

CAPITAL UNIVERSITY
LAW AND GRADUATE CENTER

FAMILY LAW
SPRING SEMESTER, 1995
FINAL EXAMINATION

PROFESSOR STRASSER
APRIL 21, 1995
TAKE HOME

INSTRUCTIONS

1. THIS EXAM IS DUE NO LATER THAN 6:00 P.M. ON WEDNESDAY MAY 10 IN MY OFFICE (121). As a matter of convenience, the exam may be turned in earlier. If I am not there when you want to turn in the exam, ask Phyllis Cole (the secretary down the hall) to let you into my office to place your exam in the appropriate box.

2. The exam must be TYPED and DOUBLESPOCED on 8 1/2 by 11 paper. There should be 1 INCH MARGINS, and the print should be between ten and twelve characters per inch (10 pci - 12 pci). THE EXAM MUST NOT EXCEED FOURTEEN (14) PAGES. You may only write on one side of each page. Number your pages. You may allocate the pages as you see fit. However, YOU MUST BEGIN YOUR ANSWER TO EACH QUESTION AT THE TOP OF A NEW PAGE. THE FAILURE TO FOLLOW THESE DIRECTIONS WILL RESULT IN A LOSS OF POINTS.

3. The questions are of EQUAL WEIGHT.

4. This is an open book exam. However, you are not permitted to consult with anyone about the questions or answers until all papers have been submitted. YOU SHOULD BE ABLE TO DO VERY WELL ON THIS EXAM WITHOUT ANY OUTSIDE RESEARCH.

5. AMBIGUITIES: If you find the facts given to be insufficient to answer a question, state any additional f actual assumptions you deem necessary and answer the questions as though your assumptions were part of it. DO NOT MAKE THE MISTAKE OF CHANGING THE QUESTION BY CHANGING THE FACTS.

6. IDENTIFICATION: Write your exam number on the first page and on every succeeding page. **Neither your name nor any other identifying mark, other than your exam number, should appear anywhere on your answer.**

7. Take time to organize your answers, which should be concise and to the point. **You should discuss ALL RELEVANT ISSUES even if one issue might dispose of the case.** This exam requires you to do **ISSUE-SPOTTING and ANALYSIS.**

8. REPETITION: When I grade these, I will look at Question One in ALL of the exams and then look at Question Two in ALL of the exams. Merely because you have said something in Question One does not mean that you will get credit for it in Question Two should the same point be relevant in both questions. DO NOT CROSS-REFERENCE. (I don't want my judgment of how you are doing in Question Two to be affected by my judgment of how well you did on Question One.)

9. CURRENT LAW: Although the questions are dated to facilitate sequencing of events, you should apply CURRENT LAW.

10. CITATION: When citing to a case we discussed in class, it will suffice to use the name of the case, e.g., the Baby M. Court or the DeShaney Court.

QUESTION 1

Mr and Mrs. Anderson are unable to have children. They adopt Bobbi. Mr. and Mrs. Cunningham are also unable to have children. They adopt Donald. Mrs. Anderson and Mrs. Cunningham are sisters.

Capania Revised Statute Sec. 1000.1 reads in relevant part:

Male persons of the age of eighteen years and female persons of the age of eighteen years, not nearer of kin than second cousins, and not having a husband or wife living, may be joined in marriage.

Bobbi and Donald are childhood playmates. Eventually, they fall in love and marry (when each has reached the age of 22 after graduating from college).

After their honeymoon, Bobbi (a registered nurse) starts working at Capania State Hospital at a salary of \$27,000 per year. She turned down a more attractive offer at Lakeside Hospital for \$30,000 per year because her husband, Donald, would pay \$3000 less per year at Capania State University Law School if his spouse worked at Capania State Hospital.

During the summers following his first and second years of law school, Donald clerked at Prestigious Law Firm, earning \$6,000 each summer. He paid for his tuition and books by applying his summertime earnings and by getting loans for the rest. Bobbi paid all household expenses as well as did all household chores while Donald was in law school.

Donald graduated in June of 1989 near the top of his class. Within five years of graduation, he was earning \$75,000 per year at Prestigious Law Firm.

Donald and Bobbi were blessed with two children, Gregory, born May 15, 1988, and Helen, born April 27, 1989. On July 4, 1994, Donald came to the realization that he was no longer in love with Bobbi. He carefully examined his feelings for the remainder of the month (without discussing them with Bobbi) and ultimately decided to get a divorce. On August 8, 1994, he flew to Divorca, an island which had recently achieved statehood in the United States. Divorca imposed a one-day residence requirement for jurisdictional purposes for those seeking a divorce. Donald stayed twice as long as legally required, got a divorce, and returned home.

When Donald returned from Divorca, he went home, packed a few suitcases," explained to Bobbi that he had just gotten a divorce, and then left. Thereafter, Donald and Bobbi only spoke to each other through their attorneys.

The weekend after Donald moved out, Bobbi and the children moved into Bobbi's parents' home. The Andersons, now retired, had a large home and had a wonderful relationship with their grandchildren. Bobbi and the children would stay there for the next seven years.

When Bobbi filed for divorce (on incompatibility grounds), Donald contested the action, arguing:

1. their marriage was void from the beginning because they were first cousins, and
2. in the alternative, if the court did not find the marriage void from the beginning, Donald had already secured a divorce in the state of Divorca, which had to be given full faith and credit by the State of Capania.

The court rejected both of Donald's claims. Fortunately, the attorneys for Bobbi and Donald had reached an agreement about property and custody issues on the off-chance that Donald's claims would be rejected. The agreement included the following conditions (the other conditions may be ignored for present purposes):

1. Donald would pay child support as determined by the relevant tables.
2. Bobbi would get \$3000 per month spousal support for the first year and \$2000 per month spousal support for the second year. After the second year ended, Bobbi would get \$500 per month until Jan. 1, 2006, at which point she would get \$250 per month. On Jan. 1, 2007, all support would stop.
3. Donald agreed to pay the college expenses (including tuition, books, and housing) of each child.
4. Bobbi agreed to sell the house and furnishings, proceeds to be split evenly.
5. Bobbi would have custody of the two children. Donald would have liberal visitation privileges.

The court incorporated the agreement into the divorce decree, retaining jurisdiction.

Fortunately, the house sold very quickly. Bobbi and Donald received \$40,000 more for the house than they had paid for it. They received additional money for the furnishings.

Bobbi's attorney advised her that she would have to declare all monies received (excluding the amounts specified in the support tables as child support and excluding the amounts received for the sale of the house and furnishings) as income. However, he pointed out cheerfully, better to receive it as income than not at all.

In the year 2000, Bobbi met Ken Kildare, a doctor who was a member of the religious sect Special People. Special People believe (among other things) that lawyers are adulterous scum. In the year 2001, Bobbi converted and then married the doctor.

Bobbi never interfered with Donald's visiting the children; indeed, she encouraged the visitation. However, after Bobbi's remarriage, Donald noticed that the children were becoming less friendly towards him, often quoting passages from religious writings suggesting that he was not a nice person. Donald went to court seeking a modification of custody and support, arguing:

1. There had been an important change of circumstances, namely, Bobbi's remarriage, justifying a change in custody.
2. Support for Bobbi was no longer necessary now that she had remarried.
3. Donald should not be forced to pay for the children's college educations – Bobbi's and Ken's combined income exceeded Donald's considerably. As a solo practitioner, Ken was making about \$60,000 per year.

Bobbi argued that a modification of custody and support was inappropriate, pointing out:

1. as custodial parent, she could determine her children's religious upbringing.

2. the children wanted to live with her and her new husband.
3. it would be inappropriate to change the support agreement; the agreement had never included a clause specifying that support would stop upon remarriage.
4. Donald had agreed to pay for college. Neither she nor her children should be made to suffer just because Donald had decided to go into a solo practice.

You have been asked to write a memo discussing all relevant issues raised by the facts. Please be sure to include any tax or professional responsibility issues raised.

QUESTION 2

On Feb. 1, 1992 Nancy Smith, a divorced mother with three children, was informed by her doctor that she should not have any more children she had a medical condition which would make it very dangerous for her to carry a child to term. She considered having a tubal ligation performed, but she would have to go out of state for the procedure, no private hospital would perform one (they were all religiously affiliated and were prohibited from performing such procedures) and the state of Wexley had prohibited such procedures from being performed in any public hospital.

Nancy started dating a man named Oscar on March 1, 1992. However, they stopped seeing each other on April 15, 1992, in large part because Zoe (Oscar's ex-fiancée) had come back into his life.

Fortunately, around the time that Nancy and Oscar broke up, Nancy met Peter. Nancy and Peter started dating each other quite seriously. Nancy did not mention her brief affair with Oscar.

On June 15, 1992, Nancy discovered that she was about two months pregnant. She and Peter discussed what to do. Peter wanted to father a child. However, his family had a history of Huntington's Disease, a genetically transmitted disease with no known cure, and he did not want to take the chance that his child would get the disease. Peter thought that a test had been developed which would determine whether one had Huntington's Disease. Nancy and Peter agreed that if he had the disease, they would go to another state to get an abortion. (The same reasons preventing Nancy from having gotten a tubal ligation in the state of Wexley also prevented her from getting an abortion in the state.) There is no history of Huntington's Disease in Nancy's family.

Peter went to his doctor, Charlie Tun, to get tested. Fortunately, the test results were negative. Nancy and Peter decided to get married and to have the child.

On December 20, 1992, Peter went to a new doctor to have his annual physical. Because Dr. Tun had recently had his license to practice medicine revoked, Peter asked to be retested for Huntington's. Peter noticed that this doctor administered the test in a different way that Dr. Tun had administered it six months earlier. Regrettably, this time the test showed that Peter had the disease. Further, the doctor performed the test twice (just to make sure) and both times the test indicated that he had the disease.

Peter pointed out that his previous doctor had administered the test differently. The new doctor explained that she had gotten advanced training in the administration of the test and that the previous doctor had probably done the test incorrectly. However, the new doctor further pointed out that since there was no treatment for the disease, Peter was not harmed by the mistake. Peter asked whether the test could be used to determine whether a fetus had Huntington's. The doctor replied that it could not be so used.

On January 17, 1993, Oscar happened to be reading the obituary pages of the local newspaper. He was shocked to learn that Nancy Smith, the woman whom he had dated the previous spring, had died after giving birth to a little girl. (There was no malpractice involved in Nancy's death.) Oscar reflected a moment and realized that he might be the father of the child.

Oscar contacted his attorney, John Willing, to see how he could go about determining whether he was indeed the father of the child. He and his current wife, Zoe, wanted to raise the child if possible. Willing had done a lot of work for Oscar in the past and had always done a good job.

Wexley Revised Statute 1002.1 says, in relevant part:

(1) A man is presumed to be the natural father of a child if a man and the child's mother are married to each other and the child is born during the marriage.

(2) The presumption may be rebutted by blood tests only if the motion for such tests is made within two years from the date of the child's birth, either by the husband or by the wife.

Shortly after Nancy's death, Nancy's mother, Abigail, went to court to get custody of her three oldest grandchildren (i.e., all of Nancy's children excluding the newborn). Quentin, Nancy's ex-husband, also sought custody. He had had contact with the children since the divorce (including overnight visitation) and had contributed to their support. Quentin had been living with his lover, Robert, for the past several years. The children knew and liked Robert.

The state sodomy law was struck down in *Thomas v. State*, 203 Wex.2d 488 (1990) on state constitutional grounds.

Peter did not want custody of any of the children (including the newborn), at least in part, because he believed that he would be irresponsible to try to raise the children alone, especially given his uncertainty about how long he would live. Peter called John Willing, an attorney who had been highly recommended. Peter knew that Wexley allowed private adoptions and was hopeful that his difficult situation could be resolved with minimal publicity. Peter explained everything including his own prognosis and his worry that his child had inherited the disease. (There is a 50% chance that any child that he has sired will inherit the disease.) Willing told Peter that he was sure that something satisfactory could be arranged.

Willing saw a way that both Peter and Oscar would be pleased. Willing had Oscar submit a blood sample, allegedly to determine whether he was the father of the child. Willing failed to have any blood tests performed.

Willing told Oscar that the child was indeed his. However, Willing explained, it would be better for all concerned if this matter were treated as a private adoption. Willing had all relevant parties sign the necessary paperwork.

All of the parties were pleased. Peter did not have to worry about raising a child whom he might not be able to take care of for very long, Oscar was pleased to be raising his own daughter whom he decided to name Joy, and Willing was pleased because he had earned two good fees and the gratitude of two clients. Willing was especially pleased because this seemed to be a perfect way to end a long career. Because he was so excited about retiring and moving to Florida with his wife, he failed to file any of the appropriate papers.

Shortly after Joy's fifth birthday, she was diagnosed as having developed Huntington's Disease as a juvenile. Oscar and his wife consulted an attorney, Harvey Walleye, to explore their options. Harvey did some research, discovering that no court had ever approved the adoption.

You have been asked to write a memo discussing all of the relevant issues raised by the facts. Please include any professional responsibility issues raised.