

CAPITAL UNIVERSITY
LAW AND GRADUATE CENTER

FAMILY LAW
SPRING SEMESTER, 1998

PROFESSOR STRASSER
FINAL EXAMINATION

INSTRUCTIONS

1. **THIS IS A THREE-HOUR (3-HOUR), OPEN-BOOK EXAM. YOU ARE WELCOME TO LOOK AT YOUR NOTES, YOUR OUTLINES, AND YOUR TEXT AND SUPPLEMENT, BUT YOU ARE NOT PERMITTED TO MAKE USE OF ANY COMMERCIAL MATERIALS (EXCEPT AS NOTED ABOVE). FAILURE TO ABIDE BY THESE RULES IS AN HONOR CODE VIOLATION.**

2. **BEGIN EACH ANSWER IN A NEW BLUE BOOK. NUMBER EACH BLUE BOOK, E.G., ON THE FIRST, #1 OF 3, ON THE SECOND, #2 OF 3, AND ON THE THIRD, #3 OF 3. THE SECOND NUMBER SHOULD CORRESPOND TO THE TOTAL NUMBER OF BLUE BOOKS THAT YOU ARE USING. FOR EXAMPLE, IF YOU USE TWO BLUE BOOKS FOR THE ENTIRE EXAM, YOU SHOULD HAVE "#1 OF 2" WRITTEN ON THE FIRST BLUE BOOK AND "#2 OF 2" WRITTEN ON THE SECOND BLUE BOOK. YOU SHOULD BE ABLE TO DO THIS EXAM USING ONLY TWO BLUE BOOKS BUT YOU ARE WELCOME TO USE MORE IF YOU SO DESIRE.**

3. The questions are of **EQUAL WEIGHT**.

4. **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. **DO NOT MAKE THE MISTAKE OF CHANGING THE QUESTION BY CHANGING THE FACTS.**

5. **IDENTIFICATION:** Write your exam number on the **FRONT COVER OF EACH BLUE BOOK.**

6. **TAKE TIME TO THINK ABOUT THE QUESTION.** 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.**

7. **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 do not 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.)

8. **CITATION** When citing to a case we discussed in class, it will suffice to use the name of the case, e.g., the Griswold Court or the Rankin court.

9. If dates are offered in the questions below, they are just there to facilitate the sequencing of events.

10. 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.

11. WRITE LEGIBLY. IF I CANNOT UNDERSTAND WHAT IS WRITTEN, I CANNOT GIVE CREDIT FOR THE ANSWER.

12. PLEASE DO NOT TURN THE PAGE UNTIL INSTRUCTED TO DO SO.

QUESTION 1

Alison and Brian Smith were married 10 years ago in the state of Capitania and have lived there ever since. Capitania is the only state to have done away with its no-fault divorce law, which it did fifteen years ago. For the past few years, Alison and Brian have been experiencing marital difficulties.

On April 2, Brian waited until Alison had gone to work and then wrote a goodbye note, leaving no forwarding address. He packed up his car with some clothing and personal items and then went to the bank and closed his personal savings and checking accounts. He took **2** (one-half) of the money in the joint savings account and **2** (one-half) of the money in the joint checking account.

Ever since they had been married, Brian and Alison had each kept 1/10 (one tenth) of their take-home pay and had deposited it in separate accounts. That money could be used for whatever the account-holder had wanted -- buying gifts for the spouse, personal items, etc. The remaining money would be deposited in joint savings or joint checking accounts, which would be used to pay household expenses, insurance, rent, car payments, etc. Brian had not only deposited 1/10 of each paycheck into the separate account, but he had also deposited dividends from stocks which he had inherited from his uncle. Notwithstanding his having made a large number of withdrawals over the past several years, the amount of money in the account was fairly substantial.

After closing his account, Brian drove to the neighboring state of Divorca, which had a six-week residency requirement for divorce. Brian found an apartment and looked for a job. Before long, he had found a well-paying job in his area of expertise, marriage counseling. After the six weeks had passed, Brian filed for divorce.

The Divorca court granted the divorce, awarding Brian the car he was driving, all that he had packed in the car (i.e., some clothes and personal items), and the money that he had withdrawn from the bank. It also awarded him certain paintings which he and Alison had jointly purchased. (He was sure

to claim for himself those paintings which she did not care for but which he especially liked.) The court awarded Alison an equal number of equally valuable paintings, also jointly purchased, which she cared for a great deal, as well as the car she was driving (which was worth at least as much as Brian's), as well as other personal and household items.

Brian wrote to Alison, explaining the court's decision. Alison sent him the paintings, asking him never to contact her again.

A few months after his divorce, Brian met Ethel. They started dating. By Dec. 1, they had married.

On Dec. 15, Brian and Ethel went back to Capitania to visit Brian's parents. While there, Brian learned from his mother that Alison had just given birth to a baby boy. He called Alison, saying that he wanted to see his child. Alison asked him how long he would be in town. He replied that he would be there for a week. Alison said that he could come to her home on Dec. 20 to see the boy.

On Dec. 19, Brian was served with a copy of a complaint -- Alison was seeking to divorce him. Brian called Alison's attorney, who explained that no mistake had been made and that Alison was indeed seeking a divorce. When Brian responded that he had already divorced her and, in fact, had already remarried, Alison's attorney pointed out that Brian's second marriage might be viewed as bigamous and hence void if his divorce were not recognized by Capitania.

Brian hired an attorney, who after hearing the story, suggested that Alison was probably bringing this action to induce Brian not to try to see his child. The attorney explained that while Alison's case had no merit, Brian would be taking certain risks if he chose to fight, for example, losing time, money, etc. Further, if the court were to find in Alison's favor, Brian might face a bigamy charge.

Brian went to Alison's home on Dec. 20. Alison's mother answered the door, explaining that Alison was at work. Alison's mother also explained that Fred (Brian and Alison's son) was asleep. Brian went to see his child but left before much time had passed, swearing to himself that he would contest custody. Neither Brian nor Alison's mother mentioned the divorce litigation.

Brian went back to Divorca, but returned to Capitania in late August to have his day in court. To his surprise, he lost. The Capitania court ruled that Divorca's law violated an important public policy of Capitania's and thus Brian's divorce did not have to be recognized in Capitania. The Capitania court further held that the Divorca court's division of property was in error. While holding that the division involving the cars, paintings, and personal and household items was appropriate, the court held that because Brian had had much more in his separate accounts than Alison had had in hers, she was entitled to the full amount that had been in the joint accounts. The court awarded custody of Fred to Alison, retaining jurisdiction. Brian would have the child on certain holidays and for much of each summer. Brian was required to pay child support (as determined by the relevant tables). The court further held that Brian would be required to contribute an additional \$2000/year to a trust fund to help defray Fred's college expenses. (The extra \$2000 would not impose a substantial burden on Brian.)

On appeal, the court reversed the lower court's determination that the Divorca divorce did not have to be recognized, but upheld the Capitania court's property distribution, both because it agreed with the court's characterization of all of the bank accounts as marital property and because, in any event, that distribution was more than justified as a matter of equity.

Eight years later, while Fred was staying with Brian and Ethel for the summer, Fred mentioned that he didn't like living with Alison and her new husband, Greg. Greg smoked cigars, and the house (and Fred's clothes) always smelled of cigar smoke. Further, although Fred was well provided for and received much love and attention from both his mother and stepfather, Fred didn't like having to vie for Alison's attention, now that she and Greg had had a daughter of their own. Finally, Fred thought that it would be fun to live in Divorca -- he always enjoyed his summer visits, especially because Brian and Ethel would allow Fred to stay up at night as late as he wanted.

At the end of the summer, Brian refused to send Fred back to live with Alison. Instead, he went to Divorca Family Court, seeking a modification of custody. The court granted Brian's request. The court awarded Alison liberal visitation, but ordered that she could not take Fred out of Divorca.

Discuss all relevant issues. Be sure to include, for example, an analysis of the Capitania trial and appellate court decisions.

QUESTION 2

Terry and Wendy Williams, a married couple living in the state of Fredonia, wished to have a child. However, because Wendy could neither produce eggs nor carry a child to term and because Terry was a carrier of a particular genetic disease, they decided to commission a birth. They went to the Fredonia Fertility Clinic and met with the Director of the Clinic and Arthur Attorney, in-house counsel for the clinic. Terry and Wendy explained that they wanted to engage the services of a surrogate and that they would be providing no genetic material.

The Clinic official explained that the Clinic could offer the services of either gestational or genetic surrogates. Terry asked whether there were any legal implications of using one rather than another. Arthur Attorney said that there was no law on that issue in Fredonia but that it was his understanding from the practices in other states that it would not matter which option was chosen, although he did intimate that there would be a wider selection of genetic contributions from which to choose if Terry and Wendy did not require that the surrogate be genetically related to the child. (Many more women were willing to donate eggs than to act as surrogates.) Arthur also warned that the likelihood of a live birth was not as great if a gestational surrogate were used.

Terry and Wendy decided to make use of a gestational surrogate, Sally Smith. The genetic contributions of the individual described in File 400 and the individual described in File 450 were selected. Ironically, unbeknown to Terry and Wendy, the individuals described in Files 400 and 450 (Matthew Newparent and Nancy Norris) had met at a Genetic Contributors Anonymous Meeting,

had fallen in love, and had married.

The agreement between Sally Smith and Terry and Wendy Williams specified that under no condition would Sally have parental rights or responsibilities. She was strictly providing gestational services.

Sally did become pregnant. She gave birth to a beautiful baby girl, Jessica. Terry and Wendy were ecstatic. Sally had great difficulty in parting with Jessica, notwithstanding her original agreement to have no parental rights or responsibilities. However, she did not say anything at the hospital when Terry and Wendy were given the child forty-eight hours after her birth, and Sally signed a form acknowledging that she had no parental rights to Jessica at the time that Terry and Wendy were given the child.

On the way home from the hospital, Terry and Wendy were in a terrible auto accident. Terry and Wendy both died. Jessica was alive but had a very serious injury to her liver. The best solution for her would be to have a liver transplant.

The incident was the major news story in the state. This was in part because the Fredonia Governor, who had been driving the other car, had been quite intoxicated at the time, and in part because of the human interest elements involved in the story. Further, as sole surviving relative, Jessica stood to inherit a great deal of money should she survive.

Matthew and Nancy Newparent saw the story, called the hospital taking care of Jessica, and explained that one or the other might be related to the child and thus might be a good organ donor. (The hospital had had a remarkable success rate whereby parents who donated part of their livers to their children had suffered no ill effects but had saved the lives of their children.) Matthew and Nancy went to the hospital to see if either was related to the child.

When Matthew and Nancy discovered that they were each biologically related to the child, they each volunteered to be an organ donor. They also called an attorney to find out whether they could somehow claim parental rights or adopt the child.

When Sally read about the accident in the paper, she contacted an attorney to see if she might be able to assert parental rights in this case.

Fredonia Stat. 200.01 states:

A woman can establish maternity by:

- a. proof of having given birth to the child, or
- b. through genetic marker evidence derived from blood testing.

Fredonia Stat. 200.05 states:

The anonymous donor of genetic material which has been provided to a licensed physician or agency for use in the artificial creation of a child will have neither parental rights nor parental responsibilities should that donation result in a live birth.

Fredonia Stat. 200.10 states:

A release of custody shall be signed, not less than seventy-two hours after the birth of the child to be released, by any parent relinquishing custody.

Matthew and Nancy Newparent went to court to establish their paternal rights. Arthur Attorney represented them, much to the consternation of the Fredonia Fertility Clinic.

The court held that Matthew and Nancy were not anonymous genetic donors and thus could not be barred from being the parents on that account. Sally Smith was held to have abandoned Jessica and thus to have lost her parental rights or, in the alternative, to have waived in the contract she signed whatever parental rights she might have had to the child.

Discuss all relevant issues.