



# Domestic Relations

## Lecture 07

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# Establishing Parenthood

- Establishing maternity is easy, since it's not hard to show which woman actually gave birth to the child.
- **Paternity**
  - There is a presumption that a man is the father of a child if:
    - The man was married to the mother at the time of the likely conception.
    - The man and the mother lived together in an apparent marital relationship at the time of the likely conception (even if not legally married)
    - The man lives with the woman and the child when or after the child is born and openly holds out the child to be his own
    - The man voluntarily acknowledges paternity



# Establishing Parenthood

- This presumption can be disproved by scientific or anecdotal evidence.
- A non-marital child can be forced to prove paternity by “clear and convincing evidence” in order to inherit from the father or get child support, etc. This is not a violation of the equal protection clause because of the important government interest in preventing fraud in these types of matters.
- Courts can order DNA tests to establish paternity if the case requires it.
- Even if DNA tests show that a man is not the parent of the child, a court can hold a liable a man as if he were the biological father on a theory of estoppel!



# Michael H. and Victoria D. v. Gerald D.

## 491 U.S. 110 (1989)

- **Facts**

- Carole and Gerald were married. They had a child named Victoria.
- Scandalously, it turned out that Carole had been having an affair with Michael.
- A blood test established that Michael was most likely the father.
- Carole left Gerald for Michael, but then left Michael for Scott.
- Michael sued for *visitation rights*, and to be declared Victoria's father.
- Victoria's guardian ad litem filed a complaint asserting that Victoria had multiple 'psychological fathers' (Gerald, Michael, Scott) and was entitled to a filial relationship (and child support) from all of them.
- Carole moved back in with Gerald, but then left him again and moved in with Michael. But then she left Michael and moved back in with Gerald.
- Michael reestablished his suit to be declared the father.



# Michael H. and Victoria D. v. Gerald D.

## 491 U.S. 110 (1989)

- **Facts**

- Gerald intervened, and argued that under California law, when a child is born to a married couple living together (as Victoria was), then the child is conclusively presumed to be the husband's.
- This presumption can only be rebutted if the husband or wife makes a motion to do so, and in this case Carole and Gerald did not do so because they wanted Victoria.
- The Trial Court granted summary judgment and dismissed the case.
- The Trial Court found the presumption of paternity to be dispositive.
- Michael appealed.
- Michael argued that the presumption was an unconstitutional violation of *substantive due process* and his *fundamental right* to custody of his children.



# Michael H. and Victoria D. v. Gerald D.

## 491 U.S. 110 (1989)

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- **Issue**
  - Are the parental rights of a biological father in an adulterous relationship a fundamental right under the Constitution?



# Michael H. and Victoria D. v. Gerald D.

## 491 U.S. 110 (1989)

- **Holding**

- No. The parental rights of a biological father in an adulterous relationship are not a fundamental right under the Constitution.
- The U.S. Supreme Court found that Michael had no parental rights to Victoria.
- The U.S. Supreme Court noted that Victoria could not have dual fathers, so declaring Michael to be the father would terminate Gerald's rights to Victoria.
- The Court noted that there was no historical precedent for granting parental rights to the children of adulterous affairs to the adulterer. Therefore, there was no *fundamental right* involved.
- Basically, in order to be a *fundamental right* it has to be something that is so ingrained in the culture it would be implicit in the Constitution.
- But giving Michael custody would be a break from precedent, so his interests can't be considered 'fundamental.'



# Michael H. and Victoria D. v. Gerald D.

## 491 U.S. 110 (1989)

- **Holding**

- If anything, Gerald's presumption of legitimacy is the fundamental principle of common law.
- Since there was no *fundamental right* at issue, California was free to enact its own laws regarding parental presumption without running afoul of *substantive due process*.

- **Dissent**

- In a dissent it was argued that traditional notions of family were changing, and that looking at historical precedent to make modern decisions was "one of make believe," especially considering that a blood test had proved Michael was factually the father.





# Assisted Reproduction and the Impact on Parental Status

## • **Artificial Insemination**

- Sperm from a third party is inserted into the woman.
- During this process, the donor and the husband will usually sign waivers and acknowledgments which have the following effect:
  - The man married to the woman is considered the father even though he is not the biological father.
  - The “sperm donor” has no parental rights or obligations at all.
- If there is no such agreement, the sperm donor could be liable for child support, especially if there is no man married to the mother!

## • **In Vitro Fertilization**

- Gametes are made to fertilize outside the woman and then the zygote is implanted into the woman’s uterus.
  - Once the child is successfully implanted, the parental rights are exactly the same as if the fertilization had happened naturally.



# Assisted Reproduction and the Impact on Parental Status

- What happens to the sperm, eggs and zygotes that are not implanted?
- Courts have to balance the right to procreate of one parent against the right not to procreate of the other parent!
- **Surrogacy**
  - Zygote is implanted into a different woman, who did not produce the egg, by contract for her to give birth to the baby and then turn it over to the parents
    - The surrogate mother legally has no claim to parenthood since she is not the biological parent.
    - However, some courts may not enforce the agreement as against public policy.
    - Different states have different rules regarding these agreements.



# Quick Quiz



# Presumptions Under the Uniform Parentage Act (2000) §204

- Currently adopted (in substantial form) in 37 states
- A man is the father of a child if:
  - He and the mother of the child are married to each other and the child is born during the marriage;
  - He and the mother of the child were married each other and the child is born within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce;
  - Before the birth of the child, he and the mother of the child married each other in apparent compliance with law, even if the attempted marriage is or could be declared invalid, and the child is born during the invalid marriage or within 300 days after its termination by death, a moment, declaration of invalidity, or divorce;
  - After the birth of the child, he and the mother of the child married each other in apparent compliance with law, whether or not the marriage is or could be declared invalid, and he voluntarily asserted his paternity of the child by either: putting his name on the birth certificate or agreeing to support child as his own; or
  - For the first two years of the child's life, he resided in the same household with the child and openly held out the child as his own.



# End Of Class Review Quiz

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**THE  
BIG  
QUIZ**



# The End

