscellaneous expenditures as charitable contributions.[14] Although the issue was not raised in the trial court in the *Schmitt* case, the question of whether probable future earnings should be reduced by the amount of probable state and federal taxes was later considered by the supreme court in the case of *Adams v. Deur*.[15] In *Adams* the court held that tax consequences would be a proper subject of cross-examination and argument material to the issue of loss of support. The period of time during which the children of the decedent may properly recover for loss of support does not necessarily terminate upon their reaching majority, but is a fact question for the jury to determine.[16]

Services of a parent to his child include care, counsel, advice and education.[17] Services of a spouse include performing household tasks and making decisions.[18] Since no tax consequences are ordinarily associated with the services of a parent to a child or one spouse to another, the effect of taxes upon the value of services would not be admissible.[19] As with support, the value of loss of services does not necessarily terminate upon the majority of the children.[20] Furthermore, the value of services must be reduced to its present worth.[21]

Considering the relevant factors in loss of services and support in the context of the *Schmitt* case, the question of whether or not the evidence supported the size of the verdicts still remains. The dissenters in *Schmitt* considered the verdicts unrealistic and unsupported by the evidence.[22] In particular, issue

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[13] 170 N.W.2d at 654.
[14] 170 N.W.2d at 658; Adams v. Deur, 173 N.W.2d 100 (Iowa 1969).
[15] 173 N.W.2d 100 (Iowa 1969).
[16] Schmitt v. Jenkins Truck Lines, Inc., 170 N.W.2d 632, 664-65 (Iowa 1969).
[17] *Id.*
[18] Adams v. Deur, 173 N.W.2d 100, 114-15 (Iowa 1969). This would not include loss of consortium, but, if the decedent survived for a sufficient period of time, the spouse would have an independent cause of action for loss of consortium. The period of recovery would end with the death of the decedent. *See* Lampe v. Lagomarcino-Grupe Co., 251 Iowa 204, 100 N.W.2d 1 (1959).
[19] Adams v. Deur, 173 N.W.2d 100, 106 (Iowa 1969).
[20] Schmitt v. Jenkins Truck Lines, Inc., 170 N.W.2d 632, 664-65 (Iowa 1969). *But see* DeMoss v. Walker, 242 Iowa 911, 48 N.W.2d 811 (1951) (the relationship of a child to the parent was held insufficient, standing alone, to justify an award for loss of services).
[21] Adams v. Deur, 173 N.W.2d 100, 106 (Iowa 1969).
[22] 170 N.W.2d at 666. Note, as pointed out by the dissent, that if the amount of the verdict, or $566,000, was invested at an annual interest rate of five percent, the annual income from this investment would exceed $28,000 per year without depletion of the principal.

was taken with the testimony of two expert witnesses.[23] One expert witness was a mother of four children and a teacher with a Master's degree, presumably in the field of home economics. She testified concerning the value of Mrs. Schmitt's services as a mother and housekeeper which she estimated at $300 per week.[24] The distinction between loss of services and support is not always clear. Services such as sewing and canning may be evidence of support. In *Schmitt*, despite the fact that Mrs. Schmitt had not been gainfully employed since the marriage and had no future plans to do so, the court held that loss of support could be properly inferred by the jury because if the decedent

> had offered her capabilities as a seamstress and cook for sale on the market, some income would have resulted. Instead of having this income to contribute toward the financial support of her family the jury could properly find her talents made it unnecessary to expend larger amounts for clothes and food. The savings thus effected made cash available for other family needs and constituted financial support that existed at Dorothy's death which the children might reasonably suppose to continue in the future, in view of her character, habits, occupations and prospects in life.[25]

Whether viewed as services or support, the fact remains that a verdict ten times greater than any previous award to the estate of a deceased mother was allowed where there was no husband surviving.[26] The dissenters questioned whether the jury actually reduced the value of services to its present value, or considered that the services of a mother would decrease as the children matured.[27] A more fundamental issue raised by the dissent is whether the services of a mother can "be weighed in the scales of the money changer"[28] and thus properly be the subject of expert testimony.[29]

A professor of finance at the University of Iowa, with a Bachelor's degree in economics, testified to the present worth value of the loss of support to the family resulting from the death of Mr. Schmitt. The witness first projected Mr. Schmitt's income, considering the decedent's prior income, salary increases and inflation and then reduced this amount by projecting the personal expenditures of the decedent. The dissent did not quarrel with the use of expert

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[23] *Id.* at 666-68.
[24] *Id.* at 656.
[25] *Id.* at 655.
[26] Henneman v. McCalla, 260 Iowa 60, 148 N.W.2d 447 (1967) (The decedent was married and a mother of four children with one aged ten living at home. She was employed, earning $130.00 per month as a nurse's aide, helped her husband with the farm work and was a good mother and skilled homemaker. The testimony as to value of services in this case, however, came from housewives, mothers and one husband-father, and the jury made its determination without the benefit of expert testimony).
[27] 170 N.W.2d at 667. Apparently the expert evaluated Mrs. Schmitt's services as being worth $15,600.00 per year which, if extended over the period of minority of the youngest child, would total less than $250,000.00 or less than the verdict of $264,162.74, even without a reduction to its present worth.
[28] Bridenstine v. Iowa Electric Ry., 181 Iowa 1124, 1134, 165 N.W. 435, 439 (1917).
[29] 170 N.W.2d at 666-67.

testimony to project income and personal expenditures to arrive at an estimate of the loss of support, but questioned the foundational basis for the projected salary increases and personal expenditures as well as the failure of the witness to consider the impact of federal and state income taxes.[30]

A further example of the use of this type of testimony is pointed out in *Adams v. Deur*,[31] where the plaintiffs utilized the testimony of a professor of family sociology in proving the pecuniary loss to the estate, the loss of support and the loss of services. The same justices who dissented in the *Schmitt* case dissented in *Adams*, primarily on the ground that an expert witness should not be allowed to testify as to the dollar value of services.[32] The court was particularly critical of the attempt of the expert to assign exact dollar values to factors so intangible as those illustrated in the following excerpt from the record:

> "Q. Now, Doctor, * * *, further assume that such a man as we are talking about completed ten years of school, and in the education and care and training of his children did the following with one or more of his children: That he taught them how to drive a car and instructed on how to operate a car safely and how to perform minor maintenance and repair on a car; that he participated in sports activities such as softball, hunting, fishing, rock hunting, playing cards and games, and taught them how to safely carry and use a a gun and how to properly use fishing tackle and taught the rules of safe and legal hunting and proper fishing; and further assume that he taught them how to play games and to play cards, and that by example taught the value of a good sense of humor; further assume that he helped the children with their school work and with a chemistry set and with a star telescope, and if he found he did not understand the problem that the child had, that he would take it upon himself to first solve the problem or learn the subject before he would further attempt to help the child, and that he would consult with the children about their report cards and the grades they had obtained; assume that he attended church with his family and saw that they attended Sunday School, and that he instructed them in good moral conduct; assume that he helped with Cub Scout activities and instructed on Scout achievement tests; assume that he was able to prepare food for the family and that when necessary at home and on camping trips, he did so, and instructed the family on the proper and efficient camping techniques and methods; and assume that he

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[30] One should note, however, that the objection to the hypothetical question made at trial was not specific in nature. *See* Deaver v. Armstrong Rubber Co., 170 N.W.2d 455 (Iowa 1969), which stresses the need for specific foundational objections to hypothetical questions. For an excellent analysis of the use of and methods to refute the testimony of an economist, see THE DEFENSE RESEARCH INSTITUTE, INC., ECONOMISTS' TESTIMONY (1968) and THE DEFENSE RESEARCH INSTITUTE, INC., THE ECONOMIC EXPERT IN LITIGATION (1971). As to the admissibility of the testimony of an actuary, *see* Annot., 79 A.L.R.2d 259 (1961). Many plaintiffs' lawyers rely solely upon an experienced investor and an actuary, who testify solely on the issue of loss of support and then rely on argument to assert that loss of services, though intangible, is of greater value to the survivors.

[31] 173 N.W.2d 100 (Iowa 1969).

[32] *Id.* at 114.

> was a safety conscious person and a good workman and that he imparted such a knowledge to other members of his family."[33]

Based upon this hypothetical question, the expert witness stated that the lifetime value of these services would be $13,120.40, with a discounted or present worth value of $11,414.42.[34]

In addition to the above hypothetical question, which was directed to the value of Mr. Schmitt's services as a father, the expert witness testified to the value of Mr. Schmitt's services as a handyman around the home. These services ranged from such ordinary tasks as painting, laying floor tile and linoleum, repairing small appliances, and maintaining the family car, to major renovations of the home, such as new plumbing and wiring. The expert witness testified that the value of these services would be $69,805.18, with a discounted or present worth value of $35,981.34.[35]

The sociologist then made an evaluation of the value of Mr. Schmitt's services as a decision-maker, based upon the following hypothetical question:

> "Q. * * *Let's further assume that such a man made or helped make decisions, choices, and selections that had an impact on and affected the welfare of the family and/or family members such as helping to select the family home, deciding when it would be best for the family and for them to move to a different community, determining when it was economically or otherwise desirable to trade the family car, formulating or helping to formulate plans for the family vacations, choosing the proper and necessary camping equipment, consulting with his wife about the future of their children including deciding to help as much as he could toward a higher education for the children, partaking in the discipline decisions in regard to the children, and in many cases making those decisions, helping to decide on the purchase of mutual funds such as a method for savings for the family, and being available to make any other decisions necessary for the well being of the family. Doctor, on these assumptions, do you have an opinion as to the reasonable value in this county of such services of making or helping to make decisions as performed by such a man?"[36]

These services were valued at $14,155.60, with a discounted or present worth value of $7,573.30.[37]

The services performed by the decedent in *Adams* are not unlike those which Mr. Schmitt performed, or for that matter, as indicated previously, fathers generally. There is ample authority for allowing expert witnesses to testify to matters within their expertise if it will assist the jury in its deliberations.[38] The question, however, is whether the value of services is peculiarly

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33 *Id.*
34 *Id.* at 115.
35 *Id.*
36 *Id.*
37 *Id.*
38 Grismore v. Consolidated Products Co., 232 Iowa 328, 5 N.W.2d 646 (1942) and Brower v. Quick, 249 Iowa 569, 88 N.W.2d 120 (1958). *But see* Henneman v. McCalla,

within the knowledge of any expert, or whether this is a matter which the jurors themselves are equally qualified to evaluate without the aid of expert testimony. As the dissent so pointedly asked:

> What witness (expert or lay) can put a *money* value on the parent's services in teaching his son to shoot straight; or to play cards; or to drive safely; or to develop a sense of humor; or to teach them efficient camping techniques; or when to trade the family car; or when to move to a different community; or the advisability of making certain investments; or helping formulate plans for vacations?[39]

On the other hand, the majority of the court in *Adams,* as it did in *Schmitt,* stressed the point that the ultimate determination is left with the jury and if expert testimony of this nature will aid them in their determination it should be admissible.[40] Regardless of one's view with respect to testimony of this character, the fact is that it has had a decided effect upon the size of verdicts since the passage of Section 613.15.

Other cases have elaborated to some extent upon the holdings in the *Schmitt* case; however, many issues still remain. In *Robeson v. Dilts,*[41] a case decided prior to *Schmitt,* the court held that recovery for loss of services and support is not limited by the amount which the deceased parent or parents would have earned, stating that: "Certainly decedant's importance to his minor children far exceeded his monthly paycheck."[42]

In *Bailey v. Chicago, Burlington & Quincy Railroad,*[43] the court held that the only proper party to bring an action under Section 613.15 is the personal representative of the estate. The Iowa Death Damage Acts[44] are survival statutes which preserve to the legal representative the original cause of action, enlarging these elements to include damages for wrongful death.[45] Based on the survival aspect of the Iowa statutes, the court has held the doc-

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260 Iowa 60, 148 N.W.2d 447 (1967), which recognizes that the value of services is not necessarily within the field of expert testimony; and Bridenstine v. Iowa City Electric Ry., 181 Iowa 1124, 1134, 165 N.W. 435, 439 (1917), where the court states:

> The services of a competent wife or mother cannot be weighed in the scales of the money changer. And indeed it would seem almost frivolous to call witnesses to estimate their monetary value. The best that can be done is to prove the facts and circumstances of the woman's life and service in these capacities, her age, health, and strength, her expectancy of life, and all that may appear to enlighten the minds and aid the judgment of the jurors, and leave them to assess such recovery within the statutory limit as they find and believe to be just.

[39] 173 N.W.2d at 116.

[40] *Id.* at 110.

[41] 170 N.W.2d 408 (Iowa 1969).

[42] *Id.* at 416.

[43] 179 N.W.2d 560 (Iowa 1970).

[44] Iowa Code § 611.20 (1971) provides: "All causes of action shall survive and may be brought notwithstanding the death of the person entitled or liable to the same." Iowa Code § 611.22 (1971) provides: "Any action contemplated in Sections 611.20 . . . may be brought, or the court, on motion, may allow the action to be continued, by or against the legal representatives or successors in interest of the deceased. Such action shall be deemed a continuing one, and to have accrued to such representative or successor at the time it would have accrued to the deceased if he had survived."

[45] Cardamon v. Iowa Lutheran Hospital, 256 Iowa 506, 128 N.W.2d 226 (1964).

trine of interspousal immunity applicable thus precluding an action by the wife's estate against her husband.[46] While there is nothing surprising in these decisions, the wording of Section 613.15 raises certain questions.

As has been pointed out previously, where an action is brought under Section 613.15, the jury must arrive at its verdict by considering among other elements the loss of services and support "as spouse or parent or both."[47] Despite the wording of Section 613.15 and the methods of proof at trial which concentrate upon the loss to the children and/or spouse, the proceeds of any verdict go to and are distributed as personal property of the estate of the decedent.[48] The result is that whether the decedent dies testate or intestate it is unlikely that the proceeds of the verdict will be distributed in the proportion determined by the jury and, in the case of a decedent who dies testate, perhaps the children will receive nothing at all.[49]

A second issue which is as yet unresolved is whether or not evidence of marital discord or the remarriage of the spouse would be admissible with respect to the issue of loss of services and support. Since the cause of action under Section 613.15 is in the estate, such evidence may be deemed immaterial and thus inadmissible. In a case[50] decided prior to the allowance of services and support as an element of damage, the court so held. It is unlikely that the Iowa supreme court would adhere to this view today, since the primary method of proving loss of services and support involves a showing of a close family relationship. It would seem clear that evidence of marital discord should be admissible for the limited purpose of discounting the claim for loss of services. However, evidence as to the remarriage of the surviving spouse probably should be excluded because of the speculative nature of comparing the decedent's services with those of the new spouse and because the damages to the estate are generally considered to be determinable at the time of the decedent's death.[51]

II. Recovery for the Death of a Minor

The liberalizing of the Iowa statute with respect to the death of an adult

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[46] Wright v. Daniels, 164 N.W.2d 180 (Iowa 1969).

[47] Iowa Code § 613.15 (1971).

[48] Iowa Code § 633.336 (1971) provides: "When a wrongful act produces death, damages recovered therefor shall be disposed of as personal property belonging to the estate of the deceased . . . ."

[49] Perhaps a solution would be for the Legislature to create a new cause of action in favor of the spouse and children with respect to recovery for loss of services and support. Most states have such legislation, which is patterned after the Lord Campbell Act. *See* Druker, *The Question of Damages Resulting From Recent Legislative Changes*, 15 Drake L. Rev. 107 (1966).

[50] Evans v. Holsinger, 242 Iowa 990, 48 N.W.2d 250 (1951). *But see* Bailey v. Chicago, Burlington & Quincy R.R., 179 N.W.2d 560 (Iowa 1970), where the court held that evidence of communications between the surviving spouse and a lawyer she had retained to obtain a divorce from the decedent were inadmissible as privileged. The court did not discuss the *Evans* case.

[51] *See* Annot., 87 A.L.R.2d 252 (1963). *But see* Rafferty v. Buckman, 46 Iowa 195 (1877).

has now been followed by a major expansion of the measure of damages in the case of a minor child. In *Wardlow v. City of Keokuk*,[52] the Iowa supreme court held that in the case of the wrongful death of a minor, loss of society and companionship would be a proper element to be considered by the jury in a determination of the loss of services in a cause of action by the parent under Iowa Rule of Civil Procedure 8.[53]

Where a minor is the decedent, two causes of action are available. The first is an action by the estate to recover the present worth of the amount which the decedent would have reasonably been expected to have accumulated as a result of his efforts between the time of his majority and the end of his natural life,[54] together with the damages normally recovered by any estate in such an action.[55] This cause of action, however, would not be available in the case of an unborn child.[56] The second action is one by the parent for the loss of the services of the minor child who has not been emancipated.[57] The inclusion of loss of companionship and society as an element of loss of services by the court is a recognition of the inadequacy of the prior Iowa law which limited services to the present value of what the decedent would have earned during his minority, less the amount it would have cost his parents for his support and maintenance during this period.[58] This prior interpretation developed out of the context of a rural society in which a child was an economic asset rather than a liability, as would be more generally true today.[59]

Loss of society and companionship would be a proper element of damage only with respect to the cause of action by the parent under Iowa Rule of Civil Procedure 8 and would not be included as an element in an action by the estate.[60] In addition, there can be no recovery for the grief, mental anguish or suffering of the parents under either cause of action.[61]

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52 190 N.W.2d 439 (Iowa 1971).

53 IOWA R. CIV. P. 8 provides: "A father, or if he be dead, imprisoned or has deserted the family, then the mother, may sue for the expense and actual loss of services resulting from injury to or death of a minor child." This applies only to unemancipated minors. *See* Wardlow v. City of Keokuk, 190 N.W.2d 439, 442 (Iowa 1971).

54 IOWA CODE §§ 611.20, 611.22.

55 *See* Hurtig v. Bjork, 258 Iowa 155, 138 N.W.2d 62 (1965) (the court allowed interest on the reasonable funeral expense for the period of time it was prematurely incurred together with pain and suffering for the period of time the decedent survived the accident). The parent could recover medical expense and burial expense under IOWA R. CIV. P. 8. *See* Carnego v. Crescent Coal Co., 164 Iowa 552, 146 N.W. 38 (1914).

56 McKillip v. Zimmerman, 191 N.W.2d 706 (Iowa 1971).

57 IOWA R. CIV. P. 8.

58 Wardlow v. City of Keokuk, 190 N.W.2d 439, 444 (Iowa 1971). *See also* Carnego v. Crescent Coal Co., 164 Iowa 552, 146 N.W. 38 (1914).

59 *See* Wardlow v. City of Keokuk, 190 N.W.2d 439, 445-46 (Iowa 1971), relying on Minnesota and Washington cases. *See also* Hurtig v. Bjork, 258 Iowa 155, 170, 138 N.W.2d 62, 71 (1965). In his dissent Justice Becker states: "Nothing has been said about the concept that human life does have value over and above what can be estimated by foreseeing the accumulation capacity of the human being."

60 Wardlow v. City of Keokuk, 190 N.W.2d 439, 442 (Iowa 1971).

61 *Id.* at 448.

Conclusion

The Iowa Legislature, through the passage of Section 613.15, and the Iowa supreme court, through its new interpretation of Iowa Rule of Civil Procedure 8, have now made it possible for the survivors of the family unit to be more fairly and adequately compensated for their loss. While in the view of some, verdicts since the passage of Section 613.15 have been excessive, it is true that prior to this legislation verdicts were grossly inadequate. This was commonly the case where the decedent was a minor child.

If verdicts have been excessive, it is perhaps due to the fact that neither the courts, counsel nor juries have been able to adequately cope with expert testimony. While this writer agrees with the dissenters in *Schmitt* and *Adams* with respect to the use of an expert witness on the subject of loss of services, the fact remains that this testimony probably will be permitted together with testimony of a more concrete nature on loss of support. Therefore, defense counsel must be prepared to lessen the impact of this testimony by questioning its foundational basis and perhaps by calling expert witnesses of their own to contradict the plaintiff's expert. However, the latter tactic is considered by some to be objectionable either because it is tantamount to an admission of liability or because it tends to set a minimum amount which the jury will award if liability is found.

There is a scientific basis for challenging the expert witness on the issue of support. For example, the expert witness usually assumes a work-life expectancy of age 65 or beyond when statistically it is unlikely that a man will be working at those ages. The expert witness assumes continued employment without layoffs, constant increases in wages, continued inflation and continued physical and mental health. Taxes are sometimes not considered and, if they are, the expert witness will assume that there will be no increase in the tax rate. Personal expenditures of the decedent are generally estimated at a time when the decedent's family is at home and would be at the lowest and is not increased for the period after the children reach majority. One of the greatest factors in increasing the present worth value of services and support is the use of a low discount rate of four or five per cent by the expert when a safe investment today yields a much higher rate of return. If the jury is not made aware of the fallibility of expert testimony, it should not surprise anyone that the jury may well accept the testimony.

The effect of the inclusion of loss of society and companionship into loss of services under Iowa Rule of Civil Procedure 8 on the size of verdicts cannot be stated with any certainty. Because of the intangible and emotional nature of this element, it may well have a dramatic effect upon the size of verdicts.

Notes

EVERYTHING A BANKRUPT NEEDS TO KNOW ABOUT LIFE INSURANCE BUT WASN'T TOLD

I. INTRODUCTION

This Note deals with the Federal Bankruptcy Act[1] and its effect on life insurance policies which are owned by and which insure the lives of persons declaring bankruptcy. Special emphasis will be placed on the rights and exemptions granted to bankrupts domiciled in Iowa by a special Iowa exemption statute. However, to properly understand these rights and exemptions peculiar to Iowa domiciliaries, an overview of the applicable provisions of the Bankruptcy Act is a necessary starting point.

II. THE SUBSECTION 5 PROVISO

A. *A Vesting Clause*

Any discussion of this subject must begin with an analysis of section 70 (a)[2] of the Bankruptcy Act. This section provides:

> The trustee of the estate of a bankrupt . . . shall in turn be vested by operation of law with the title of the bankrupt *as of the date of the filing of the petition* initiating a proceeding under [this Act], *except insofar as it is to property which is held to be exempt*, to all of the following kinds of property wherever located . . . ; (3) powers which he might have exercised for his own benefit, but not those which he might have exercised solely for some other person; (4) property transferred by him in fraud of his creditors; (5) *property, including rights of action, which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial process against him,* or otherwise seized . . . *And provided further, That when any bankrupt, who is a natural person, shall have any insurance policy which has a cash surrender value payable to himself, his estate, or personal representatives, he may, within 30 days after the cash surrender value has been ascertained and stated to the trustee by the company issuing the same, pay or secure to the trustee the sum so ascertained and stated, and continue to hold, own, and carry such policy free from the claims of the creditors participating in the distribution of his estate under the bankruptcy proceedings, otherwise the policy shall pass to the trustee as assets* . . . .[3]

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[1] 11 U.S.C. §§ 1 *et seq.* (1970).
[2] 11 U.S.C. § 110(a) (1970).
[3] *Id.* (Emphasis added).