

The Emancipation Of Minors Act: A California Solution For The Mature Minor

The recently enacted Emancipation of Minors Act provides California minors with a means to obtain a court decree which removes many of their legal disabilities. Minors seeking emancipation must meet certain evidentiary requirements before a court may issue the decree. This article discusses and evaluates these requirements, and suggests guidelines for their interpretation.

As minors age and mature they instinctively seek to exercise a greater amount of control over their own lives. In so doing, they often meet two obstacles: their parents' or guardian's attempts to guide, counsel or control, and legal restrictions on their freedom of action. Emancipation is a means for minors to overcome these obstacles. It frees children from parental control and grants them some of the rights and responsibilities of adulthood which they have demonstrated they are ready to assume. Through emancipation, minors can seek the removal of legal disabilities which prevent their living and working in society with rights equal to those of adults.¹

In California, emancipation was originally a non-statutory judicial doctrine.² A judge had discretion to determine if the facts and circumstances indicated the parents' relinquishment of their

¹ See Katz, *Emancipating Our Children*, 3 FAM. L.Q. 215 (1969). The unemancipated minor is unable to sue, consent to some forms of medical care, establish a separate residence, control earnings, and be free of parental control. An emancipated minor has the status of an adult for some, but not all purposes.

² *Id.* at 215, 232. Katz distinguishes "judicial" and "statutory" emancipation as follows: Judicial emancipation occurs when a court extinguishes the reciprocal rights and responsibilities of minors and their parents. Statutory emancipation primarily removes the disabilities of minors, either by authorizing a decree when certain requirements are met, or by a statute which operates automatically. This article will use judicial emancipation to refer to the removal of minors' disabilities by court decision. Statutory emancipation will refer to emancipation by a court decree which is authorized by statute.

rights to control their child's earnings.³ If it found such relinquishment, the court could remove some or all of a broad range of legal disabilities, an option not available under more rigid, statutory schemes.⁴ This flexibility, however, created uncertainty as to which standards and definitions courts would use to determine whether a minor had been emancipated.

The California legislature responded in 1979 to this situation by enacting the Emancipation of Minors Act,⁵ a scheme of statutory emancipation. In enacting this scheme, the legislature hoped to create certainty where once there was confusion.⁶ The Act therefore provides a number of evidentiary standards to guide the court in issuing a decree.⁷ At the same time, the Act directs the court to remove as many of the minor's disabilities as it could have under judicial emancipation, thereby giving capable minors the ability to manage their own lives.⁸

This article will describe and evaluate the Act in light of the courts' previous experience with judicial emancipation. It will discuss the evidentiary standards which the Act imposes and

³ See Katz, *supra* note 1. The California Civil Code provides statutory authority for the court to make the finding of relinquishment of control. CAL. CIV. CODE § 211 (West 1954). Section 211 is different from statutes authorizing emancipation decrees. These statutes establish specific requirements which must be met before the court can issue a decree. See note 4 *infra*.

⁴ The courts originally used judicial emancipation to settle parent-child claims to the child's wages. H. CLARK, LAW OF DOMESTIC RELATIONS 240 (1968). It has grown to encompass the removal of many other disabilities. See, e.g., *Jolicoeur v. Mihaly*, 5 Cal. 3d 565, 488 P.2d 1, 96 Cal. Rptr. 697 (1971) (emancipated minor may establish own residence). This growth is due in part to the use of emancipation to determine the outcome of disputes contingent on the status of the minor, such as parental liability for minors' torts, intra-family torts, and parental support. See INSTITUTE OF JUDICIAL ADMINISTRATION-AMERICAN BAR ASSOCIATION JOINT COMMISSION ON JUVENILE JUSTICE STANDARDS, STANDARDS RELATING TO RIGHTS OF MINORS 21 (1977) [hereinafter cited as IJA-ABA JOINT COMM'N]. In contrast, statutory emancipation authorizes the court to declare a minor emancipated for the limited purposes of conveying property and entering into binding contracts, if the minor meets certain requirements. See generally ALA. CODE, tit. 27, §§ 13-20 (1973); ARK. STAT. ANN. §§ 34-2001 - 34-2002 (Supp. 1977); KAN. REV. STAT. §§ 38-108 - 38-110 (1973); LA. CODE CIV. PRO. ANN., art. 3991-3994 (West Cum. Supp. 1978); MISS. CODE ANN., tit. 93, §§ 93-19-1 - 93-19-9 (1972); OKLA. STAT. ANN., tit. 10 §§ 91-94 (West 1966); TENN. CODE ANN. §§ 23-1201 - 23-1204 (Cum. Supp. 1978); TEX. FAM. CODE ANN., tit. 2, §§ 31.01-31.07 (Vernon Cum. Supp. 1978).

⁵ Emancipation of Minors Act, ch. 1039 (codified at CAL. CIV. CODE §§ 60-68 (West Cum. Supp. 1979)).

⁶ *Id.* § 61.

⁷ *Id.* §§ 62(a)-62(c).

⁸ *Id.* §§ 63(a)-63(k).

suggest guidelines for their interpretation. Finally, it will suggest how the legislature can change the Act so that courts can better effect its underlying policy.

THE EMANCIPATION OF MINORS ACT

The Emancipation of Minors Act provides that minors who meet certain requirements may petition the superior court for an emancipation decree.⁹ Prior to the hearing, minors seeking emancipation must give reasonable notice to their parents or guardians.¹⁰ If the court grants the petition and issues the decree, the minor may request that the Department of Motor Vehicles receive notice and indicate the minor's new status on his or her identification card.¹¹ If the court does not issue the decree, the minor may petition for writ of mandate.¹²

Minors emancipated under the Act may sue and be sued, contract, consent to various types of health care, and establish a residence.¹³ They assume responsibility for most of their torts and for their support.¹⁴ Minors wishing to rescind the decree may do so by petition to the court, and the court shall sustain the petition if it finds that the minor is indigent and has no means of support.¹⁵ Parents become liable for their emancipated children's acts only upon actual notice of the petition for rescission.¹⁶

A minor may satisfy the requirements of the Act in three ways: by being or having been married,¹⁷ by enlisting in the armed

⁹ *Id.* § 64(a).

¹⁰ *Id.* § 64(b).

¹¹ *Id.* § 64(e).

¹² *Id.* § 64(f).

¹³ *Id.* §§ 63(a), 63(c), 63(f), 63(g).

¹⁴ *Id.* §§ 63(e)-63(j).

¹⁵ *Id.* §§ 65(a)-65(c).

¹⁶ *Id.* § 65(b).

¹⁷ The Act states that minors who meet its requirements are "emancipated". CAL. CIV. CODE § 62 (West Cum. Supp. 1979). The rights and responsibilities which the Act lists apply to both "emancipated" minors and those who obtain the decree. See CAL. CIV. CODE § 63 (West Cum. Supp. 1979). The purpose of these sections is primarily to define emancipation and its consequences should questions arise as to a minor's ability to perform certain acts if he or she has not obtained the decree. See CAL. CIV. CODE § 61 (West Cum. Supp. 1979). The Act's significance, however, lies in its procedures whereby the minor may obtain a court decree. See CAL. CIV. CODE § 64 (West Cum. Supp. 1979). The decree facilitates the exercise of the emancipated minor's rights. Thus this article will discuss the Act's requirements in light of how they relate to obtaining the decree.

services,¹⁸ or by satisfying certain evidentiary requirements of the Act.¹⁹ The first two ways both involve objective requirements using an easily ascertainable legal status, raising no problems of definition.²⁰ Other minors who are at least 16 years old, however, must show that they are "managing . . . [their] . . . own financial affairs" and are living "separate and apart" from their parents with parental "consent or acquiescence."²¹ These requirements raise problems of definition and interpretation because they are subjective; they rest solely on a court's judgment of the

¹⁸ *Id.* § 62(a).

¹⁹ *Id.* § 62(b).

²⁰ Under the Emancipated Minors Act, a married or enlisted minor assumes all the rights and responsibilities of minors who actually prove that they are able to live independently of their parents and support themselves. Emancipation of married or enlisted minors is based on the notion that their newly acquired status is inconsistent with the parent-child relationship. IJA-ABA JOINT COMM'N, *supra* note 4 at 29. Furthermore, state law terminates parental authority on marriage or enlistment. CAL. CIV. CODE § 204 (West 1954). It is questionable if either of these reasons justifies treating married or enlisted minors the same as those who are emancipated by a showing of their capabilities as the Act requires. CAL. CIV. CODE § 62(c) (West Cum. Supp. 1979). The Act's tort liability and support provisions suggest a need for differentiation and clarification.

The Act abolishes parental liability for children's torts, except for that which the Vehicle Code imposes. CAL. CIV. CODE § 63(j) (West Cum. Supp. 1979). See CAL. VEH. CODE § 17708 (West 1971). *Easterly v. Cook*, 140 Cal. App. 115, 123, 35 P.2d 164, 168 (3d Dist. 1934) applied this vehicle code liability to parents of married minors on the rationale that marriage alone does not make one a safer driver. *Id.* at 123, 25 P.2d at 168. Application of the same rationale to minors emancipated by enlistment is appropriate. However, unmarried, unenlisted minors who show that they live on their own and manage their own financial affairs are surely capable of operating a vehicle without the protection of parental liability.

The Act also emancipates minors for purposes of parental support. CAL. CIV. CODE § 63(d) (West Cum. Supp. 1979). Judicial treatment of enlisted minors' support rights suggests a need for clarification as to the consequences of the decree, depending on the means minors use to emancipate themselves. The courts have given enlisted minors rights of support despite their enlisted status, on the rationale that their emancipation is temporary. See *Argonaut Ins. Exch. v. Kates*, 137 Cal. App. 2d 158, 289 P.2d 801 (1st Dist. 1955) (enlisted minor has right as survivor to parent's death benefits). The Act also provides that an enlisted minor's emancipation is only temporary. It does not, however, indicate if the *Argonaut* holding is to be followed in its support provisions. Surely it ought to be, since the temporary nature of emancipation by enlistment recognizes what the marriage provision does not: that the maturity and financial responsibility to handle adult burdens are not automatically created by the minor's change in lifestyle.

²¹ CAL. CIV. CODE § 62(c) (West Cum. Supp. 1979).

parties' conduct.²² Once a court finds these elements, the Act provides that the minor is eligible for the decree of emancipation.²³ The court, however, retains the power to deny the decree if it believes that granting it would be against the minor's best interests.²⁴ Thus, despite the court's recognition that the minor has assumed adult responsibilities and is free of parental control, it may still employ its subjective judgment as to the minor's best interests. This possibility raises significant problems of policy and interpretation.²⁵

Managing Own Financial Affairs

The Emancipation of Minors Act requires minors to show that they are managing their own financial affairs, regardless of their income source.²⁶ Meeting this requirement demonstrates the minor's ability to make independent financial decisions to obtain life's basic necessities. The Act's purpose is to allow minors capable of making these decisions to do so without parental or legal interference.²⁷ The courts can best effect this purpose, therefore, by resting their determination of "managing . . . own financial affairs" on a limited consideration of how minors decide to spend their money and of the freedom they have to make that decision.

Courts in the past did not articulate "managing . . . own financial affairs" as a standard for emancipation.²⁸ They did,

²² See *Spurgeon v. Mission State Bank*, 151 F.2d 702 (8th Cir. 1945) (court emancipates minor partly because of mutual understanding with parents that he was leaving home to make his own life); *Martinez v. Southern Pacific Co.*, 45 Cal. 2d 244, 288 P.2d 868 (1955) (court emancipates minor who still lives at home but contributes to family expenses); *Grant v. Segawa*, 44 Cal. App. 2d Supp. 945, 112 P.2d 784 (App. Dep't Super. Ct. San Diego County 1941) (court does not emancipate minor who earns income from family even though the minor manages the family business).

²³ CAL. CIV. CODE § 64(a) (West Cum. Supp. 1979).

²⁴ *Id.* § 64(d).

²⁵ See *Rounds Bros. v. McDaniel*, 133 Ky. 669, 677, 118 S.W. 956, 958 (1909) (whether refusal to emancipate would interfere with the minor's "individual plans and aims" determined minor's best interests). This is one of the few reported judicial emancipation cases using the best interests standard. In child custody cases, where it almost always required, it engenders confusion and unpredictability. Mnookin, *Foster Care—In Whose Best Interest?* 43 HARV. EDUC. REV. 599, 615 (1973). See text accompanying notes 88-93 *infra*.

²⁶ CAL. CIV. CODE § 62(c) (West Cum. Supp. 1979).

²⁷ See text accompanying note 1 *supra*.

²⁸ See *Martinez v. Southern Pacific Co.*, 45 Cal. 2d 244, 288 P.2d 868 (1955); *Aetna Life Ins. Co. v. Indust. Acc. Comm'n*, 175 Cal. 92, 165 P.15 (1917); *Perkins v. Robinson*, 140 Cal. App. 2d 536, 295 P.2d 972 (4th Dist. 1956); *Grant v.*

however, look to similar factors, one of which was "financial independence."²⁹ Judges measured financial independence by certain objective indicators including whether minors had outside sources of income,³⁰ provided their own clothing and furniture, and whether or not their parents claimed them as dependents on their tax returns.³¹ When parental employment was the income source, the courts were apt to find minors were not financially independent, even though the parents allowed them to keep their earnings, and even if they assumed major responsibility for the family income.³²

The courts also considered the minor's "subordinate position" in the household as a factor in emancipation.³³ It is hard to define what "subordinate position" meant. Courts which used it as an indicator of emancipation were often more concerned with achieving other objectives rather than with clarifying emancipation standards.³⁴ Hence a minor who lived at home and had an outside source of income which she could spend as she pleased no longer occupied a "subordinate position" because her father had relinquished control over her earnings.³⁵ Another court found a

Segawa, 44 Cal. App. 2d Supp. 945, 112 P.2d 784 (App. Dep't Super. Ct. San Diego County 1941); Buxton v. Bishop, 185 Va. 1, 37 S.E.2d 755 (1946). Although the Act also requires that a minor live separate and apart from the parents, CAL. CIV. CODE § 62(c) (West Cum. Supp. 1979), this requirement does not clarify the meaning of "managing own financial affairs". It might if it were clear that living separate and apart requires physical separation, since a court might more easily determine if a minor were acting autonomously. Such an interpretation is neither necessary nor useful in serving the goals of emancipation. See text accompanying note 40 *infra*.

²⁹ See Carricato v. Carricato, 384 S.W.2d 85, (Ky. Ct. App. 1964); Burton v. Burton, 472 S.W.2d 620 (Kan. City, Mo. Ct. App. 1971); Gillikan v. Burbage, 263 N.C. 317, 139 S.E.2d 753 (1965); Buxton v. Bishop, 185 Va. 1, 37 S.E.2d 755 (1946).

³⁰ See Burton v. Burton, 472 S.W.2d 620 (Kan. City, Mo. Ct. App. 1971); Buxton v. Bishop, 185 Va. 1, 2, 37 S.E.2d 755, 756-757 (1946).

³¹ See Carricato v. Carricato, 384 S.W.2d 85 (Ky. Ct. App. 1964); Gillikan v. Burbage, 263 N.C. 317, 139 S.E.2d 753 (1965). (In *Gillikan*, the court emancipated for purposes of intra-family tort action a minor who came and went as she pleased, earned her own income, and lived at home.)

³² See Aetna Life Ins. Co. v. Indust. Acc. Comm'n, 175 Cal. 92, 165 P. 15 (1917); Grant v. Segawa, 44 Cal. App. 2d Supp. 945, 112 P.2d 748 (App. Dep't Super. Ct. San Diego County 1941).

³³ Martinez v. Southern Pacific Co., 45 Cal. 2d 244, 254, 288 P.2d 868, 873 (1955).

³⁴ See Katz, *supra* note 1, at 222.

³⁵ Wood v. Wood, 135 Conn. 280, 283, 63 A.2d 586, 599 (1958) (court emancipated minor for purposes of bringing tort action against her father even though she lived at home without contributing to her room and board because her father

lack of "subordinate position" under similar circumstances, but considered the fact that the minor used her money to contribute to family expenses to be decisive.³⁶ Being responsible for a family business, however, was not sufficient.³⁷

In establishing the "managing . . . own financial affairs" requirement, the Emancipation of Minors Act tries to eliminate consideration of the minor's source of income as a factor in emancipation.³⁸ The Act implies that courts should only consider whether petitioning minors have the means to and do provide basic necessities for themselves without parental interference.³⁹ Source of income should be an irrelevant consideration, because a minor's freedom to decide how to spend his or her money displays a relinquishment of any parental control over that money, even if the parents are its source. "Subordinate position" should remain a consideration only insofar as it demonstrates parental interference in a minor's financial decision making.

Living Separate and Apart

The Emancipation of Minors Act also requires that minors live "separate and apart" from their parents.⁴⁰ This element appears to mean physical separation, but such an interpretation could, in some cases, defeat the purpose of the Act. It would deny minors with the proven capability to care for themselves an opportunity to do so simply because they live with their parents. The courts should interpret the requirement broadly: physical separation

allowed her to spend her earnings as she wished). *Wood* illustrates how a court's view of the merits of litigation or a current legal standard, in this case intra-family tort immunity, can influence its emancipation finding. Other courts have required minors in similar circumstances to show contributions to family expenses. See note 36 *infra*.

³⁶ *Martinez v. Southern Pacific Co.*, 45 Cal. 2d 244, 254, 288 P.2d 868, 873 (1955) (minor who lived at home emancipated because she contributed to family expenses). Compare *Martinez* with *Perkins v. Robinson*, 140 Cal. App. 2d 536, 541, 295 P.2d 972, 976 (4th Dist. 1956) (minor who lived at home with freedom to come and go and to spend his earnings as he wished was not emancipated because he did not contribute to his support).

³⁷ *Grant v. Segawa*, 44 Cal. App. 2d Supp. 945, 959, 112 P.2d 784, 786 (App. Dep't Super. Ct. San Diego County 1941).

³⁸ CAL. CIV. CODE § 62(c) (West Cum. Supp. 1979).

³⁹ The court should consider if petitioning minors are able to provide food, clothing and shelter for themselves. That they have a lower standard of living than they did while living with their parents should not be a factor, since minors should have freedom to choose their lifestyle. See text accompanying note 95 *infra*.

⁴⁰ See CAL. CIV. CODE § 62 (West Cum. Supp. 1979).

alone should meet the requirement, but if minors live with their parents, the courts should consider their autonomy in making decisions regarding their lives as proof of living separate and apart.

There is support for this interpretation in judicial emancipation case law. Physical separation was not a necessary element in judicial emancipation.⁴¹ It was, however, a significant factor which the courts considered.⁴² In those cases, the courts required a "mutual understanding" between the parents and the child that the child was "leaving to make his way in the world."⁴³ This implies that the court's major concern was not the fact of physical separation, but the intentions of the parents. The Act does not ignore such intent; rather, it makes separate provision for it in the parental "consent or acquiescence" requirement.⁴⁴ The court's consideration of the minor's intention to "make his way in the world," therefore, is tantamount to a simple inquiry into the minor's conduct for evidence of autonomous behavior. Minors can exhibit such behavior whether or not they live with their parents.

Courts have also addressed the meaning of "living separate and apart" in marriage dissolution cases.⁴⁵ "Living separate and apart" has long been an issue in those cases because it establishes a date of separation which may determine the classification of the parties' assets as either community or separate property.⁴⁶ Until recently, courts considered the actual physical separation of the spouses, usually combined with the intention of at least one of the parties never to reconcile, as determining the date of separate living.⁴⁷ The recent appellate court decision of *In re Marriage of*

⁴¹ *Carricato v. Carricato*, 384 S.W.2d 85, 87 (Ky. Ct. App. 1964) (minor who lived at home, came and went as she pleased and contributed her earnings to family expenses held emancipated for purposes of bringing intra-family tort action). See *Martinez v. Southern Pacific Co.*, 45 Cal. 2d 244, 188 P.2d 868 (1955).

⁴² See *Spurgeon v. Mission State Bank*, 151 F.2d 702 (8th Cir. 1945); *Jolicoeur v. Mihaly*, 5 Cal. 3d 565, 488 P.2d 1, 96 Cal. Rptr. 697 (1971).

⁴³ *Spurgeon v. Mission State Bank*, 151 F.2d 702, 705 (8th Cir. 1945).

⁴⁴ See CAL. CIV. CODE § 63(c) (West Cum. Supp. 1979).

⁴⁵ See *Loring v. Stuart*, 79 Cal. 200, 21 P. 651 (1889); *Tobin v. Galvin*, 49 Cal. 34 (1874); *In re Marriage of Baragry*, 73 Cal. App. 3d 448, 140 Cal. Rptr. 630 (3d Dist. 1968); *Makeig v. United Sec. Bank and Trust Co.*, 112 Cal. App. 138, 296 P.2d 673 (1st Dist. 1931).

⁴⁶ CAL. CIV. CODE § 5118 (West 1970); See Bruch, *The Legal Import of Informal Marriage Separations: A Survey of California Law and A Call for Change*, 65 CALIF. L. REV. 1015, 1020 (1977).

⁴⁷ *Loring v. Stuart*, 79 Cal. 200, 202, 21 P. 651, 652 (1889) (husband moves out and later decides to seek divorce; held date of moving out is date of separation); *Makeig v. United Sec. Bank and Trust Co.*, 112 Cal. App. 138, 143, 296

Baragry,⁴⁸ however, holds that the parties' conduct, regardless of actual physical separation and intent, is determinative of this date.⁴⁹ Although one of the spouses had moved out of the home in that case, the court's decision implies that even when a couple are living together, their conduct can still show that they are "living separate and apart."

The marital dissolution cases are analogous to emancipation in that both situations deal with the severance of a legal relationship involving rights and obligations. In marriage, however, these rights and obligations are the concomitants of joint efforts predicated on a continuation of the relationship.⁵⁰ Termination of that relationship requires an equal division of the fruits of those efforts.⁵¹ Requiring physical separation with the intention never to reconcile may be a useful benchmark to determine when this joint effort has ceased. Emancipation, however, involves no cessation of joint efforts, nor division of the fruits of such efforts. The parent-child legal relationship will end of its own course upon the minor's attaining majority.⁵² The court is looking only to see if the facts justify an acceleration of that event.

Although marital dissolution cases are thus distinguishable from emancipation cases, *In re Marriage of Baragry*'s reasoning suggests that conduct may be an appropriate indicator of "living separate and apart" in emancipation. *Baragry* stated that so long as the parties conducted themselves as if they were married, they continued to enjoy the benefits of their joint efforts, and therefore their earnings remained community property.⁵³ Similarly, if minors conduct themselves in a way which shows autonomy, regardless of whether they live with their parents, they are no longer reliant on parental guidance or control and are ready for emancipation.

The court can best effect the Act's purpose by using one or two

P.2d 673, 675 (1st Dist. 1931) (husband and wife live together for only six weeks of their marriage. Upon wife's death, court holds wife's property not separate even though the parties were physically separated because there had never been a final decision to seek divorce).

⁴⁸ 73 Cal. App. 3d 448, 140 Cal. Rptr. 779 (2d Dist. 1977).

⁴⁹ *Id.* at 449, 140 Cal. Rptr. at 781 (husband moves in with another woman, but continues to see wife for meals and vacations; held that separation did not occur prior to dissolution).

⁵⁰ *Id.* at 450, 140 Cal. Rptr. at 782.

⁵¹ CAL. CIV. CODE § 4800 (West Cum. Supp. 1979).

⁵² *Id.* § 25.

⁵³ *In re Marriage of Baragry*, 73 Cal. App. 3d 448, 450, 140 Cal. Rptr. 779, 782 (2d Dist. 1977).

means to determine whether a minor lives "separate and apart." Actual physical separation alone should be sufficient. Alternatively, if a minor lives with his or her parents, the court should consider the minor's conduct to see if it evidences autonomy. Minors are autonomous if they make their own decisions regarding the conduct of their lives.⁵⁴ This autonomy, implicit in physical separation, or evidenced by specific findings when minors live with their parents, demonstrates readiness for its free exercise through emancipation.

Parental Consent

The Emancipation of Minors Act further requires parental "consent or acquiescence" to the minor's living separate and apart.⁵⁵ This requirement is a legislative recognition of parents' rights to control their children. Similar recognition made consent a major factor in judicial emancipation.⁵⁶ Under that doctrine, courts would find that parents had given their consent if they had expressly or impliedly relinquished their control over the minor.⁵⁷ The Act's narrower requirement of parental consent only to the minor's living separate and apart recognizes parental rights without unduly restricting the minor's right to a decree of emancipation. If minors have the managerial ability to provide their basic necessities and are acting autonomously, they have demonstrated their capability to assume adult rights and responsibilities. Requiring parental consent to the decree, even though the parents have already allowed their children to exercise and demonstrate their adult capabilities, would defeat the Act's purpose. To determine parental consent, therefore, the courts should look only to see if the parents have expressly or impliedly allowed their children to live physically separate, or to make their own decisions regarding the conduct of their lives.⁵⁸

⁵⁴ Examples of such decisions might be those regarding education, work and control over comings and goings within the home. See *Carricato v. Carricato*, 384 S.W.2d 85 (Ky. Ct. App. 1964). Similar considerations will arise when determining parental consent or acquiescence in making those decisions, see note 58 *infra*.

⁵⁵ CAL. CIV. CODE § 62(c) (West Cum. Supp. 1979).

⁵⁶ See *Katz*, *supra* note 1, at 236.

⁵⁷ See H. CLARK, *supra* note 4, at 234; *Katz*, *supra* note 1, at 214.

⁵⁸ The courts should consider, for example, whether the parents impose curfews, control the minor's decisions regarding how the minor's earnings are spent, and if the parents limit the minor's choice of employment, education, or companions. See *Gillikan v. Burbage*, 263 N.C. 317, 139 S.E.2d 753 (1965).

Express parental consent should meet the Act's requirement, since it is an obvious indication of parental willingness to let the child control his or her own life. In fact, most judicial emancipation decisions have found express consent sufficient to meet this requirement.⁵⁹ In *County of Alameda v. Kaiser*,⁶⁰ however, the court declined to find a minor emancipated despite his parent's express consent. It held the parent liable for the minor's expenses on the rationale that parents may consent to relinquish their rights but not their responsibilities to their children.⁶¹

Kaiser's reasoning is no longer apposite under the Act. First, the Act's purpose is to give minors the freedom to exercise responsibility.⁶² The Act specifically provides that the parents of an emancipated minor relinquish their responsibilities as well as their rights.⁶³ Second, proceedings under the Act relate solely to the minor's eligibility for an emancipation decree.⁶⁴ In contrast, the emancipation issue in *Kaiser* arose in the context of another dispute, the outcome of which turned on whether or not the minor was emancipated.⁶⁵ Hence, the court's major concern was really with the scope of emancipation rather than with the validity of the express parental consent requirement.⁶⁶

The Act's alternative requirement of parental "acquiescence" recognizes that parental consent may be implied as well as express.⁶⁷ Courts commonly used implied consent in judicial emancipation, but the cases do not indicate what factors the courts should consider to find implied consent under the Act.⁶⁸ These cases looked for implied consent to emancipation itself, rather

⁵⁹ See, e.g., *Perkins v. Robinson*, 140 Cal. App. 2d 536, 295 P.2d 972, 976 (4th Dist. 1956).

⁶⁰ 238 Cal. App. 2d 815, 48 Cal. Rptr. 343 (1st Dist. 1965).

⁶¹ See *County of Alameda v. Kaiser*, 238 Cal. App. 2d 815, 816, 48 Cal. Rptr. 343, 344 (1st Dist. 1965) (county seeking to recover costs of hospital care provided to minor held entitled to these costs from mother despite her claim that she had expressly consented to her son's emancipation).

⁶² See text accompanying note 1, *supra*.

⁶³ See CAL. CIV. CODE §§ 63(a)-63(k) (West Cum. Supp. 1979).

⁶⁴ *Id.* § 64(a)-64(h).

⁶⁵ See *County of Alameda v. Kaiser*, 238 Cal. App. 815, 816, 48 Cal. Rptr. 343, 344 (1st Dist. 1965).

⁶⁶ *Id.* at 817, 48 Cal. Rptr. at 344.

⁶⁷ CAL. CIV. CODE § 62(c) (West Cum. Supp. 1979).

⁶⁸ See *Spurgeon v. Mission State Bank*, 151 F.2d 702 (8th Cir. 1945); *Perkins v. Robinson*, 140 Cal. App. 2d 536, 295 P.2d 972 (4th Dist. 1956); *Wood v. Wood*, 135 Conn. 280, 63 A.2d 586 (1948); *Carricato v. Carricato*, 384 S.W.2d 85 (Ky. Ct. App. 1964); *Bates v. Bates*, 62 Misc. 498, 310 N.Y.S. 2d 26 (1970).

than to the minor's separate living.⁶⁹ They therefore considered a variety of factors with which the Act's other requirements deal, such as a minor's financial independence.⁷⁰ Furthermore, courts often used the concept of implied consent to emancipation to justify a certain result, so it is difficult to find a consistent pattern of factors.⁷¹

Courts seeking simplicity and certainty might measure implied consent or "acquiescence" by setting up a time period requirement. For example, they could require that minors live "separate and apart" without parental interference for six months.⁷² As a practical matter, however, this determination might require physical separation as the standard for living "separate and apart." If a minor lives at home, the court may have difficulty in determining whether the time period has run, or whether there has been parental interference. Further, a time limit could impose hardship on minors in need of immediate emancipation. Such a rigid interpretation would place judicial convenience above the Act's purpose. As parental conduct is likely to differ in each case, courts should determine the issue of acquiescence on a case-by-case basis.

Examination of parental conduct for indicators of consent to living "separate and apart" only, or of a child's autonomy in decision making, is a departure from the broader requirement of judicial emancipation and of a few statutory jurisdictions which require parental consent to emancipation itself.⁷³ Cases indicate that the parental consent requirement was to ensure due recognition of parental rights in emancipation. The courts viewed it as a drastic action because it cut off parental control.⁷⁴ The require-

⁶⁹ *Id.*

⁷⁰ For example, in *Bates v. Bates*, 62 Misc. 498, 310 N.Y.S.2d 26 (1970) the court found that the father provided some income for the minor. This fact led the court to conclude that there had been no consent to the minor's emancipation. *Id.* at 504, 310 N.Y.S.2d at 30. The Emancipation of Minors Act deals with the issue of the source of income as a separate consideration, and makes it irrelevant. CAL. CIV. CODE § 62(c). See text accompanying note 26 *supra*.

⁷¹ See notes 35-36 *supra*.

⁷² The Act's drafters considered this possibility and rejected it. Interview with Peter Bull, National Center for Youth Law, in San Francisco (July, 1978) [hereinafter cited as Bull Interview].

⁷³ ALA. CODE, tit. 27, § 13 (1973); LA. CODE CIV. PRO. ANN., art. 3992 (West Cum. Supp. 1978); MISS. CODE ANN., tit. 93, § 93-19-3 (1972); TENN. CODE ANN. § 23-1203 (Cum. Supp. 1977).

⁷⁴ Katz, *supra* note 1, at 236. Katz points out that courts have also construed strictly the consent requirements in statutory emancipation jurisdictions, citing

ment also helped judges to overcome their reluctance to interfere with family life and its protections for the child and social stability.⁷⁵

The Act's requirement of parental consent or acquiescence, however, has a more limited purpose. The requirements of "managing . . . own financial affairs" and "living separate and apart" supply the basic indicators that courts previously looked for under the guise of "parental consent" to emancipation.⁷⁶ Financial independence and autonomy, whether evidenced by living physically apart from the parents or by no longer occupying a "subordinate position" in the family, were signs of parental relinquishment of control.⁷⁷ The Act's other requirements thus justifiably limit the purpose of parental consent to assuring the court that the minor is not acting autonomously in contravention of parental wishes.

Current developments in the law further justify the Act's limited parental consent requirement. Recent statutes which broaden the rights of minors through removal of certain legal disabilities⁷⁸ suggest that emancipation is no longer a drastic measure requiring a high degree of protection for parental rights.⁷⁹ These statutes reflect a contemporary view which rejects absolute parental control as essential to a minor's well-being and to the preservation of the family unit and social stability.⁸⁰ Indeed, forcing a minor to remain under parental control when he or she no

In re Dupuy, 196 La. 439, 444, 199 So. 384, 386 (1940) (minor petitions court under statute requiring parental consent to emancipation decree, unless parents refuse to support the minor or mistreat the minor; petition denied because evidence that mother dissipated minor's estate did not support claim of mistreatment).

⁷⁵ See In re Dupuy, 196 La. 439, 444, 199 So. 384, 386 (1940).

⁷⁶ See notes 36-37, 43 *supra*.

⁷⁷ See text accompanying notes 28-33, 42 *supra*.

⁷⁸ For example, minors may obtain contraceptives without parental consent in California. CAL. CIV. CODE § 34.5 (West Cum. Supp. 1979).

⁷⁹ The issue of parental consent has constitutional implications which are beyond the scope of this article. Cases dealing with parental control of the child's education present the question of the right of the state to intervene on the child's behalf contrary to parental wishes. See *Wisconsin v. Yoder*, 406 U.S. 205 (1972); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925). For further discussion, see Knutsen, *Education of the Amish Child*, 62 CALIF. L. REV. 1506-1531 (1974); Moskowitz, *Parental Rights and State Education*, 50 WASH. L. REV. 623-651 (1975). The Act avoids the problems these cases raise by requiring parental consent to living separate and apart, so that at the point of emancipation, the state is not acting against the parents' rights. See text accompanying note 57 *supra*.

⁸⁰ See Katz, *supra* note 1, at 241.

longer needs it threatens the harmony of the family unit and the social stability which courts have attributed to it.

These considerations, however, do not justify the complete elimination of the parental consent requirement from the Emancipation of Minors Act. Emancipation is a change in the parent's relationship with the child which ought not to be left completely in the minor's control. On the other hand, requiring parental consent to emancipation itself would defeat the Act's purpose. When parents have allowed their children autonomy in decision-making, and the children demonstrate the ability to make those decisions, they are functioning as adults. Requiring parental consent to "living separate and apart" only will afford them the legal opportunity to do so.

Best Interests of the Child

Even if minors show that they are managing their own affairs and "living separate and apart" with parental consent, the Emancipation of Minors Act still requires that the courts deny the petition for the decree if granting it would not be in the minor's best interests.⁸¹ This requirement is unnecessary and self-defeating.⁸² If minors are self-supporting and living independently of their parents with their parents' consent, they have shown that they are ready to assume adult responsibilities and rights. The denial of those rights can only work against their interests in realizing their potentials in society.

So long as the best interests test remains in the Act, courts should interpret it so that it serves the purpose of providing a way for minors to assume the rights and responsibilities of adulthood if they are ready to do so. To deny such minors this opportunity inhibits the development of independence and responsibility, essential qualities which are in anyone's best interests for a fulfilling life. Thus a court should deny the emancipation decree only when it will not promote the growth of these qualities.

Even if courts apply this interpretation of the test, however, inherent problems of the best interests test will remain. Past judicial experience with the test in other contexts shows that it is difficult to predict what a court deems a minor's "best interests" to be.⁸³ Further, the requirement unnecessarily intrudes upon the minor's autonomy⁸⁴ since the court may use the best

⁸¹ CAL. CIV. CODE § 64(d) (West Cum. Supp. 1979).

⁸² Bull Interview, *supra* note 72.

⁸³ See text accompanying notes 88-90 *infra*.

⁸⁴ See text accompanying notes 95-97 *infra*.

interests standard to prevent emancipation of a fully competent minor.

The best interests test is an unarticulated element in most emancipation cases. Although it is a stated requirement in some jurisdictions which have statutory emancipation,⁸⁵ appellate opinions rarely discuss it since the courts give much deference to trial court determinations.⁸⁶ In judicial emancipation cases, where emancipation is often the determining factor but not the source of the litigation, the "best interests" of the minor were rarely considered since other factors were often more important to the court.⁸⁷

Child custody cases illustrate the difficulties of using a best interests standard.⁸⁸ No clear articulation of the test emerges from the cases, and it has generated much discussion as to how a court should evaluate "best interests."⁸⁹ Even if certain factors can be clearly stated, it is difficult to predict how courts will apply the test since the determinations involved are so subjective.⁹⁰ Furthermore, the test has led to questionable results.⁹¹ A court which places great value on the stable lifestyle of one parent or guardian, as serving the best interests of the child, may lose sight of other pertinent factors, such as the age of that parent or

⁸⁵ ALA. CODE, tit. 27, §§ 13 (1973); KAN. REV. STAT. §§ 38-109 (1973); TEX. FAM. CODE ANN., tit. 2 § 31.02 (Vernon Supp. 1978).

⁸⁶ See *Ex Parte Price*, 68 So. 866, 867 (Ala. 1915); *McLeiter v. Rackley*, 148 Miss. 75, 76, 114 So. 128, 129 (1927).

⁸⁷ For example, where the effect of emancipation was limited to determining if minors could sue their parents or demand parental support, the court's views of intra-family tort immunity or the conduct of the parents and the minor were decisive. Cf. IJA-ABA JOINT COMM'N, *supra* note 4; *Martinez v. Southern Pacific Co.*, 45 Cal. 2d 244, 288 P.2d 868 (1955) (decided before the abolishment of intra-family tort immunity in California).

⁸⁸ See *In re Reyna*, 55 Cal. App. 3d 288, 126 Cal. Rptr. 138 (5th Dist. 1976); *Cheryl Lynn H. v. Super. Ct.*, 41 Cal. App. 3d 273, 115 Cal. Rptr. 849 (2d Dist. 1974); *In re Guardianship of Marino*, 30 Cal. App. 3d 961, 106 Cal. Rptr. 655 (2d Dist. 1973).

⁸⁹ See Mnookin, *Foster Care—In Whose Best Interest?* 43 HARV. EDUC. REV. 599 (1973); Foster and Freed, *Child Custody*, 39 N.Y.U. L. REV. 423 (1964). One suggested definition of the best interests of the child is a situation where there is a parent-child relationship which balances the needs of the child in maturing and realizing his or her potential with the need to provide adequate protection and care. KATZ, *WHEN PARENTS FAIL*, 82 n.13 (1971).

⁹⁰ See Mnookin, *Foster Care—In Whose Best Interest?* 43 HARV. EDUC. REV. 599, 615 (1973).

⁹¹ Levine, *Child Custody: Iowa Corn and the Avant Garde*, 1 FAM. L.Q. 3, 7 (1967).

guardian.⁹² Similar problems arise if courts apply the best interests test to emancipation. For example, one emancipation case which did consider the minor's best interests looked to whether refusing emancipation would frustrate the minor's "individual plans and aims."⁹³ The court's view of the validity of the plans and aims could have a decisive impact. Even if "best interests" means the court should decide whether emancipation will promote independence and responsibility as this article suggests, the notion of what conditions are most conducive to the development of these qualities is again highly subjective and will lead to uncertainty.

Furthermore, the best interests test permits the state to intrude upon the demonstrated autonomy of minors who have met the Act's requirements of managing their own financial affairs and living "separate and apart" with parental consent or acquiescence.⁹⁴ These minors are functioning essentially as adults, and like adults should be free of state or judicial intrusion into their choices of lifestyle or views.⁹⁵ The best interests test becomes thus a means for the state to regulate the conduct of minors even when their parents have relinquished the right to do so according to the court's findings under the Act.

The right of the state to intervene when the parents cannot is unclear.⁹⁶ Cases upholding minors' rights to obtain abortions and

⁹² See *Painter v. Bannister*, 285 Iowa 1390, 140 N.W.2d 152 (1966) (Grandparents in their sixties awarded custody of seven year old boy. The father lived what the court described as a "bohemian lifestyle" in California.)

⁹³ *Rounds Bros. v. McDaniel*, 133 Ky. 669, 677, 118 S.W. 956, 958 (1909).

⁹⁴ CAL. CIV. CODE § 62(c) (West Cum. Supp. 1979).

⁹⁵ Cf. Wald, *State Intervention on Behalf of "Neglected" Children: A Search for Realistic Standards*, 27 STAN. L. REV. 985, 989-901, 992 (1975). Wald points out that the standards courts use to determine if children are neglected may amount to a screening process as to who are "good" parents. State intrusion via this process could inhibit parental freedom of point of view, lifestyle and religion. By analogy, the same inhibition may occur when courts consider the minor's best interests.

⁹⁶ "The question of the extent of state power to regulate the conduct of minors not constitutionally regulable when committed by adults is a vexing one, perhaps not susceptible of a precise answer." *Carey v. Pop. Serv. Int'l*, 431 U.S. 678, 692 (1977). See also *Bellotti v. Baird*, 428 U.S. 132 (1976) where the court considered the constitutionality of a state requirement of judicial approval of minors' abortions. The court remanded the case to the Supreme Judicial Court of Massachusetts to construe the meaning of the statute and refused to pass on the judicial review provision. *Id.* at 146. The California Supreme Court considered a similar problem in *Ballard v. Anderson*, 4 Cal. 3d 87, 484 P.2d 1345, 95 Cal. Rptr. 1 (1971). While upholding CAL. CIV. CODE § 34.5 (West Cum. Supp. 1979) which allows abortions for minors without parental consent, the court

contraceptives have held that the state may not impose regulations on minors which it cannot impose on adults unless there is a countervailing state interest in specifically regulating minors.⁹⁷ Under this view, justification for the best interests test in the Emancipation of Minors Act requires a state interest in judging minors' conduct not present in judging that of adults.⁹⁸ These considerations might be protection of the minor and protection of those with whom the minor deals. If minors have shown that they are managing their own financial affairs and living independently of their parents, however, state protection is unnecessary. Furthermore, if for any reason emancipated minors become incapable of handling their status, they may rescind the decree.⁹⁹ The interests of those who deal with minors are protected since they are on notice of emancipated minors' status, and deal with them with the same risks and legal rights as they do an adult.¹⁰⁰

The use of the best interests test is an unnecessary and highly subjective infringement on the minor's autonomy. Ideally, the legislature should eliminate it. If it remains, however, a court should not refuse to issue a decree unless it finds that it will not promote the development of independence and responsibility in the minor. If the minor petitions for a writ of mandate, a reviewing court should thoroughly and independently review the lower

suggested a role for judicial review when it stated that it is "implied" that the minor must have sufficient maturity to give informed consent. *Id.* at 884, 484 P.2d at 1352, 95 Cal. Rptr. at 8, 9. This suggests that the role of the state in this instance is a protective one.

⁹⁷ *Carey v. Pop. Serv. Int'l*, 431 U.S. 678, 693 (1977); *Planned Parenthood of Cent. Mo. v. Danforth*, 428 U.S. 52, 75 (1976).

⁹⁸ Professor Edward L. Barrett of the U.C. Davis School of Law has pointed out to the writer that there is a noteworthy distinction between the role of the state in the Emancipation of Minors Act and its role in statutes which confer constitutional rights on minors. In the latter case, the state is attempting to intervene in the exercise of a constitutional right; hence the necessity of judging the state's interest in doing so. However, emancipation is not a constitutional right but a right which the state is creating. Thus an argument may be made that in creating such a right the state has greater justification for imposing best interests limitations. The justifications are the same as those noted in the text accompanying this note. The statute's other provisions, however, meet these justifications by providing protective measures, rendering the test unnecessary. The confusion and unpredictability which the use of it will create outweighs any interest it promotes.

⁹⁹ See CAL. CIV. CODE § 65 (West Cum. Supp. 1979).

¹⁰⁰ The Act provides that notice of the decree will be placed on a minor's Department of Motor Vehicles identification card, and that anyone who in good faith relies on such notice will have the same rights regarding the minor as if the minor were in fact emancipated. CAL. CIV. CODE §§ 64(e), 67.

court's reasons for denying the petition if it did so in the minor's best interests.

CONCLUSION

The purpose of emancipation is to provide a means for mature minors to remove legal obstacles to realizing their potentials as independent, responsible human beings. It enables minors to assume adult rights and responsibilities if they are capable of handling them. The Emancipation of Minors Act is a valuable tool for achieving this purpose, but fails to set out sufficient guidelines for the subjective evidentiary standards it requires. Courts should interpret these standards in such a way that creates certainty and at the same time serves the purposes of emancipation.

"Managing . . . own financial affairs" should mean that a minor is able to obtain basic necessities, regardless of income source, and to make his or her own decisions as to how to spend money. The courts should interpret "living separate and apart" broadly to include either physical separation or, if the minors are living with their parents, autonomy in basic decision-making. "Parental consent or acquiescence" should rest on a finding that the parents have allowed their children to make these decisions regarding their incomes and lives.

If these factors are present, the courts should recognize that the minor is ready to assume the rights and responsibilities of emancipation, and issue the decree. Denial on the ground of the minor's "best interests" could work against the purpose of the Act by preventing the minor from exercising demonstrated independence and responsibility. It also creates problems of subjective and uncertain application and threatens the minor's autonomy. The legislature should eliminate the test, but if it retains it, the courts should deny the emancipation decree only if convinced that issuing it would be contrary to the minor's interests in developing an already demonstrated independence and responsibility.

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