The Effect of Inflation on Monetary Values in Statutes and Contracts

Keywords

463, adjustable, adjustment, agreement, agreements, alimony, bond, bonds, case, cases, child, clause, clauses, coin, constant, Consumer, contract, contracts, court, CPI, currency, dollar, gold, Index, indexed, indexing, inflation, interest, law, lease, legal, loan, money, novation, obligation, payment, payments, Price, principal, rate, standard, statute, statutes, support, U.S., USA, value

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Introduction

During the 1970s and 1980s, I worked as a physicist and spent some of my time designing and calibrating instruments. Physicists have defined most of the fundamental units of measure (e.g., length, time, temperature) in terms of atomic processes that are believed to be constant in time and that are independent of official standards maintained in a few government laboratories around the world.

In the mid-1990s, I changed careers to law. I immediately noticed that U.S. Government statutes specify fixed dollar amounts in many contexts (e.g., maximum fines for crimes, minimum amount in controversy in diversity jurisdiction in federal courts, etc.), as if the dollar had a constant value. But such an assumed constant value of the dollar is absurd. US$ 1.00 in 1950 had approximately the same purchasing power as US$ 7.64 in 2003.[1] During 1979-81, the inflation rate in the USA exceeded 10%/year.

Many other authors have criticized the decision by the U.S. Congress to make the value of the U.S. Dollar independent of gold. I explicitly say that I am *not* concerned with removing the dollar from the gold standard. My concern is *only* with the fiction in statutes and long-term contracts that the U.S. Dollar has a constant value. I conclude that in long-term legal documents, both statutes and contracts, the principal amounts should be indexed to the U.S. Consumer Price Index.

This essay is intended only to present general information about an interesting topic in law and is *not* legal advice for your specific problem. See my disclaimer at http://www.rbs2.com/disclaim.htm .

I list the cases in chronological order in this essay, so the reader can easily follow the historical development of a national phenomenon. If I were writing a legal brief, then I would use the conventional citation order given in the *Bluebook*.

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1 See statistics on Consumer Price Index available from U.S. Government at http://www.bls.gov/bls/inflation.htm .

Examples of Problems

state statutes

Some states have a statute that specifies that parents can be held financially liable for torts committed by their children, but also specifying a maximum amount of liability. Some of these statutes have not been revised in many decades, with the result that the amount that was substantial when the statute was enacted has now been eroded by inflation to an insignificant amount.
For example,

- Nebraska limited the amount to US$ 1000 in the year 1969.[2] According to the U.S. Consumer Price Index, US$ 1000 in 1969 has the same purchasing power as US$ 5200 in July 2004, so the value of this limit in Nebraska has been seriously eroded by inflation during 35 years.

- Montana limited the amount to US$ 2500 in the year 1981.[3] According to the U.S. Consumer Price Index, US$ 2500 in 1981 has the same purchasing power as US$ 5200 in July 2004, so the value of this limit in Montana has been cut in half by inflation during 23 years.

In contrast to these traditional state statutes, California specified a limit of US$ 25,000 in 1994 and further specified that the amount will be adjusted every two years, according to changes in the California Consumer Price Index.[4]

Another example of state statutes that treat the U.S. Dollar as having a fixed value is in the context of compensation for jurors in trial courts.

- On 1 Oct 2003, Michigan increased jury compensation for the first time since 1968, from $15/day to $25/day.[5]
- Missouri pays jurors US$ 6/day, if a city or county does not authorize additional payments.[6]

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[2] Nebraska Revised Statute § 43-801 “Destruction of property; infliction of personal injury; limitation.” (current July 2004).

[3] Montana Code 40-6-238 (current July 2004), also provides for the victim to be reimbursed for “a reasonable attorney’s fee to be set by the court not to exceed $100.” This limitation on attorney’s fees is currently less than one hour of an attorney’s time**!**

[4] California Civil Code § 1714.1 “Liability of parents and guardians for willful misconduct of minor”. (current as of July 2004).

[5] Michigan Statutes § 600.1344 (enacted 2002, current August 2004).

[6] Missouri Statutes § 488.040 (current as of August 2004).

- New Jersey pays jurors US$ 5/day.[7]
- Oregon pays jurors US$ 10/day, except that "the fee of jurors for the third and subsequent days of required attendance in circuit court during a term of service is $25 for each day that a juror is required to attend."[8]
- Pennsylvania pays jurors "$9 a day for the first three days in any calendar year he shall be required to report for service and $25 a day for each day thereafter ...."[9]
- In 13 specified counties of South Carolina, jurors are paid only US$ 2/day. However, in Beaufort County of South Carolina, jurors are paid US$12.50/day, the highest rate in South Carolina.[10]

In contrast, jurors in U.S. District Courts are paid US$ 40/day.[11]

Beginning 1 Sep 1997, and still current in Aug 2004, a federal statute specified the minimum wage in the USA was US$ 5.15/hour.[12] If one assumes that jurors work for six hours a day, then jurors should be compensated *at least* $30.90/day. But why is jury duty a menial job, to be paid at the minimum legal wage? A typical salary for a senior scientist or senior engineer in Aug 2004 was approximately $350/day.

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[7] New Jersey Statute § 22A:1-1.1 (current August 2004). However, if the juror is employed by the state government, then the state must pay the juror the usual daily wages. N.J.S. § 2B:20-16.

[8] Oregon Revised Statutes § 10.061 (enacted 2002, current August 2004).

[9] 42 Pa.C.S.A. § 4561 (enacted 1980, current August 2004).

[10] South Carolina Code 1976 § 14-7-1370 (current August 2004).

[11] 28 U.S.C.A. § 1871 (effective 1990, current August 2004).

[12] 29 U.S.C.A. § 206 (enacted 1996, current August 2004).
See also the general information linked at http://www.dol.gov/esa/whd/flsa/ .

airline lost luggage

If you look at the fine print on your airline ticket for international flights, you see that the airline will reimburse you for US$ 9.07/pound if they lose your luggage or other cargo. See *Trans World Airlines v. Franklin Mint Corp.,* 466 U.S. 243, 273 (1984) (affirming limitation of liability).[13] Ironically, the Warsaw Convention specified cargo liability per kilogram of cargo at a rate of 250 gold French Francs. This amount was fixed in the Warsaw Convention in the year 1929 and never subsequently amended, because amounts in gold are somewhat protected against inflation. The details of the conversion are in a footnote.[14] Because the U.S. Government continues to cling to a long-obsolete gold price[15], inflation has eroded the limitation of liability for lost luggage to about 10% of its value in 1929.

gold clause in contracts and bonds

People who wrote long-term (99-year duration) leases in the USA prior to the year 1933 commonly specified a fixed payment in gold coin, a so-called gold clause. By indexing the payment to gold, the lessor protected himself from inflation and devaluation of the U.S. Dollar. The U.S. Congress made those gold clauses inoperative in 1933 in a highly controversial Joint Resolution that is discussed below. As discussed below from pages 8 to 10, this decision by Congress seriously underpaid lessors and bondholders, yet was nonetheless legal.

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[13] See also *Boehringer Mannheim Diagnostics, Inc. v. Pan American World Airways, Inc.,* 531 F.Supp. 344, 349-354 (S.D.Tex. 1981) (rejecting limitation of liability: "Allowing defendant to limit its liability under the Convention based on the now-abolished 'official' gold price of $42.22 an ounce [during 1973-78] would perpetrate a legal fiction of the purest kind."), *rev'd,* 737 F.2d 456, 457-58 (5thCir. 1984), *cert. den.,* 469 U.S. 1186 (1985).

[14] One pound is 0.453 kg, so the liability is 113 FF/pound. One gold French Franc contains 65.5 mg of 90% gold, so 113 FF contains 6.67 grams (equivalent to 0.215 ounces troy) of pure gold. This amount of gold was converted into U.S. dollars at the rate of US$ 42.22/ounce of gold, the official rate in the year 1973. Some of these data are taken from the U.S. Supreme Court's opinion in *TWA,* 466 U.S. at 247, 249 (1984).

[15] In July 2004, the free-market price of gold was approximately US$ 390/ounce. For the current value, see http://www.kitco.com/ .

law sometimes considers inflation

However, sometimes the law does consider inflation. In personal injury cases involving a permanent injury or in wrongful death cases, courts sometimes consider inflation in calculations of the present value of future wages that plaintiff will not receive as a result of the injury or death. For example, see the discussion in:

- *Kircher v. Atchison, T. & S.F. Railway. Co.,* 32 Cal.2d 176, 187, 195 P.2d 427, 434-35 (Cal. 1948) (" It is a matter of common knowledge, and of which judicial notice may be taken, that the purchasing power of the dollar has decreased to approximately one half what it was prior to the present inflationary spiral [five citations omitted], and the trier of fact should take this factor into consideration in determining the amount of damages necessary to compensate an injured person for the loss sustained as the result of the injuries suffered.").

- *Burke v. City and County of San Francisco,* 244 P.2d 708, 713 (Cal.App. 1952).

- *U.S. v. English,* 521 F.2d 63, 75 (9th Cir. 1975).

- *Feldman v. Allegheny Airlines, Inc.,* 382 F.Supp. 1271 (D.Conn. 1974), *aff'd in part,* 524 F.2d 384, 386-388 (2nd Cir. 1975).

- *Sauers v. Alaska Barge,* 600 F.2d 238, 244-47 (9th Cir.(1979).

- *Doca v. Marina Mercante Nicaraguense, S. A.,* 634 F.2d 30, 35-40 (2nd Cir. 1980), *cert. den. sub nom. Pittston Stevedoring Corp. v. Doca,* 451 U.S. 971 (1981).

- *Kaczkowski v. Bolubasz,* 421 A.2d 1027 (Pa. 1980).

In 1990, the U.S. Congress enacted a statute that calls for automatic adjustment of civil monetary penalties at least once every four years, according to changes in the Consumer Price Index.[16]

Ways to Avoid the Problem

index dollar to gold

One solution to the problem of the varying value of the U.S. Dollar is to index the dollar to a specified mass of gold, a so-called "gold clause" in a contract for payment. However, this solution was declared against public policy in the USA by a joint resolution of the U.S. Congress in June 1933:

> (a) Every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby, is declared to be against public

[16] "Federal Civil Penalties Inflation Adjustment Act of 1990," 104 Stat. 890, as amended 110 Stat. 1321-373 (1996) and 112 Stat. 3293 (1998). Codified at 28 U.S.C. § 2461.

> policy; and no such provision shall be contained in or made with respect to any obligation hereafter incurred. Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts. Any such provision contained in any law authorizing obligations to be issued by or under authority of the United States, is hereby repealed, but the repeal of any such provision shall not invalidate any other provision or authority contained in such law.
>
> (b) As used in this section, the term "obligation" means an obligation (including every obligation of and to the United States, excepting currency) payable in money of the United States; and the term "coin or currency" means coin or currency of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations.

31 U.S.C. § 463 (effective 5 June 1933, repealed in 1977). 48 Stat. 112, 113 (1933).
§ 463 quoted from *Baumlin & Ernst, Ltd. v. Gemini, Ltd.,* 637 F.2d 238, 242 (4th Cir. 1980).

From 1934 until 1968, obligations specified to be paid in gold could instead be paid in U.S. Dollars at the fixed conversion rate of US$ 35/ounce of gold.

There are six U.S. Supreme Court cases involving gold clauses:

- *Norman v. Baltimore & O.R. Co.,* 294 U.S. 240 (18 Feb 1935) (Bond issued by railroad was specified payable in gold coins. Held it could be paid in devalued U.S. Dollars.).

- *Nortz v. U.S.,* 294 U.S. 317 (18 Feb 1935).

- *Perry v. U.S.,* 294 U.S. 330 (18 Feb 1935) (31 USC § 463 was *un*constitutional when applied to a prior U.S. Government bond that specified payment in gold coins.).

- *Holyoke Water Power Co. v. American Writing Paper Co.,* 300 U.S. 324 (1 Mar 1937) (Water company in Massachusetts wrote leases during years 1881-1897 specifying payment in gold.).

- *Smyth v. U.S.,* 302 U.S. 329 (13 Dec 1937) (Secretary of Treasury called for early redemption of bonds that were payable in gold coins. Held no interest after accelerated maturity date.).

- *Guaranty Trust Co. of New York v. Henwood,* 307 U.S. 247 (22 May 1939) (Bonds issued by railroad on 1 Jan 1912 gave bond holder option to redeem in U.S. Dollars, Dutch Guilders, British Pounds, German Marks, or French Francs. Held bonds must be paid in U.S. Dollars, despite fact that payment in Dutch Gilders would give bondholder 172% of value in U.S. Dollars.).

The U.S. Constitution contains an explicit prohibition against “impairing the obligation of contracts”.[17] The Joint Congressional Resolution in 1933 stated:

> Whereas the existing emergency has disclosed that provisions of obligations which purport to give the obligee a right to require payment in gold or a particular kind of coin or currency of the United States, or in an amount in money of the United States measured thereby, obstruct the power of the Congress to regulate the value of the money of the United States, and are inconsistent with the declared policy of the Congress to maintain at all times the equal power of every dollar, coined or issued by the United States, in the markets and in the payment of debts. ....[18]

Perhaps the monetary crisis during the Great Depression, and the urgent need to end that crisis, encouraged the U.S. Supreme Court to allow Congress to impair obligations in pre-existing contracts.[19] However, as stated earlier, this Congressional Resolution seriously underpaid property owners and bondholders with long-term contracts/bonds that had specified payment in gold.

Effective 31 Dec 1974, the U.S. Congress repealed the 1934 Act’s prohibition on individual ownership of gold. Courts have repeatedly held that this change had no effect on gold clauses in contracts.

- *Equitable Life Assur. Soc. of U.S. v. Grosvenor,* 426 F.Supp. 67 (W.D.Tenn. 27 Oct 1976), *aff’d without opinion,* 582 F.2d 1279 (6th Cir. 1978), *cert. den.,* 439 U.S. 1116 (1979).

- *Henderson v. Mann Theatres Corp.,* 135 Cal.Rptr. 266 (Cal.App. 2 Dist. 28 Dec 1976) (99 year lease executed in year 1929 mentioned payment in gold coin), *cert. den.,* 434 U.S. 825 (1977).

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17 Article I, § 10, ¶ 1.

18 48 Stats. 112 (1933), quoted from *Norman v. Baltimore & O.R. Co.,* 294 U.S. 240, n. 1 (1935).

19 It is beyond the scope of this essay to discuss the wisdom of this Joint Congressional Resolution and the subsequent U.S. Supreme Court cases that held it to be constitutional. However, in my research for this essay, I have found the following judicial opinions that comment on these cases:

- *U. S. Trust Co. of New York v. New Jersey,* 431 U.S. 1, 20-26 (1977).
- *Hellinger v. Farmers Ins. Exchange,* 111 Cal.Rptr.2d 268, 278-280(Cal.App. 2 Dist. 2001).

Plaintiffs in several cases have argued that 31 USC § 463 became *un*constitutional *after* the economic emergency that motivated this statute had passed. Courts rejected plaintiffs’ arguments by noting that the U.S. Supreme Court in *Norman* held 31 USC § 463 constitutional because of Congressional authority to regulate money in the USA, *not* because of an economic emergency. Further, Congress had not yet repealed § 463.

- *Southern Capital Corp. v. Southern Pacific Co.,* 568 F.2d 590, 591 (8th Cir. 1978).
- *Schickler v. Santa Fe Southern Pacific Corp.,* 593 N.E.2d 961, 963-65 (Ill.App. 1992).

- *Feldman v. Great Northern Railway Co.,* 428 F.Supp. 979 (S.D.N.Y. 16 Mar 1977) (Bonds issued in year 1921: "Both principal and interest were payable 'in gold coin of the United States of America of or equal to the standard of weight and fineness as it existed on the first day of July, 1921.' .... The parties stipulate that due to inflation, $6,523.94 was the market value on July 1, 1976 of the quantity of gold represented by $1,000 in gold coin of the standard of weight and fineness specified in the bonds.").

- *Southern Capital Corp. v. Southern Pacific Co.,* 568 F.2d 590 (8th Cir. 11 Jan 1978), *cert. den.,* 436 U.S. 927 (1978).

- *Gold Bondholders Protective Council, Inc. v. U. S.,* 230 Ct.Cl. 307, 676 F.2d 643 (Ct.Cl. 7 Apr 1982) (Plaintiffs unsuccessfully attempted to collect $1,253 on $50 U.S. Liberty Bond issued in 1918, which contained a gold clause.), *cert. den.,* 459 U.S. 968 (1982).

- *Gold Bondholders Protective Council v. Atchison, Topeka and Santa Fe Railway Co.,* 649 P.2d 947, 950 (Alaska 3 Sep 1982). Subsequently, the Railroad was awarded $15,551 in attorneys fees and costs from Plaintiffs. 658 P.2d 776 (Alaska 1983).

- *Schickler v. Santa Fe Southern Pacific Corp.,* 593 N.E.2d 961 (Ill.App. 1 Dist. 15 May 1992) (Bonds issued by railroad in 1895 and matured in 1995. Bonds stated that the principal is: "payable * * * in gold coin of the United States, of the present standard of weight and fineness, or its equivalent, and to bear interest at the weight of four per cent. per annum, payable semi-annually in like gold coin.").

Other cases on this topic include:

- *Baumlin & Ernst, Ltd. v. Gemini, Ltd.,* 637 F.2d 238 (4th Cir. 1980) (Swiss corporation obtained a settlement of a case in January 1976, calling for payment in Swiss Francs. Held *not* a violation of 31 U.S.C. § 463.).

Finally, the U.S. Congress passed a statute that again permitted contracts to be paid or valued in gold, provided that the contract was entered into after 27 Oct 1977. 31 U.S.C. § 5118(d)(2).

- *Rudolph v. Steinhardt,* 721 F.2d 1324 (11th Cir. 27 Dec 1983) (giving historical background).

- *Fay Corp. v. BAT Holdings I, Inc.,* 646 F.Supp. 946 (W.D.Wash. 23 Oct 1986), 682 F.Supp. 1116 (W.D.Wash. 25 Mar 1988), *aff'd per curiam sub nom. Fay Corp. v. Frederick & Nelson Seattle, Inc.,* 896 F.2d 1227 (9thCir. 28 Feb 1990) (Lease signed in year 1929 for 99 year duration contained a gold clause. Transfer of lease in year 1982 was a novation that made enforceable demand for payment in gold.).

- *Wells Fargo Bank v. Bank of America,* 38 Cal.Rptr.2d 521 (Cal.App. 2 Dist. 16 Feb 1995) *review denied,* (6 June 1995) (Lease of commercial property in Beverly Hills, Calif. that was signed in year 1929 for 95 year duration, specified rent of $2000/month payable in gold coin. This property was worth at least $27,000/month in 1980. Transfer of the lease in 1981 constituted a novation that made enforceable demand for payment in gold.).

- *Adams v. Burlington Northern R. Co.,* 80 F.3d 1377 (9th Cir. 10 April 1996) (In bonds issued before 1922, the 1977 statute did *not* revive a gold clause that had been rendered *un*enforceable by statute in 1933.), *cert. den.,* 519 U.S. 864 (1996).

- *Grand Ave. Partners, L.P. v. Goodan,* 25 F.Supp.2d 1064 (C.D.Cal. 16 May 1996), *aff'd per curiam,* 160 F.3d 580 (9th Cir. 18 Nov 1998) (Lease signed in year 1926 for 99 year duration contained a gold clause. Under California law, assignment of lease in 1994 was *not* a novation and did *not* revive the gold clause.).

- *Trostel v. American Life & Cas. Ins. Co.,* 133 F.3d 679 (8th Cir. 15 Jan 1998) (Lease signed in year 1917 for 99 year duration, with lessor having an option to demand payment in gold coin. Assignment of lease in year 1990 was a novation that made enforceable demand for payment in gold.), *cert. den.,* 524 U.S. 945 (1998),
appeal after remand, 168 F.3d 1105 (8th Cir. 23 Feb 1999),
cert. den. sub nom. Conseco Annuity Assurance Co. v. Trostel, 528 U.S. 922 (1999).

- *Nebel, Inc. v. Mid-City Nat. Bank of Chicago,* 769 N.E.2d 45, 49, 53-54 (Ill.App. 1 Dist. 21 Mar 2002) (Lease signed in year 1906 for 99 year duration, specified rent of $1333/month payable in gold coin. A first amendment to lease in 1988 said "Except as otherwise expressly modified by this first Amendment, all the terms and provisions of the Lease are reaffirmed and are not modified by this First Amendment." Held that this first amendment revived the gold clause.), *appeal denied,* 786 N.E.2d 187 (Ill. 2002).

The indexing of dollar amounts to gold reduces the risk that a loan will be repaid with less valuable dollars (i.e., inflation during the duration of the loan), which reduction of risk should decrease the interest rate, and make the transaction fairer to both parties during the duration of the loan.
An alternative solution is to have an annually adjustable interest rate in the loan, so that the lender does not need to predict the amount of inflation in a long-term loan.

index principal amount?

An intriguing solution to the problem of the changing value of the U.S. Dollar is to index the value of the U.S. Dollar to something with constant purchasing power. Before the year 1933, this something was usually gold. However, as seen below, this something could be the Consumer Price Index that is calculated by the U.S. Department of Labor, Bureau of Labor Statistics.

- *Avery v. J.L. Hudson Co.,* 169 N.W.2d 666 (Mich.App. 28 May 1969) (In a lease of land in year 1912 for a duration of 99 years, the lease stated: "rents shall be payable in legal tender of the United States of America, of equal purchase power with the present monetary standard of the said United States of America ...." Held payable in U.S. Dollars, without adjustment. Although the contract did not mention *gold,* the court said: "We conclude from the foregoing analysis that the clause clearly requires payment in legal tender measured by the gold content of the 1912 dollar.").

- *Olwine v. Torrens,* 344 A.2d 665 (Pa.Super. 22 Sep 1975) (In a loan made in 1958, the principal amount was increased or decreased each year, according to the"average purchasing power of the dollar", as measured by the Consumer Price Index. Because the 6% interest rate in this loan was the maximum permitted by Pennsylvania usury statute, the court held that the percentage increase in principal plus the interest rate exceeded the statutory usury rate, and thus the adjustment of principal was unlawful.).

- *Aztec Properties, Inc. v. Union Planters Nat. Bank of Memphis,* 530 S.W.2d 756 (Tenn. 27 Oct 1975) (A loan indexed the principal amount to the Consumer Price Index. The court held that the 10% percentage increase in principal plus the 10% interest in this loan exceeded the 10% usury rate in Tennessee statute, and thus the adjustment of principal was unlawful. Further, the court held that the loan was also unlawful because it violated 31 U.S.C. § 463.), *cert. den.,* 425 U.S. 975 (1976).

- *Shaughnessy v. REC Centers, Inc.,* 361 So.2d 807 (Fla.App. 4 Dist. 9 Aug 1978) (In a lease of land in year 1967 for a duration of 99 years, the lease stated:

  > In the event that the United States dollar should ever be officially devalued by the United States government or replaced by a regular species of a lesser value, then and in that event the rental to be paid by the lessee to the lessor or any purchase price to the lessor by the lessee shall be increased in proportion to said devaluation so that the rental to be paid to the lessor or the purchase price of the property covered by this lease to be paid to the lessor shall be the same in terms of actual value as the United States dollar was on January 1, 1967.

  The court interpreted this sentence in the lease to be a gold clause, although the lease did not mention *gold.*), *appeal after remand,* 407 So.2d 971 (Fla.App. 4 Dist. 14 Dec 1981), *review denied,* 417 So.2d 330 (Fla. 1982).

- *Enchanted World Doll Museum v. Buskohl,* 398 N.W.2d 149 (S.D. 23 Dec 1986) (Principal amount in sales contract was adjusted annually according to changes in Consumer Price Index, during a 20 year payment schedule, plus 6% annual interest. Court held the contract was valid.).

index child support or alimony to CPI

Beginning in the 1970s, it became common to index alimony and child support payments to the Consumer Price Index (CPI), to avoid unfairness to the beneficiary caused by inflation and also to avoid frequent court-ordered modifications. The most frequent problem with such indexing seems to be occasional ambiguity in drafting by attorney(s).

- *Wertlake v. Wertlake,* 349 A.2d 552, 554 (N.J.Super.A.D. 2 Dec 1975) (Settlement agreement signed in 1971 indexed child support and alimony payments to CPI.).

- *Klein v. Sheppard,* 381 N.Y.S.2d 885 (N.Y.A.D. 6 April 1976) (Separation agreement in May 1970 indexed alimony and child support payments to CPI.).

- *Hecker v. Hecker,* 387 N.Y.S.2d 143 (N.Y.A.D. 27 Sep 1976) (Separation agreement in 1973 indexed alimony and child support payments to CPI.).

- *Swayze v. Swayze,* 408 A.2d 1, 5 (Conn. 19 Dec 1978) (Separation agreement in 1965 indexed alimony and child support payments to CPI. Court remarked: "This clause, referred to as a cost-of-living adjustment clause (COLA), is common in commercial contracts and is apparently employed to adjust for fluctuations in the purchasing power of the dollar relative to a predetermined base year.").

- *Schmittinger v. Schmittinger,* 404 A.2d 967 (D.C. 7 Aug 1979) (Separation agreement in 1968 indexed child support and alimony payments to CPI.).

- *Branstad v. Branstad,* 400 N.E.2d 167, 171 (Ind.App. 5 Feb 1980) (In 1978, trial court indexed child support payments to CPI. Appellate court approved of this indexing:

  > ... the provision (1) gives due regard to the actual needs of the child, (2) uses readily obtainable objective information, (3) requires only a simple calculation, (4) results in judicial economy, (5) reduces expenses for attorney fees, and (6) in no way infringes upon the rights of either the custodial parent or the non-custodial parent to petition the court for modification of the decree due to a substantial and continuing change of circumstances. [footnote omitted]

- *In re Marriage of Stamp,* 300 N.W.2d 275, 279 (Iowa 17 Dec 1980) (In 1979, ex-wife asked trial court to index child support payments to CPI, and, in a detailed opinion that quotes *Branstad* with approval, the Iowa Supreme Court agreed with ex-wife. The court cited seven federal statutes that used the CPI to automatically adjust the amount of benefits and then said:

  > Such statutory escalation provisions are a recognition of long-standing and continuing inflation. We think it is common knowledge, subject to judicial notice, that similar provisions frequently have been incorporated in collective bargaining agreements, leases, and other private sector agreements in attempts to insulate the contracting parties from inflation's toll.

- *Brevick v. Brevick,* 628 P.2d 599, 602 (Ariz.App. 29 Apr 1981) ("Nothing in [Arizona statute] prevents the trial court, in appropriate circumstances, from placing an automatic adjustment on a specific amount to preserve the real value of the award against modification by inflation. See *Branstad v. Branstad,* 400 N.E.2d 167 (Ind.App. 1980); *In re Marriage of Stamp,* supra.")

- *Falls v. Falls,* 278 S.E.2d 546, 555-558 (N.C.App. 2 June 1981) (Holds automatic adjustment of child support payments is *im*proper, because it "is at odds with North Carolina statutory and case law."). This decision was later clarified by *Snipes v. Snipes,* 454 S.E.2d 864, 868-870 (N.C.App. 21 Mar 1995).

- *Hempton v. Hempton,* 329 N.W.2d 514, 517 (Mich.App. 8 Dec 1982) (Property settlement agreement in 1974 indexed support payments to CPI. Michigan appellate court cited a few cases that rejected indexing, then concluded: "We believe that cases such as *Stamp, Branstad,* and *Brevick* are better reasoned.").

- *Orman v. Orman,* 344 N.W.2d 415 (Minn. 24 Feb 1984) (Minnesota Supreme Court tersely held it was appropriate to index child support payments to CPI.).

- *Roya v. Roya,* 494 A.2d 132, 134 (Vt. 29 Mar 1985) (Vermont Supreme Court approved indexing alimony and child support payments to CPI.).

- *Martin v. Martin,* 7 P.3d 144, 145-47 (Ariz.App. 13 July 2000) (Child support order in 1981 indexed weekly payment to CPI.).

Recently, a federal statute encouraged states to enact laws that would review child support orders at least once ever three years. This federal statute can be satisfied by including an automatic cost of living adjustments in *all* child support orders. See the judicial comments in:

- *Tompkins County Support Collection Unit ex rel. Chamberlin v. Chamberlin,* 786 N.E.2d 14, 18-21 (N.Y. 13 Feb 2003).

- *Monroe County Special Collections Unit v. David Wills,* 2003 WL 22798937 at *2 (N.Y.Fam.Ct. 14 Nov 2003) (Unpublished trial court opinion remarks:

  > As explained in *Chamberlin,* the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, or "PRWORA" (42 USC § 651-669), is the Federal basis for New York's Family Court Act, section 413-a. PRWORA provided the states with three options for reviewing and adjusting child support orders at least every three years, and the State of New York chose the second option — i.e., the application of a cost of living adjustment (COLA) to the existing order.

why CPI is better than single commodity

There is a risk associated with using a single commodity as a measure of constant purchasing power.

For example, from Sep 1976 to Jan 1980, the price of gold increased steadily to about US$ 850/ounce, owing to inflation in the USA. Then, from Oct 1980 to June 1982, the price of gold decreased to about US$ 300/ounce, although the U.S. Dollar had *not* regained its previous value.

For example, if considers desktop computers as an index, from 1980 to 2005, computers have become both less expensive and better performing (e.g., faster microprocessor, containing more semiconductor memory, larger hard disk drive, etc.). Specifying the purchase price of a $75000 house as 15 desktop computers in 1985 would be ridiculously cheap when the mortgage was paid after about 1995.

These contrary changes in value of single commodities is why it makes sense to use an index such as the Consumer Price Index, which is based on a number of different commodities.

Roy Davies, a librarian at the University of Exeter in England, has collected and posted a comprehensive set of links to webpages on the historical valuation of money at: http://www.ex.ac.uk/~RDavies/arian/current/howmuch.html .

Conclusion

Pretending that the U.S. Dollar has a constant value makes about as much sense as using a rubber band to measure distance.

This document is at **www.rbs2.com/gold.pdf**
My most recent search for court cases on this topic was in June 2004.
revised 22 Aug 2004, minor correction 27 Feb 2008

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