

Domestic Relations

Lecture 02

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Loving v. Virginia

388 U.S. 1 (1967)

- **Facts**

- The state of Virginia enacted laws making it a felony for a white person to intermarry with a black person or a black person to intermarry with a white person.
- The Supreme Court of Appeals of Virginia held that the statutes served the legitimate state purpose of preserving the “racial integrity” of its citizens.
- The State argued that because its miscegenation statutes punished both white and black participants in an interracial marriage equally, they cannot be said to constitute invidious discrimination based on race and, therefore, the statutes commanded mere rational basis review.



Loving v. Virginia

388 U.S. 1 (1967)

• Issues

- Was rational basis the proper standard of review by which to evaluate the constitutionality of the statutes?
- Were the Virginia miscegenation statutes constitutional under the Equal Protection Clause?

WHICH LEVEL OF EQUAL PROTECTION REVIEW APPLIES?		
I. Rational Basis Review	II. Intermediate Scrutiny	III. Strict Scrutiny
1. Non-suspect classifications 2. Non-fundamental rights 3. General legislation regarding social welfare and economics 4. Anything else not falling into II or III	1. Quasi-suspect classifications (gender and alienage) 2. Laws burdening "important but not constitutional" rights 3. Gender classifications must be "exceedingly persuasive?" (See VMD)	1. Suspect classifications (race and national origin) 2. Laws burdening fundamental rights of some class (e.g., travel among the states, voting) regardless of class affected



Loving v. Virginia

388 U.S. 1 (1967)

- **Holding**

- No and No.
- The mere fact that a statute is one of equal application does not mean that the statute is exempt from strict scrutiny review.
- The statutes were clearly drawn upon race-based distinctions.
- The legality of certain behavior turned on the races of the people engaging in it.
- Equal Protection requires, at least, that classifications based on race be subject to the “most rigid scrutiny.”
- The Equal Protection Clause of the United States Constitution prohibits classifications drawn by any statute that constitutes arbitrary and invidious discrimination.
- The fact that Virginia bans only interracial marriages involving whites is proof that the miscegenation statutes exist for no purposes independent of those based on arbitrary and invidious racial discrimination.



Loving v. Virginia

388 U.S. 1 (1967)

- **Explanation**

- Restricting the freedom to marry solely on the basis of race violates the central meaning of the Equal Protection Clause.
- The key to this case is articulated in J. Stewart's concurrence.
- The miscegenation statute was improper because it made the legal consequences of an action turn on the races of the persons participating in it.



Orr v. Orr

440 U.S. 268 (1979)

- **Facts**

- William Orr, appellant, and Linda Orr, appellee, were issued a final decree of divorce on February 26, 1974, with appellant ordered to pay appellee \$1,240 per month in alimony.
- On July 28, 1976, appellee initiated a contempt proceeding against appellant alleging he was in arrears in his alimony payments.
- Appellant alleged in his defense that Alabama's alimony statute should be declared unconstitutional.



Orr v. Orr

440 U.S. 268 (1979)

- **Issue**

- Is Alabama's alimony statute, which provides that husbands, but not wives, may be required to pay alimony upon divorce constitutional?

- **Holding**

- Such statutes are unconstitutional in situations such as this where the State's compensatory and ameliorative purposes are as well served by gender-neutral classification as one that gender classifies.
- The statute is subject to scrutiny under the Equal Protection Clause because it provides that different treatment be accorded on the basis of sex.
- To withstand such scrutiny, the classifications by gender must serve important governmental objectives and must be substantially related to achieving those objectives.
- This Court rejects as a legitimate purpose the state's preference for traditional sex-based roles in marriage as antique.



Orr v. Orr

440 U.S. 268 (1979)

- **Holding**

- Two legitimate state objectives proposed for the statute are to provide help for needy spouses, using sex as a proxy for need; and compensating women for past discrimination during marriage.
- In the present case the classification at issue is not substantially related to achievement of these objectives.
- Individual hearings already occur in Alabama where the parties' financial circumstances are considered.
- Therefore, the compensatory purpose may be effectuated without placing burdens solely on husbands.
- Furthermore, gender classification produces perverse results in this case because the wives who benefit from the disparate treatment are those who are not needy spouses.
- Classifications such as these carry an inherent risk of reinforcing negative stereotypes, and statutes designed to ameliorate the effects of past discrimination must be carefully tailored.



Orr v. Orr

440 U.S. 268 (1979)

- **Explanation**

- The Alabama statute is unconstitutional because it is not rationally related to the legitimate state objectives proposed for the statute.
- The Court found that the statute was not rationally related to the objectives because little if any additional burden would be placed on the state by providing help for needy males as well as needy females.



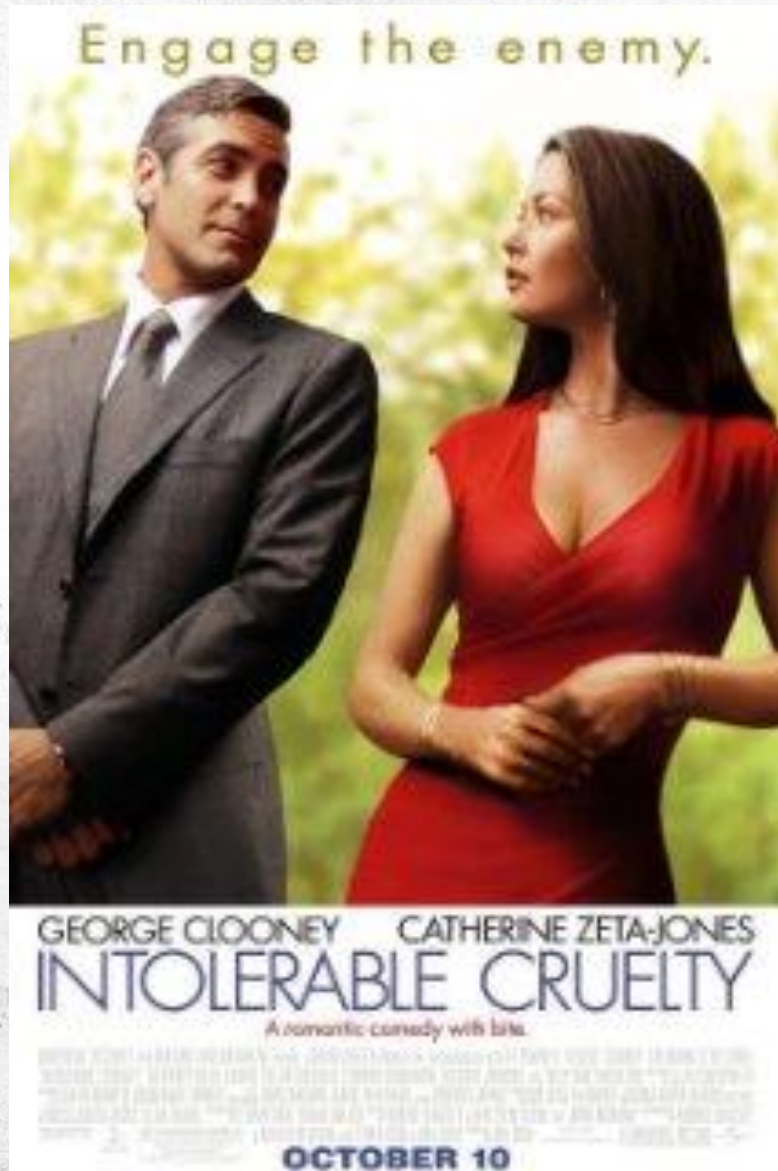
Pre-Nuptial Agreements - Purposes

- Under state laws, spouses have certain rights to the other spouse's property; including:
 - intestacy share in the estate
 - elective share
 - presumption in favor of being appointed a fiduciary
 - "equitable distribution" upon divorce.
 - alimony/ child support.
- Historically, courts would not enforce agreements that change these rules, since they contemplated or even encouraged divorce.
- However, today all of these rights can be given away by contract agreement between the parties!
- Thus, people who have substantial property before the marriage can "protect" that property from the new spouse with a **pre-nuptial agreement**.



Intolerable Cruelty (2003)

M_IntCruelty_02



Pre-Nuptial Agreements – Requirements

- **Consideration**
 - As with any other contract, each side must give something up for a contract to be valid. In general, the *consideration* that supports the contract is the agreement to marry itself.
- **Writing**
 - Under the Statute of Frauds, any promise in consideration of marriage *must be in writing* to be enforceable. Thus, pre-nuptial agreements must be in writing. (Some states even require a formal execution.)
- **Adequate provisions for the needs of each spouse (“fairness”)**
 - Courts may refuse to enforce a pre-nuptial agreement if it finds the agreement to be unconscionable.



Pre-Nuptial Agreements – Requirements

- **Disclosure**
 - Unless each party gives a full and accurate disclosure of assets, that party will not be able to enforce the agreement.
- **Independent Counsel**
 - Each party must have full opportunity to consult with and retain his or her independent counsel.
- **Reasonable Time**
 - Each party must have been given enough time to carefully consider the agreement before signing it.



Quick Quiz



The War of the Roses (1989)

M_Roses_02



Uniform Premarital Agreement Act (UPAA) of 1983

- Designed to make the rules pertaining to prenuptial agreements consistent throughout the country.
- Adopted by 28 states.
- Some of the most important provisions:
 - Agreements must be in writing and signed by both parties.
 - Agreements are enforceable without formal consideration.
 - Agreements may alter the rights and obligations of both parties in many areas, including disposition of money upon dissolution of the marriage or death of the parties.
 - Agreements **MAY NOT** adversely affect child support.
 - Agreements become effective only upon marriage of the parties.
 - Agreements are null and void if:
 - They were not signed voluntarily by both parties
 - The agreement is unconscionable.
 - Full disclosure of assets was not made.



End Of Class Review Quiz

**THE
BIG
QUIZ**



The End

