

DRL § 236(B)(5)(d)(10): Marital Fault May Not Be Considered in Determining an Equitable Distribution of Marital Property

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DOMESTIC RELATIONS LAW

DRL § 236(B)(5)(d)(10): Marital fault may not be considered in determining an equitable distribution of marital property

In addition to delineating nine factors that a court may consider in determining the equitable distribution⁸⁹ of marital property⁹⁰ in matrimonial actions,⁹¹ section 236(B) of the Domestic Re-

⁸⁹ "Prior to the enactment of the New York Equitable Distribution Law, property was generally divided between the spouses on the basis of title." DRL § 236, commentary at 33 (McKinney Supp. 1981-1982). See generally 2 H. FOSTER & D. FREED, LAW AND THE FAMILY—NEW YORK §§ 22:44-22:48, at 112-20 (1972); Note, *New York's Equitable Distribution Law: A Sweeping Reform*, 47 BROOKLYN L. REV. 67, 70-71 (1980). Thus, the spouse who held title to property was entitled to it, and the court would not transfer title to the other spouse. DRL § 236(B), commentary at 33 (McKinney Supp. 1981-1982). Under the "title" theory, hardship often would be incurred by a wife whose husband accumulated property during the marriage, since the court would award the property to the title-holding spouse "notwithstanding the contributions made by the non-title-holding spouse toward the property or toward the marriage." DRL § 236(B), commentary at 33 (McKinney Supp. 1981-1982). With the enactment of the New York Equitable Distribution Law, however, "property accumulated during the marriage should be distributed [upon dissolution] in a manner which reflects the individual needs and circumstances of the parties regardless of the name in which such property is held." Governor's Memorandum on Approval of ch. 281, N.Y. Laws (June 19, 1980), reprinted in [1980] N.Y. Laws 1863 (McKinney).

⁹⁰ The term "marital property" refers to "all property acquired by either or both spouses during the marriage and before the execution of a separation agreement or the commencement of a matrimonial action, regardless of the form in which title is held . . ." DRL § 236(B)(1)(c) (McKinney Supp. 1981-1982). Separate property, including property acquired before the marriage, or at any time through bequest, devise, descent, or gift from a third person, or compensation received for personal injuries, is excluded from the marital property category. *Id.* § 236(B)(1)(c)-(d). The spouses may, by written agreement, designate property as separate. *Id.* § 236(B)(3). Where the parties have not disposed of the matter by agreement, however, marital property is subject to distribution in divorce, dissolution, annulment or declaration of nullity actions. *Id.* § 236(B)(5)(a).

⁹¹ DRL § 236(B)(5)(d)(1)-(10) (McKinney Supp. 1981-1982). New York's current equitable distribution statute, which became effective July 19, 1980, provides that "[m]arital property shall be distributed equitably between the parties, considering the circumstances of the case and of the respective parties." *Id.* § 236(B)(5)(c). The court is to make its determination in light of the following factors:

- (1) the income and property of each party at the time of marriage, and at the time of the commencement of the action;
- (2) the duration of the marriage and the age and health of both parties;
- (3) the need of a custodial parent to occupy or own the marital residence and to use or own its household effects;
- (4) the loss of inheritance and pension rights upon dissolution of the marriage as of the date of dissolution;
- (5) any award of maintenance under subdivision six of this part;
- (6) any equitable claim to, interest in, or direct or indirect contribution made to the acquisition of such marital property by the party not having title, including joint efforts or expenditures and contributions and services as a spouse, parent, wage earner and homemaker, and to the career or career potential of the other

lations Law permits a court to assess any other factor that it expressly determines to be "just and proper."⁹² Although marital fault is not included specifically in the guidelines set forth in section 236(B), it nevertheless has been contended that such a consideration properly falls within the broad perimeters of the "just and proper" provision.⁹³ Recently, however, in *M.V.R. v. T.M.R.*,⁹⁴ the

party;

(7) the liquid or non-liquid character of all marital property;

(8) the probable future financial circumstances of each party;

(9) the impossibility or difficulty of evaluating any component asset or any interest in a business, corporation or profession, and the economic desirability of retaining such asset or interest intact and free from any claim or interference by the other party;

(10) any other factor which the court shall expressly find to be just and proper.

Id. § 236(B)(5)(d)(1)-(10) (McKinney Supp. 1981-1982) (emphasis added). It is clear, therefore, that in an equitable distribution jurisdiction, marital property is divided pursuant to a judicial determination that is based upon principles of equity. *See, e.g., Painter v. Painter*, 65 N.J. 196, 215, 320 A.2d 484, 494 (1974). Such a scheme is fundamentally different from that of a community property jurisdiction, which typically presumes that there shall be an equal division of marital property. *See, e.g., In re Marriage of Brigden*, 80 Cal. App. 3d 380, 389, 145 Cal. Rptr. 716, 723 (Ct. App. 1978). *See generally* Note, *supra* note 89, at 70-71.

Prior to the adoption of the current equitable distribution scheme, DRL § 236(B) (McKinney Supp. 1981-1982), New York's alimony statute dictated that in the case of a separation or divorce, the court could order "the husband to provide suitably for the support of the wife . . ." *Id.* § 236 (1977), amended by DRL § 236(B) (McKinney Supp. 1981-1982). The original section 236 of the Domestic Relations Law, however, contained a provision that automatically barred alimony if the wife were found guilty of the type of marital misconduct that would entitle her spouse to a judgment of separation or divorce. *See, e.g., Mann v. Wasserberger*, 65 App. Div. 2d 717, 717, 410 N.Y.S.2d 590, 591 (1st Dep't 1978) ("no award of alimony may be made to a wife where her misconduct would constitute grounds for separation or divorce"); *Schwartzman v. Schwartzman*, 62 App. Div. 2d 988, 988, 403 N.Y.S.2d 317, 318-19 (2d Dep't 1978) (divorce granted to husband on the basis of wife's misconduct operates to preclude her rights to alimony and exclusive possession or occupancy of the marital home); *Smith v. Smith*, 60 Misc. 2d 692, 693-94, 303 N.Y.S.2d 193, 195 (Family Ct. Ontario County 1969) (wife has no right to alimony where her husband obtained divorce decree on the ground of wife's misconduct). The present section 236 does not expressly include marital fault as a factor to be considered in distributing property or awarding maintenance. *See* DRL § 236(B)(5)(d)(1)-(10), (6)(a)(1)-(10) (McKinney Supp. 1981-1982). Additionally, under the current statute, maintenance, as opposed to alimony, may be ordered for either spouse on either a temporary or permanent basis. *See id.* § 236(B)(6)(a) (McKinney Supp. 1981-1982); *cf. Orr v. Orr*, 440 U.S. 268, 278, 283 (1979) (Alabama statute permitting alimony only for wife violates equal protection clause of federal Constitution).

⁹² DRL § 236(B)(5)(d)(10).

⁹³ *E.g.*, 1 E. BISKIND, BOARDMAN'S NEW YORK FAMILY LAW § 219, at 979 (rev. ed. 1981); 11C J. ZETT, M. KAUFMAN & C. KRAUT, NEW YORK CIVIL PRACTICE § 65.11, at 65-47 (1981); Freed, *Factors for Equitable Distribution*, in A PRACTICAL GUIDE TO THE NEW YORK EQUITABLE DISTRIBUTION DIVORCE LAW 207 (H. Foster ed. 1980) [hereinafter cited as PRACTICAL GUIDE]; DiLeo & Model, *A Survey of the Law of Property Disposition Upon Divorce in the Tristate Area*, 56 ST. JOHN'S L. REV. 219, 255-56 (1982); Foster, *Equitable Distribution: An*

Supreme Court, New York County, held that as a matter of law, marital fault may not be considered by a court in determining the equitable distribution of marital property.⁹⁵

In *M.V.R.*, the plaintiff-wife commenced a divorce action against her husband, alleging, *inter alia*, that his homosexuality constituted cruel and inhuman treatment.⁹⁶ In addition to requesting that a separation judgment be issued, the defendant moved to preclude from the equitable distribution determination any evidence of his alleged homosexuality.⁹⁷ The Supreme Court, New York County, granting both motions, concluded that marital fault may not be considered in determining the distribution of marital property under section 236(B).⁹⁸

Writing for the court, Justice Glen noted that the marriage relationship frequently has been viewed as an economic partnership.⁹⁹ Thus, the court reasoned, since fault is irrelevant to the de-

Explanation of New York's New Statute, N.Y.L.J., July 24, 1980, at 4, col. 3. Several lower courts have indicated that fault is a proper factor to consider in the equitable distribution of marital property. *See, e.g.*, *Kobylack v. Kobylack*, 110 Misc. 2d 402, 408, 442 N.Y.S.2d 392, 395 (Sup. Ct. Westchester County 1981) (fault should not be "used as punishment but only to tilt the balance where there are insufficient assets to make the parties economically whole"); *Giannola v. Giannola*, 109 Misc. 2d 985, 987, 441 N.Y.S.2d 341, 343 (Sup. Ct. Suffolk County 1981).

⁹⁴ 115 Misc. 2d 674, 454 N.Y.S.2d (Sup. Ct. N.Y. County 1982).

⁹⁵ *Id.* at 675, 454 N.Y.S.2d at 780.

⁹⁶ *Id.* at 679 n.8, 454 N.Y.S.2d at 782 n.7. In addition to alleging cruel and inhuman treatment, the plaintiff alleged that her husband of 20 years had abandoned her. *Id.* at 674, 454 N.Y.S.2d at 779. She nevertheless sought to withdraw the abandonment charge so that only the issue of cruelty would remain to be tried. *Id.* The motion to withdraw the claim was denied by the court. *Id.* at 675, 454 N.Y.S.2d at 780. The husband's motion for summary judgment on the abandonment issue, however, subsequently was granted. *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.* at 678, 454 N.Y.S.2d at 782; *see infra* note 106. Before analogizing the marriage relationship to an economic partnership, Justice Glen recognized that New York's Equitable Distribution Law generally was modeled on the Uniform Marriage and Divorce Act (UMDA). 115 Misc. 2d at 676, 454 N.Y.S.2d at 780; *see UNIF. MARRIAGE & DIVORCE ACT* § 307, 9A U.L.A. 142-43 (1979). The New York statute differs from the model insofar as the New York law does not contain a provision that specifically prohibits reference to marital fault in the division of marital property. *See* DRL § 236(B)(5)(d)(1)-(10) (McKinney Supp. 1981-1982). The court also observed that states adhering to the UMDA could be divided into three groups. 115 Misc. 2d at 676, 454 N.Y.S.2d at 781. Under the first model, courts are given various factors to weigh, including the cause of the marriage's dissolution, *e.g.*, CONN. GEN. STAT. ANN. § 46b-81 (West 1978), or the spouse's conduct during the marriage, *e.g.*, MO. REV. STAT. § 452.330(1) (1969). Courts employing the second model may consider a variety of enumerated factors, but marital fault is not expressly included in this list. *E.g.*, ME. REV. STAT. ANN. tit. 19, § 722-A(1) (1981). In the third model, there are no specified factors, but marital fault is not expressly excluded. *E.g.*, N.J. STAT. ANN. 2A: 34-23 (West

termination of asset distribution upon a partnership's dissolution,¹⁰⁰ it likewise should not be evaluated for purposes of equitable distribution.¹⁰¹ Additionally, Justice Glen stated that because the determination of marital fault would, at the very least, be a difficult task for a court,¹⁰² it should not be treated as a factor in the distribution of marital property.¹⁰³ To hold otherwise, the court posited, potentially would result in unlawful discrimination and impermissible punishment for protected private conduct.¹⁰⁴

It appears that the rationale relied upon by the *M.V.R.* court is unpersuasive. First, it is suggested that the court's comparison of the marital relationship with an economic partnership is mis-

Supp. 1974). The *M.V.R.* court determined that decisions in the states which have adopted statutes that specifically include marital misconduct as a factor to be considered in the equitable distribution determination provide no guidance for the New York courts. 115 Misc. 2d at 676, 454 N.Y.S.2d at 781. The *M.V.R.* court did find, however, that case law from states adopting the second and third models is helpful. *Id.* Nevertheless, the court concluded that the decisions of these states, though helpful, are "not dispositive of the question presented." *Id.*

¹⁰⁰ 115 Misc. 2d at 678, 454 N.Y.S.2d at 782. *But see* N.Y. PARTNERSHIP LAW § 69(2)(II) (McKinney 1948) (providing that a partnership dissolved in contravention of the partnership agreement has a right to sue for breach of contract against each partner who wrongfully caused the dissolution).

¹⁰¹ 115 Misc. 2d at 679, 454 N.Y.S.2d at 782 (citing *In re Marriage of Boyd*, 200 N.W.2d 845, 853 (Iowa 1972)); *see In re Marriage of Williams*, 199 N.W.2d 339, 344 (Iowa 1972); *cf. Chalmers v. Chalmers*, 65 N.J. 186, 194, 320 A.2d 478, 483 (1974) (fault is irrelevant since concept of equitable distribution is based upon contributions to the marriage).

¹⁰² 115 Misc. 2d at 679 n.7, 454 N.Y.S.2d at 782 n.7. Justice Glen reasoned that if marital fault must be assessed, the court is placed "in a difficult, if not impossible position which is entirely distinguishable from its role in granting or denying a decree of divorce." *Id.* at 679, 454 N.Y.S.2d at 782 (footnote omitted). Indeed, the court stated, "[i]n considering marital fault in equitable distribution, . . . the court . . . would be required, in God-like fashion, to lay blame." *Id.*

¹⁰³ *Id.* at 680, 454 N.Y.S.2d at 783.

¹⁰⁴ *Id.* The court noted that to permit consideration of marital fault in equitable distribution cases would allow the introduction of evidence "whose very purpose may be to prejudice judges in impermissible ways," *id.* (footnote omitted), possibly leading to unlawful discrimination against members of historically disadvantaged groups, *id.* In asserting that the gay community has been the target for much discrimination, the *M.V.R.* court referred to *People v. Onfore*, 51 N.Y.2d 476, 415 N.E.2d 936, 434 N.Y.S.2d 947 (1980), *cert. denied*, 451 U.S. 987 (1981), in which the Court of Appeals held that consenting adults have a right to express their sexual preference to engage in cloistered personal sexual conduct free from governmental interference, 51 N.Y.2d at 488, 415 N.E.2d at 940-41, 434 N.Y.S.2d at 951; *see* 115 Misc. 2d at 681, 454 N.Y.S.2d at 783. Justice Glen also stated, however, that homosexuality often has been the basis for divorce actions brought on the ground of "'cruel and inhuman treatment.'" 115 Misc. 2d at 681, 454 N.Y.S.2d at 783. *See generally* Rivera, *Our Straight-Laced Judges: The Legal Position of Homosexual Persons in the United States*, 30 HASTINGS L.J. 799, 879-83 (1979).

placed, for although the relationships have been viewed as akin,¹⁰⁵ there are fundamental differences between the two that cannot be ignored. To be sure, the reasons for entering into these relationships, and the manner by which each is dissolved, typically will vary.¹⁰⁶ Second, while it may be difficult to assess the fault attributable to a particular spouse, it is submitted that such difficulty should not preclude an examination of marital misconduct because similar evaluations routinely are made in other complex areas of law.¹⁰⁷ Finally, it appears that the court's wariness of the prejudice that might result if misconduct were a factor in the distributive determination is unfounded.¹⁰⁸ Indeed, the current equitable distribution scheme insures impartiality by requiring a court to identify the factors that it is utilizing in making a property division.¹⁰⁹

¹⁰⁵ Governor's Memorandum on Approval of ch. 281, N.Y. Laws (June 19, 1980), reprinted in [1980] N.Y. Laws 1863 (McKinney) ("the marriage relationship is also an economic partnership"). At least one commentator has asserted that section 236(B) recognizes "that modern marriage is an economic partnership of co-equals, the dissolution of which requires an equitable division of the marital assets." Note, *supra* note 89, at 85. Indeed, the underlying premise of section 236(B) "is that marriage today should be regarded as an economic partnership." Foster, *supra* note 93, at 4, col. 1.

¹⁰⁶ While the marriage relationship traditionally has been viewed as being based upon love and affection, a partnership, by definition, is motivated by the desire for economic profit. See UNIF. PARTNERSHIP ACT § 6, 6 U.L.A. 22 (1969) (partnership is "an association of two or more persons to carry on as co-owners a business for profit"); see also *Crest Constr. Co. v. Insurance Co. of N. Am.*, 417 F. Supp. 564, 568 (W.D. Okla. 1976); *Stuart v. Overland Medical Center*, 510 S.W.2d 494, 497 (Mo. Ct. App. 1974); *Cutler v. Bowen*, 543 P.2d 1349, 1351 (Utah 1976). See generally J. CRANE & A. BROMBERG, LAW OF PARTNERSHIP § 4, at 33-35 (1968); H. REUSCHLEIN & W. GREGORY, AGENCY & PARTNERSHIP §§ 174-183, at 246-66 (1979). Additionally, under New York law, if no limit has been fixed as to the duration of a partnership, the partnership may be dissolved at any time by any party. N.Y. PARTNERSHIP LAW § 62(1)(b) (McKinney 1948); see, e.g., *DeMartino v. Pensavalle*, 56 App. Div. 2d 589, 589, 391 N.Y.S.2d 461, 461 (2d Dep't 1977); *Lavin v. Ehrlich*, 80 Misc. 2d 247, 249, 363 N.Y.S.2d 50, 52 (Sup. Ct. Nassau County 1974); *Saward v. Saward*, 119 Misc. 676, 678, 197 N.Y.S. 123, 124-25 (Sup. Ct. N.Y. County 1922), *aff'd mem.*, 214 App. Div. 715, 209 N.Y.S. 914 (1st Dep't 1925). A marriage relationship, on the other hand, may not be terminated as easily as a partnership. See DRL § 170 (1977).

¹⁰⁷ See, e.g., *Dole v. Dow Chem. Co.*, 30 N.Y.2d 143, 282 N.E.2d 288, 331 N.Y.S.2d 382 (1972) (notwithstanding difficulty in determining relative guilt of multiple tortfeasors in negligence actions, there must be apportionment of responsibility). See generally W. PROSSER, HANDBOOK OF THE LAW OF TORTS § 67, at 434-39 (1971).

¹⁰⁸ See CODE OF JUDICIAL CONDUCT Canon 3, § C(1)(a) (1972) ("a judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned . . . [on the ground that] he has a personal bias or prejudice concerning a party").

¹⁰⁹ See DRL § 236(B)(5)(g) (McKinney Supp. 1981-1982). The requirement that a court enumerate the factors that it considered in making a distributive award may not be waived either by the parties to the action or by their counsel. *Id.* Notably, no similar provision exists in the New Jersey Equitable Distribution statute. See N.J. STAT. ANN. § 2A:24 (West Supp. 1974). Although New Jersey courts may not consider marital fault for equitable dis-

Irrespective of these deficiencies in the *M.V.R.* court's reasoning, it is suggested that its holding, that marital fault as a matter of law may not be considered in an equitable distribution determination, is overbroad. Recognizing that section 236(B) was designed to foster economic justice, and not to punish a spouse for marital misconduct,¹¹⁰ it nevertheless is submitted that fault at times should be considered, for instance, where it leads either to destruction of the marriage or to dissipation of marital resources.¹¹¹ Moreover, the legislative history of the statute seemingly comports with this view. Although the *M.V.R.* court accorded little weight to the legislative history,¹¹² it appears that the framers of the legislation intended egregious fault or heinous misconduct to fall within the "just and proper" provision of the statute.¹¹³ Indeed, this "catch-all" provision was adopted in order to quell the dissatisfaction with

tribution purposes, *see* *Chalmers v. Chalmers*, 65 N.J. 186, 193, 320 A.2d 478, 482 (1974), one commentator has contended that the broad discretion granted to New Jersey judges may lead to arbitrary and unpredictable decisions, possibly providing "an avenue for notions of fault to enter into and influence the distribution process." Comment, *Divorce Law—Equitable Distribution of Property in New Jersey*, 28 RUTGERS L. REV. 447, 464 (1974) (footnote omitted). It is suggested that the New York scheme precludes such arbitrary decisionmaking by mandating that the factors considered in making a distributive award be enumerated.

¹¹⁰ Foster, *supra* note 93, at 4, col. 3 (section 236(B) "is geared to economic justice and is not intended t[o] serve the purpose of punishment of marital sin or to reward domestic virtue"); *see* DiLeo & Model, *The New Jersey Influence on New York's Equitable Distribution Law*, 12 SETON HALL L. REV. 37, 42 (1981) (purpose of statute is to attain economic justice and not to punish a spouse).

¹¹¹ PRACTICAL GUIDE, *supra* note 93, at 299 editor's note ("[e]conomic fault or the dissipation of family assets" is to be considered under the catch-all provision); Foster & Freed, *Family Law*, 32 SYRACUSE L. REV. 335, 355 (1981) ("[i]t is likely that marital fault that led to the destruction of the marriage . . . will be subsumed under factor (10)").

¹¹² *See* 115 Misc. 2d at 675-76, 454 N.Y.S.2d at 780. The *M.V.R.* court noted that a proposed draft of the current equitable distribution statute contained a provision that expressly excluded marital fault as a factor to consider in the decision to divide marital property. *Id.* at 676, 454 N.Y.S.2d at 780. Acknowledging that this provision was dropped before the legislation was passed, Justice Glen stated that "by neither expressly including nor excluding marital fault . . . [and] by including the potentially catch-all 'any other factor which the court shall expressly find to [be] just and proper' . . . the legislators left the final decision to the courts." *Id.*

¹¹³ *See* N.Y.L.J., Sept. 24, 1982, at 2, col. 6 (letter to the editor). The letter stated that [a]s a member of the Ad Hoc Committee which worked with the Assembly and Senate in drafting the Equitable Distribution Law, I can state unequivocally that it was the Legislature's intent to make misconduct of the parties one of the ten points to be considered by the court in awarding maintenance and/or property division. Specifically, misconduct of the parties was to be considered under Point 10 of the statute which provided that the court must consider 'any other factor which the court shall expressly find to be just and proper.'

Id.

the original draft of the statute which expressly forbade consideration of marital fault,¹¹⁴ and to afford courts the flexibility necessary to handle the various fact patterns and equities that often arise in matrimonial actions.¹¹⁵ To hold that marital misconduct should be disregarded for purposes of marital-property division apparently negates this flexibility and ignores the legislative design of the equitable distribution statute.

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EDUCATION LAW

Educ. Law §§ 2022, 3602: Rational basis test applied to uphold constitutionality of public school financing scheme

Sections 2022 and 3602 of the Education Law create a public school financing scheme that is designed to ensure to all school districts throughout the state a uniform, minimum per pupil expenditure.¹¹⁶ To achieve this objective, state aid is allocated, where necessary, to local school districts, thereby augmenting revenue generated through local property taxation.¹¹⁷ Due to differences in

¹¹⁴ Wels, *The Role of Fault*, in PRACTICAL GUIDE, *supra* note 93, at 289, 297-98 editor's note. The first draft of the equitable distribution statute contained a provision that expressly prohibited judicial consideration of marital fault, Foster, *Commentary on Equitable Distribution*, 26 N.Y.L. SCH. L. REV. 1, 49 (1981); Wels, *supra*, at 297, notwithstanding strong opposition from attorneys and legislators who believed that fault should be considered in the determination of maintenance awards and property distributions, Wels, *supra*, at 297. The compromise finally chosen was that "no mention would be made of marital fault in the enumerated factors but that catch-call [sic] factor (10) would be added so that the court in extreme cases might consider marital fault along with the specified criteria." Wels, *supra*, at 297-98.

¹¹⁵ See Pauley, *A First Look at the Modern-Day Robin Hood: A Gallop Through Sherwood Forest*, in PRACTICAL GUIDE, *supra* note 93, at 17, 19 ("[a]n important aspect of this legislation is the flexibility which is incorporated due to the tremendous variation in marital situations and the equities involved"). To be sure, it has been recognized that "[f]lexibility, rather than rigidity, is essential for the fair disposition of a given case." *Id.*; see Foster, *supra* note 93, at 4, col. 1.

¹¹⁶ See N.Y. EDUC. LAW § 2022 (McKinney 1969); *id.* § 3602 (McKinney 1981 & Supp. 1981-1982).

¹¹⁷ See *id.* § 2022(1) (McKinney 1969). The amount of local property taxes allocated to school financing is determined by a district vote "upon the appropriation of the necessary funds to meet estimated expenditures . . . or on propositions involving the expenditure of money, or authorizing the levy of taxes . . ." *Id.* In addition to this property tax revenue, the state provides district-adjusted flat state grants per pupil, and, when the combined revenue from local property taxes and state grants does not result in the state-guaranteed minimum, the state provides supplemental funds to reach the minimum level. *Id.* § 3602 (Mc-