

CAPITAL UNIVERSITY  
LAW AND GRADUATE CENTER

FAMILY LAW  
SPRING SEMESTER, 1997

PROFESSOR STRASSER  
FINAL EXAMINATION

INSTRUCTIONS

1. **THIS EXAM IS DUE NO LATER THAN 6:00 P.M. ON MONDAY, MAY 12 IN MY OFFICE (121).** As a matter of convenience, the exam may be turned in earlier.
2. Please make sure that you **LABEL YOUR EXAM ON THE FIRST PAGE** -- "Family Law" and **PLACE YOUR EXAM IN THE CORRECT BOX**. If I am not there when you want to turn in the exam, ask the secretary down the hall to let you into my office to place your exam in the appropriate box.
3.
  - a. The exam must be **TYPED** (wordprocessing output is acceptable) and **DOUBLESPACED** on 8 1/2" by 11" paper. Even if you have indented, for example, to quote a statute, you must double-space.
  - b. There should be **1 INCH MARGINS** and the print should be no smaller than **TWELVE** characters per inch (12 cpi).
  - c. **THERE MUST BE A BLANK PAGE BETWEEN THE END OF YOUR FIRST ANSWER AND THE BEGINNING OF YOUR SECOND ANSWER.**
  - d. **STAPLE (do not clip) the pages of your answer together.**
  - e. Do not use footnotes.
  - f. **At the end of your exam, write "I certify that this exam contains fewer than 4210 words." Then write your exam number. FALSE CERTIFICATIONS VIOLATE THE HONOR CODE.**

**THE FAILURE TO FOLLOW THESE DIRECTIONS MAY RESULT IN A SIGNIFICANT LOSS OF POINTS.**

4. The questions are of **EQUAL WEIGHT**.
5. **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.**
6. **AMBIGUITIES:** If you find the facts given to be insufficient to answer a question, state any additional factual assumptions you deem necessary and answer the questions as though your assumptions were part of it. **WARNING: DO NOT MAKE THE MISTAKE OF CHANGING THE QUESTION BY CHANGING THE FACTS.**

7. **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.

8. 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**.

9. **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. **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.)

10. **CITATION** When citing to a case we discussed in class, it will suffice to use the name of the case, e.g., the Marvin court or the Griswold Court. If you discuss a case which is not in the casebook, give a full citation.

11. Make an extra copy of your exam (which you should keep). This is protection for you so that should something happen to your exam, you will not have to retake it. (This has not happened yet, but this seems to be a wise and relatively cost-free precaution.)

**12. DO NOT CALL TO ASK ME QUESTIONS ABOUT THE EXAM ONCE THIS CLASS HAS ENDED. AS A MATTER OF FAIRNESS, I DO NOT WANT TO GIVE ANSWERS TO SOME STUDENTS THAT OTHERS DO NOT HAVE THE BENEFIT (OR DETRIMENT) OF HEARING. YOU WILL SIMPLY HAVE TO USE YOUR OWN JUDGMENT ABOUT HOW TO HANDLE ANY POSSIBLE DIFFICULTIES WHICH YOU HAVE DISCOVERED ONCE THE TIME FOR ASKING QUESTIONS HAS PASSED.**

13. Dates are offered in the questions below just to facilitate the sequencing of events.

14. You need not turn in the copy of the exam. You are welcome to frame, recycle, or otherwise dispose of it as you see fit.

### QUESTION 1

Abby and Ben were married in 1987 in Capania, Capitania. Capitania no longer recognizes common law marriages but will recognize such a marriage if it has arisen in another state in accord with the latter state's laws.

Abby and Ben started to have marital problems almost immediately and their relations continued to deteriorate over the next two years. On Jan. 10, 1990, Ben flew to the city of Marryville in the state of Blissfulvania, which had a 6-week residency requirement for those seeking divorce. He rented a room in a boarding house, registered to vote, and started looking for a job.

Before long, Ben found a job, where he met a charming young woman named Carol. Carol and Ben started dating.

In April, Ben filed for and was granted a divorce. Ben and Carol went out to a bar to celebrate Ben's new-found freedom. After several drinks, Ben realized how important Carol was to him. He proposed. Carol, who had also had several drinks, accepted. They went to the local 24-hour marriage chapel which had a drive-thru and were married according to the laws of Blissfulvania.

Meanwhile, Abby didn't know what to think. She had last spoken to Ben on Jan. 10 when they had had a big fight, and hadn't heard from him since.

When Abby got home from work on Friday, May 12, 1990, there was a strange message on the answering machine. Ben explained that he had found a new job and an apartment in town. He also explained that he had met someone else and that as far as he was concerned, he and Abby were through. Ben did not mention that he had married Carol or that he had already gotten a divorce. He also did not even mention that he had left Capania or that the only reason that he had returned there was that Carol had been transferred to Capania for her job. He figured that it would be better if he gradually worked up to giving Abby that information.

Abby's first reaction after hearing Ben's message was that she wanted to get drunk. She went to a local bar and proceeded to have several drinks. Towards the end of the evening, she decided that the man with whom she had been chatting for much of the evening, David, was quite attractive. She invited him to her home for a nightcap. He quite willingly complied and ended up staying the night.

Abby and Ben met for the first time since January at a party on July 4, 1990. Their meeting went surprisingly well. Everyone at the party knew that Abby and Ben were having problems, but Ben had told no one about his Marryville trip. In fact, as far as he was concerned, the trip had never happened. Carol had quit her job, had gone back to Marryville, and had divorced him. Ben was very much hoping that he and Abby could get back together again.

Abby was also rather glad to see Ben. She too had a secret that she didn't want to divulge, namely, her one-night affair with David. Although David had called her several times since that night, she had made clear that she hadn't wanted to see him again. She had not even told David that he was the father of the child that she was carrying.

By September, it was quite clear that Abby was pregnant. Ben was excited about the prospect of being a father. Abby and Ben, who had been living together since mid-July, were getting along quite well. They decided to take a little vacation.

Ben and Abby spent a week at a lovely resort in Vacawii, one of the few states which still recognized common law marriages. They had a wonderful time and returned to their jobs refreshed and reinvigorated.

Abby give birth to a healthy little girl, Ellen, on Valentine's Day. Because Ellen was the first child born on that day, she and Abby were featured in a story in the local newspaper. David saw the feature, did a little counting, and concluded that he might be the father of the child. He called Abby, who refused to talk to him.

David consulted his attorney about his rights.

CAP ST. 209.02 reads:

The issue of a wife cohabiting with her husband, who is not impotent or sterile, is conclusively presumed to be a child of the marriage. This presumption may be rebutted by blood tests, but only if a motion for such tests is made either by the husband or, if the natural father has filed an affidavit acknowledging paternity, by the wife.

David brought suit to establish his paternity. Upholding the constitutionality of the Capitania law, the court declared Ben the legal father of Ellen.

Regrettably, Abby and Ben's marriage could not stand the strain imposed by the paternity battle with David. They filed for divorce in April, 1992. They agreed that Ben should keep the car that he drove and that Abby would keep the car that she drove. Abby would get custody of Ellen, and Ben would have liberal visitation rights. The only property that they could not agree about involved:

- a. \$5,000 that Ben had inherited the previous year from an uncle,
- b. two paintings that they had bought when they had first married. Ben wanted one depicting a ballerina (purchase price \$100) which could be sold now for \$250 and Abby wanted one depicting a bull fight (purchase price \$250) which had retained its value but had not appreciated, and
- c. the portion, if any, that Ben should get of Abby's nonvested retirement benefits.

In January, 1995, Ben was offered a chance for a promotion if he would move out to California. He accepted the offer and got the court to modify the visitation schedule -- now, Ellen would live

with Ben and his new wife and daughter during summers. That summer, Ellen came to live with them.

Ellen got along extremely well with Ben and his new family. In fact, she didn't want to go back to Capitania. Ben went to court to modify the custody arrangement, suggesting that it would be in Ellen's best interests for Ben to have custody and for Abby to have Ellen visit during the summers. After all, Ellen had never remarried and it was better for the child to be in a two-parent home. The court made the requested modification.

Discuss all relevant issues, including any tax issues that have been raised.

## QUESTION 2

Alexandria lives in the state of Onu. She has decided that she is ready to have a child. She asked Bill, her next-door neighbor, to provide sperm so that she could be artificially inseminated. She made clear that she did not want him to have any parenting responsibilities. She made him sign something which said, "I, Bill Smith, hereby agree that I will not claim any paternal rights to any child that Alexandria Jones bears should she not want me to do so."

He provided the sperm. She artificially inseminated herself.

ONU ST. 211.01 reads, in relevant part:

The donor of semen provided to a licensed physician or clinic for use in artificial insemination of a woman other than the donor's wife is treated in law as if he were not the natural father of a child thereby conceived.

The artificial insemination was successful.

At the end of her fifteenth week of pregnancy, Alexandria went to a doctor to have an amniocentesis performed. She had a history of insanity in her family due to a genetic disorder. She explained to her doctor that she wanted to make sure that her child would not have the incurable difficulty that so many in her family had had. After checking the test results, Alexandria's doctor told her that everything was fine.

Alexandria's pregnancy was otherwise uneventful. Bill would sometimes take her to her gynecological appointments and in general was very helpful.

Alexandria gave birth to a boy, Chip. However, she found that taking care of a child was much more difficult than she had supposed. She frequently had to rely on Bill, who was more than willing to help take care of Chip.

After several months, Alexandria realized that she hated being a mother. For some reason, she felt that she hadn't been able to bond with Chip and she decided to put him up for adoption. Bill said that he wanted to raise Chip, but Alexandria was unwilling to allow him to do so.

Bill went to court to have his paternal rights legally recognized. However, the court ruled that Bill had no paternal rights in this case.

Alexandria had a friend, Diane, who was an attorney. The state of Onu allowed private adoptions and Alexandria wanted Diane to see if she could find a nice couple to take care of Chip. Diane said that she had some clients, John and Mary Will, whom she thought would be exactly the couple that Alexandria had in mind. Alexandria met the Will family. They talked for awhile. During the conversation, Alexandria mentioned that she had had an amniocentesis performed and that she didn't know what she would have done had the results not been so positive. Alexandria was not asked why she had had the test performed and she did not volunteer the information.

After a few more meetings, Alexandria agreed to let the Wills adopt Chip. All of the relevant procedures were followed in this case. For example, the state certified that John and Mary Will were suitable adoptive parents.

By the time that Chip had celebrated his second birthday, he was legally recognized as the son of John and Mary Will. The day after the adoption was finalized, Alexandria paid Diane a fee for all of the work that she had done in arranging the adoption.

Chip was quite withdrawn when he had first gone to live with the Will family, but Mary and John figured that it would take him awhile to grow accustomed to his new surroundings. He didn't improve but the Wills assumed that he would grow out of whatever difficulties he was having.

When Chip was about three years old, he started engaging in very self-destructive behavior. Mary took him to a specialist, who diagnosed Chip as suffering from a genetic disorder which invariably caused insanity. A simple blood test confirmed the diagnosis. The specialist indicated that this disorder would have been detected in an amniocentesis which had been performed properly.

John and Mary went to an attorney to discuss their options. They are considering seeking an abrogation of the adoption. They are also considering whether to sue various people: Alexandria, Alexandria's physician (who had performed the amniocentesis), and Diane.

Discuss all relevant issues, including any professional responsibility issues that have been raised.