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Subject Family Law
Date 5/11/05

Number 724

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1) In an effort to make sure that ~~each~~ marriage is not fraudulent (and therefore ~~is~~ valid), courts routinely require the parties to show that they meet certain requirements. The parties should enter the marriage freely, not under duress, ^{coercion} and should have a good faith intention.

Charles uncle may try ~~to~~ to claim that this marriage is no different than someone who ~~marries~~ gets married to an illegal alien in an attempt to get them citizenship in the US. Courts have found that to be fraudulent. ~~Address~~ Therefore, Charles may be required to show that

he married Camilla for more than just the trust. Charles may be able

to establish such intentions by observing offering
evidence of their prior agreement to get married,
and their long standing friendship. Even so,

this may not overcome his burden of
proof because even Camilla felt like
he was only marrying her for the
trust.

But, that doesn't necessarily mean
that the marriage will be held invalid.

At most, this marriage would be
voidable not void (since it is not

something like incest or a marriage by someone

who is still married). Therefore, Charles may still be able to establish the validity of the marriage if he can show that he is now in love w/ Camilla & happy to be married to her. Basically, that he has no intentions of ending the marriage. If Charles can establish these facts, the marriage in its entirety should be considered valid.

Although it's worth mentioning that the court might determine that the marriage did not become valid until Charles felt this way toward Camilla. If that validity does not occur till after Charles

has passed his 22nd birthday, it may create problems for Charles. However, I believe that most jurisdictions do not follow such a rule, and usually hold that once the validity of a marriage is established, the entire marriage is considered valid.

1) First we must determine the validity of the agreement. In New Mexico you cannot enter agreements pre-marriage determining alimony or child support. However, you may enter agreements determining property settlement. The agreement which both parties agreed to appears to be fair given the fact

that they knew that Charles would be bringing a large trust fund to the

marriage. However, Camilla may argue that she was forced into signing because she

was reluctant. But, this is probably not

enough to establish that the agreement

is invalid. Greater problems are caused by

the fact that Charles chose to tear it

up. That act could and should effectively

destroy the prenuptial agreement. The fact that

he kept a copy does not ~~keep~~ keep

the pre-nup in fact. He may have intended

to keep the agreement, but most courts are

probably going to find that he acted in

had faith by tearing it up, it that was his intention. ~~Even so~~ Assuming that a court does uphold the agreement, the couple would split all property 70/30.

This should include all items except for Camilla's portfolio because she obtained that pre-marriage.

Assuming that the agreement is not valid, the analysis becomes more complicated.

Given that New Mexico is a community property state, most items received by the couple (including money) will be split jointly.

There are several items in contention, so it may be best to discuss them

all separately. The trust has been placed in a joint account & used jointly. This creates a very unique question. Some courts would split this in half given the way it has been used, as well as by looking at Charles' intentions when he tore up the

pre-nup. However, some courts might take an

equity approach & determine whether it would

be fair to give Camilla half when the

trust was truly given to Charles.

Income from the Real Estate &

otherwise that has been saved, will

be split jointly. In addition, all property

such as the truck & the boat should

also be divided equally.

The diamond necklace (and now ring) also creates an interesting question. Most states hold that gifts to one spouse or the other (but not both) ~~rather~~ from a third party are only property of the person of who the gift

^{was} given to, unless used jointly. Charles never told Lamilla about the necklace

nor did he hold it out to be joint

property. This suggests that the property will most likely be considered Charles separate property.

Again, Lamilla's portfolio should be treated as separate property because it

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was given to her before the marriage, and she has never contributed the portfolio ~~to~~ to the marriage.

Finally, there are some other unique questions to consider. Some courts have required a spouse to reimburse another spouse for their contribution to a graduate degree. Camilla may be required to reimburse Charles for the money he gave her to pursue her legal education.

Additionally, New York has held that the degree itself is worth money, and accordingly Camilla may be liable to Charles for the value of her JD. However, New York

is the only state that has taken
degree reimbursement that far.

Depending on whether Camilla has to
reimburse Charles for educational expenses, she
may or may not be saddled w/ her student
loans. Usually community property states are
community debt states, but if those loans (which
they appear to be) are solely for Camilla's
education she will probably be stuck w/
them.

1) 2) Their divorce creates all sorts of
issues. There is clearly evidence that
they are both at fault. New Mexico
has both fault & no-fault divorces.

Fault can sometimes (in some jurisdictions) play a role in alimony, child custody & support.

However, some jurisdictions have said that it should not play a role because even if it can be proved that one person is at fault, there is no telling what actions led them to be at fault.

This is just such a case. You have potential abandonment by Charles who wasn't interested in his wife sexually. You also have adultery by both parties, & inhumane treatment by Camilla. Accordingly, there is evidence that they are both at fault. Interestingly, it is worth mentioning

that at one time, ~~judicial~~ courts would not allow a divorce when both parties were at fault. Also, I should note that Camilla did not have to tell Charles about her abortion according to her constitutional rights, however the court might look to her behavior in examining her fitness as a parent.

The real question now, is who will get Junior? The cornerstone of this inquiry is what is in the best interest of the child. In using the best interest test courts have looked at several factors.

A factor that courts routinely look at

is who has been around the child more: i.e. who nurtured the child as a baby.

Charles was the primary homemaker, and therefore this factor may weigh in his favor.

Courts also look at who is the more friendly parent: i.e. the parent that

will be more willing to allow visitation

by the other parent. It's hard to tell

in this case, but that could be a

factor.

Another factor that will be considered is Camilla's abusive treatment of Charles.

Many jurisdictions place a higher standard

on abusive spouses. For example Charles

will be first required to establish

that Camilla is abusive, but then Camilla

will have to overcome a larger burden

in establishing that she is the more

fit parent (best-interest).

Even so, some jurisdictions ~~do~~ would

hold Charles' homosexual relationship against

him. Possibly requiring him to refrain from

living w/ his partner. With that said,

New Mexico does not seem to be a

state that would follow such a rigid

standard. More courts are focusing less on

the life style of the individual + more

on the stability provided. If Charles

can establish that he will provide stability for Junior, then he again would probably be favored for custody. Camilla is clearly going through a difficult time, and in her current state she probably will not provide stability.

Finally, if the child is awarded to Charles, Camilla will most likely have to pay child support since she has a higher income than Charles. This may become especially important if Camilla chooses to take the lower paying job.

The court is going to look at what she is currently making in order to establish

child support payments. If she is going to move to a lower paying job, she is going to have the burden of establishing a justifiable reason. However, the fact that she is now dealing w/ depression and other issues, may be reason enough for her to justify the switch.

I didn't know if we were supposed to use support form for this question, but I tried to figure out Lamilla's child support obligations using ~~the~~ form B, assuming she split the child. LA is for when one parent has them more than 65% of the time

See Exam

good
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2) The Child Support Order appears to be entirely enforceable. UIFSA requires

that an order be granted in the child's "home state". The home state

of the child is generally considered

the state in which the child has

spent the last 6 months. As long

as Katherineen (Kath) had lived on the

reservation for the 6 months prior to

the support Order, it should be enforceable.

However, the facts indicate that she spends

time elsewhere (since it says ^{at least} 6 months out

of the year), so it would be important

to make sure that the Navajo Nation

thoroughly looked at all of the facts in order to establish that the Navajo Nation was her "home state."

I would also instruct Bill to pay his support payments regardless of whether he is refused visitation. Courts routinely hold that visitation + support are separate, and therefore the court is the proper avenue if Bill is not getting his visitation.

Bill has greater problems in regards to the custody agreement. The UCCJEA has been adopted by many states in effort to have conformity in custody disputes. The UCCJEA is similar to UIFSA in

that courts must first determine the home state in order to award custody.

Neptunia does not appear to be Kath's

home state. Although Kath was w/ Bill

(visiting) at the time the custody order

was granted, that is not enough to

establish that it is her home state.

Accordingly, Bill is ~~not~~ going to have

to go to the Navajo Nation in order

to get a valid visitation agreement,

Also, given Kath's age, the court will

probably consider her preference & since

she prefers her mom that may weigh

heavily in her mom's favor.

I also want to note that Bill will have to pay according to the Navajo Nation's guidelines since that is the home state of Kath. Accordingly, he will have to pay till Kath is 19. This age is not uncommon, as some states are now requiring support ~~for~~ ~~to~~ for children through college. 10

2) 2) This agreement could create a problem for Bill. Such things as alimony + child support are never dischargeable, so the question ~~is~~ is what kind of of agreement was created through the divorce.

previous actions during the marriage, that does not necessarily distinguish them from alimony. Many courts have held that payments, that are structured similar to this one in a marital settlement agreement, should be treated as alimony for divorce purposes.

10

2) 3) Bill would most likely have to modify the support payments in the Navajo Nation Courts. Again, assuming the Navajo Nation is Kath's home state. UIFSA is generally structured to require modification in the child's home state. However, there are exceptions. If Kath was to move to

another state, the support could potentially be modified ~~at~~ in that state. In order to do so, Bill would have to make sure that the proper documents were

filed with the court (such as the original decree)

and establish that Kath has been

& some sort of
UIFSA ~~and receipt~~
required receipt form

in the new state for 6 months. But, in this case Bill would probably have to modify in ~~the~~ Navajo Nation.

Bill should have a good shot at modifying the agreement. Courts generally require someone to prove that they have had a substantial change in circumstances in order to justify modification. Bill

appears to have had a substantial change considering his income has been cut in half. However, he may have to show that he is unable to get a job at his previous salary. Even so, Bill should move for modification given the fact that his support payments seemed very high even prior to losing half his salary. (10)

3) I believe that the state of gay marriages in our society is a bad thing. It creates tension, hatred, & other elements that separate a country. I believe that the question of gay

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marriage needs to be answered once

& for all. The problem is that

I don't know who should answer it.

This state by state analysis just doesn't

work. For a substantial period, gay

marriage was against public policy, and in

many places still is. However, our country

was founded on the idea that people

should be treated equally. Even so,

we have failed in every regard to

treat people equally. At what point

are we going to realize that in order

to treat people equally, you have to

treat them equally. I personally feel that

The bonds of marriage are for a man + a woman, but I believe that same-sex couples should + do deserve the same rights as a married couple. Many people say "how can you argue for one and not the other?" My answer would be religious views, but that doesn't mean that I don't think a same-sex couple deserves the rights of a married couple.

Again, the Constitution establishes equal treatment to all, but that's not what's occurring, nor has it ever. The true question lies in where people are coming from

when they want to prevent gay marriage.

I ~~believe~~ believe it comes from our long standing moral beliefs. Beliefs that marriage is a commitment for man

+ woman. But, America has failed to

keep "marriage" as the strong force

that it once was. Divorce rates at

50% or higher, w/ people routinely thinking "if I'm not happy I'll just get divorced."

My point is that America's new views

toward marriage suggest that maybe it's not

the protected bond that it once was. If

that's the case, maybe it's not for

a man and a woman, but any two

people that feel attached enough to go through ~~the~~ the process. But, if you open it up for same-sex couples, do you have to re-examine polygamy?

If one's okay why not the other?

They have both been considered against public policy, but now one is starting to

gain acceptance. I know that it is a

stretch to compare the two, but

what I'm trying to say is something

needs to be done. We need answers.

Everyone should be treated "equal,"

but someone needs to tell us what

equal is so that the fighting can stop!

Civil Unions? Marriage? Some other name?

I don't know that it matters, but someone

has to answer the question.

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Family Law

Exam# 724

Semester II, 2005

UNM School of Law
Final Examination
Three Credits

Professor Sedillo Lopez

INSTRUCTIONS

THIS IS A CLOSED BOOK EXAMINATION. YOU MAY NOT TAKE ANY MATERIAL WITH YOU INTO THE EXAM ROOM AND YOU MAY NOT CONSULT ANYTHING DURING THE EXAMINATION.

Answer each question fully. Use relevant statutes, case law and policy considerations to analyze each problem thoroughly. Do not simply express your opinion.

The time suggested for each question roughly reflects its weight in grading. Note that the time suggested adds up to three hours exactly.

Clearly identify your answers in your bluebooks. Please write or type neatly and on only one side of each blue book page. Clarity of expression will improve your score.

Attached are Worksheet A and Worksheet B and the New Mexico Child Support tables for your convenience.

GOOD LUCK!!!

END OF INSTRUCTIONS

[Exam begins on next page]

Question One (100 minutes)

Camilla and Charles were very close friends throughout their high school years. During junior prom, they made an agreement to marry each other if they had not found someone else by the age of 30. They both attended the University of New Mexico, where Camilla majored in business and Charles majored in music education. During Charles's junior year in college, he proposed that he and Camilla get married. Other than their chaste date for junior prom, Charles and Camilla had never become romantically involved (though Camilla had always hoped their friendship would evolve into a more intimate relationship) so Camilla was somewhat surprised by the proposal. As they talked over the proposal, however, it became clear that Charles's desire to marry was solely for the purpose of satisfying a condition of Charles's father's trust, in which Charles had to marry by age 22 in order for the trust to end and the principle to be distributed to him. Even so, Camilla accepted his proposal, all the while thinking that once they were married she would be able to change his heart and that their marriage would flourish. The couple applied for and properly obtained a license.

In the week before the wedding, Charles spoke to Camilla about their financial arrangements. He explained to her that he had no real assets. He had financed his education thus far through student loans, which he expected to pay off when the trust was settled. While Charles was aware that Camilla had obtained a merit scholarship providing for her tuition, books, and a substantial stipend for all four years of college, he did not ask nor did she tell him that she also had a small portfolio of stock (about \$25,000) given to her by her aunt upon graduation from high school. Charles and Camilla agreed that they would move into Charles's apartment and Camilla would contribute her stipend to support them both for their final year of college.

Charles then presented Camilla with a pre-nuptial agreement in which they agreed that they would split all property acquired by either during the marriage, regardless of the source, with 70 percent to Charles and 30 percent to Camilla. Charles explained how grateful he was to Camilla and that this agreement was simply his way of saying thank you by insuring that she would have a right to some of his trust proceeds which would otherwise be his separate property. Camilla resisted signing the agreement, saying that she loved him and didn't need to be paid to marry him and hoped that their relationship would last beyond college. Charles insisted, however, that she sign the agreement, so she consented. She never disclosed her own assets to Charles. The next day, they were married in a ceremony presided over by a local judge.

Part One

Assume that Charles has come to you for legal advice. Charles's uncle, the trustee of his father's trust has indicated that he will challenge the validity of the marriage in order to contest the distribution of the trust. Charles wants to know if the uncle can challenge the marriage and what Charles can do to insure that the challenge will be unsuccessful.

Advise him.

Part Two

Notwithstanding your answer to part one, assume that the uncle decided not to challenge the marriage after all, and Charles received the principle from the trust upon his marriage. He paid off his student loans and he had about \$500,000 left, most of which he invested in a real estate partnership in his name alone. The income from the partnership is about \$25,000 annually. Charles had the income automatically deposited in a joint tenancy bank account under both Camilla and Charles's name. They both wrote checks on the account and used the money for expenditures for their apartment rent and other necessities.

Camilla and Charles graduate from college and, much to Camilla's delight, Charles appears to have no plans to leave their marriage. They have continued to act as best friends and confidants, though Camilla is somewhat confused by Charles's apparent lack of interest in her sexually. Camilla had always viewed their prenuptial agreement as a symbol of Charles's desire to eventually divorce, so she was especially comforted when he agreed to formally rescind the agreement on their second wedding anniversary. They tore the original agreement up over a class of wine. Charles, however, has a copy of the agreement in his safe deposit box in which he also has kept a \$10,000 diamond necklace given to him by his grandmother at the time of their marriage. Camilla is unaware of the safe deposit box, the necklace, and the copy of the agreement.

Charles and Camilla both wanted to pursue advanced degrees, Camilla in law and business and Charles in music. They decided that they would both begin their studies at UNM, living off Charles's investment income and Camilla's scholarships, along with whatever part-time work each could find. However, during Camilla's first year of law school, she became pregnant, and when their son Junior was born, Charles decided that he would prefer to postpone his formal studies and stay home with the baby and try his hand at composing music. Camilla could then complete her degree and establish her legal practice. Charles is very close to Junior. Camilla adores the child, but because of her schedule, she has not spent as much time with him as Charles has.

Camilla graduated with honors and \$55,000 in student loans. She joined a prominent firm and is practicing plaintiff's worker's compensation work and employment law. She earns about \$70,000 per year, plus an annual bonus based on how well the firm has done over the past year. After two years in the law practice, Camilla told Charles that she has decided that she would like to establish a solo practice. She knows that her income would likely drop to about \$40,000 for the first few years, but she believes it will go up over time. Most important to her, however, is the ability to control her own business and make her own decisions. In addition, she believes that the move will allow her to spend more time with her four and a half year old son. She also talked to Charles about having a sibling for Junior.

Camilla has kept her stock portfolio in her own name, reinvesting automatically all the dividends generated. The portfolio has grown dramatically, and is now worth about \$50,000. Except for a few small withdrawals she used for personal matters (she used one withdrawal to pay for an abortion, the result of a pregnancy from a brief affair) she has let the portfolio grow. She has never revealed its existence to Charles. She has deposited all her income from her practice in their joint bank account. They have only paid about \$5,000 toward Camilla's student loans.

The current value of Charles's real estate partnership is still approximately \$500,000. All income generated by the real estate partnership has gone into Camilla and Charles's joint bank

account. Last year, Charles purchased a boat and a truck to tow it and made stock investments that amount to approximately \$50,000 using funds from the joint bank account and virtually depleting their checking and savings accounts. On each of these investments and purchases, Charles acquired title in his name only.

While boating at Conchas Lake last summer, Charles met Pat, a man with whom he has initiated an intimate relationship. Charles recently took the diamond necklace out of his safe deposit box and had it reset in a stunning ring setting. The jeweler charged \$500 for the resetting. Charles presented the ring to Pat as a gift. Camilla found out about Pat about six weeks ago and when she saw the ring Charles had given him, she became very angry and then deeply depressed. She began to hit Charles and Charles defended himself by physically restraining her. She is currently under psychiatric care and taking anti-depressants. She has been diagnosed with situational depression and post-traumatic stress disorder. While she is on medical leave from her firm, the firm has indicated that they would like her to return once she is better. She has not revealed her plans to leave the firm to the firm partners. Their medical insurance plan does not adequately cover her psychiatric bills and her prescription medication, which is likely to be necessary for at least another year. Their insurance coverage is tied to her employment with the firm.

Charles would like to divorce Camilla, move in with Pat and he would like to have primary physical and legal custody of Junior.

Assuming that all of the above facts are now known to you, how would you advise Charles on the following issues:

- 1) Who owns what?
- 2) What is likely to happen should they divorce?

Question Two (50 minutes)

Josie is a member of the Navajo Nation. She has a child support order issued by the Navajo Court. She and her 16-year-old daughter Kathereen reside for at least 6 months out of the year on the Navajo Nation. Kathereen's father, Bill moved from the reservation to the state of Neptunia shortly after the parties separated after a 10 year common law marriage, the last two years of which they lived all together on the reservation. Neptunia has adopted the Uniform Interstate Family Support Act (UIFSA). (This is of course, because the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 mandates, as a condition of receiving federal funding that the state adopt UIFSA).

The Navajo Court order provides that Bill pay \$1000 per month in child support for Kathereen until she reaches the age of majority. Assume for purposes of this question, that the age of majority on the Navajo Nation is 19. The age of majority in Neptunia is 18.

Josie registers her order pursuant to the provisions of UIFSA. The Child Support Enforcement Office in Neptunia has instituted a proceeding to withhold the child support from Bill's wages. Bill's employer has downsized and has reduced Daniel to part time work earning \$3000 per month (down from \$6000 per month). Further, Kathereen has become very angry with her father and has

refused to comply with visitation orders issued by the State of Neptunia, which Bill obtained at a time that Katherine had resided with him over the summer when she was 12. Up until the time Daniel obtained the visitation order giving him visitation of one week-end a month and 6 weeks in the summer, Jose and Bill had simply agreed on visitation informally. Josie had been served with the motion for visitation four years ago but had simply told Bill, "I agree that you have visitation, but I am not going to go to court about it, we have always worked it out on our own." Thus, she did not enter an appearance in the Neptunia proceeding and Bill received the visitation order from the court by default. Josie has been to Neptunia twice when she accompanied Katherine in traveling to have visitation with her father.

Part One

Now that Bill has received a copy of a pleading entitled "Notice of Wage Withholding" Daniel has come to you to discuss his options concerning the child support and the visitation and custody issues. What are they?

Part Two

Assume that Bill has a substantial amount of consumer debt (some allocated to him as part of the divorce, but most of it incurred after his separation from Josie.) His employer is continuing to downsize and he is very worried about losing his job. In addition to the child support provision, described above, assume that the marital settlement agreement incorporated into the Navajo Nation divorce decree provides:

"In recognition of the fact that Josie paid for Bill's college education, Bill agrees to pay Josie \$1000 per month until Josie remarries, graduates from an accredited institution of higher education, or either Bill or Josie dies and to pay the mortgage on the family home, which has been awarded to Josie."

Bill wants to know whether the payments to Josie would be likely to be discharged if he were to file a petition for bankruptcy in federal bankruptcy court. Analyze the issue for him.

Part Three

Bill wants to know what his chances are if he tries to modify the provision and where he would have to file the motion for modification. Analyze the issue for him.

Question Three (30 minutes)

On March 28, 2004 Professor Hendrik Hartog delivered a lecture at the annual meeting of the Organization of American Historians. The following is an excerpt from the speech.

[A]t all times over the past two centuries struggles over marriage have occurred on the terrain of American federalism...[F]our years ago I described that terrain as belonging to the past. In the 1940s the United States Supreme Court fully applied the Federal Constitution's Full Faith and Credit clause to divorces and remarriages carried out under one state's laws that violated the terms of another state's laws. Until then it was possible to be legally divorced and remarried in one state,

and a criminal bigamist in another. Thereafter, conservative divorce regimes could no longer sustain their control over any of their citizens who had the wherewithal to travel to a more liberal jurisdiction -- like a Nevada or a Virgin Islands. And then in the 1960s and 1970s, the Court applied the equal protection clause of the Fourteenth Amendment and an emerging conception of the right to privacy to numbers of state rules that shaped or impinged on marriage: in the Loving decision on miscegenation law, later in decisions on child support, on unmarried paternal rights, on child custody, and on the right to marry. And even with regard to subjects on which the Supreme Court did not rule, both state courts and state legislatures began to act as if the Federal equality and privacy provisions -- or their state constitutional equivalents -- applied. Nearly every state enacted no-fault divorce laws (or their equivalents) over the 1970s and 1980s and, with greater variations, some form of marital property reform. By the early 1990s it looked as if the terrain of American marriage had become largely uniform. It no longer mattered where you lived. Marriages anywhere were about the same as marriages everywhere in the United States.

Today, however, because of gay marriage, the questions and approaches that characterized marriage law over the past two centuries have regained their salience. Once again we confront all the complexities of a state-centered law of marriage, filled with local variations and differences. We have not yet created a new equivalent to the peculiar world of the late nineteenth and early twentieth centuries, when someone could be legally divorced and remarried in one state and a criminal bigamist in another. And because of the U.S. Supreme Court's Lawrence decision last term, that situated gay sodomy within the constitutional protections of the right to privacy, it seems unlikely that those who marry legally in one jurisdiction, say Massachusetts or the Netherlands, will face criminal penalties in another, say Utah or Alabama (though religious and secular officials who officiate in gay marriages in states that will not allow them will continue to run serious legal risks). But in other ways, the whole technical discourse of the conflict of laws, that required judges in one state to evaluate the portability and relevance of marital practices in another state, has regained the significance I thought it had permanently lost.

And for me, as a historian, the ironic result is a greater appreciation for what was at stake in those earlier conflicts on the terrain of American federalism. San Francisco Mayor Newsom's assertion of his authority to declare the constitutionality of same sex marriage finds any number of earlier analogues. Marriage has always been an institution about which local and state officials felt authorized to make constitutional claims about. The apparent force of the Full Faith and Credit clause that appeared to require conservative state officials to recognize divorces and remarriages made in more liberal jurisdictions was always qualified by a public policy limitation. That "limitation" held that where the public official determined that a strong public policy of the state was implicated (say, for example, a state's strong public policy against marital freedom) it was constitutionally permissible for the official to deny full faith and credit to the offending law or practice of the "bad" state. As a side note, and as a measure of the continuities that I have been exploring, it is worth mentioning that the Defense of Marriage Act is in its fundamentals a restatement of this very old public policy limitation.

There is an unattractive messiness to our present situation. It is likely that the question of gay marriage will continue to be fought out state by state, over questions of state legislative policy and state constitutional interpretation. It is likely that it will be many years before same sex married couples will be able to retain their identities and their privileges as married, if they move to

particular jurisdictions. And I find those likelihoods both unfair and wrong. And yet there seems to be no escape from that fate (I'm assuming of course that there will not be a Federal constitutional amendment of the sort that President Bush has proposed; nor will we see a U.S. Supreme Court decision in our lifetime that declares that a marriage law limited to heterosexuals is unconstitutional sex discrimination.).

For the foreseeable future, we will experience once again the capacity of the states to serve as what Brandeis called laboratories of experimentation. We will live in a nation in which some few places - Massachusetts, New York, New Jersey, California -- will fully enfranchise and recognize the equal claims of gay citizens, while other places will not. But over the long term, which may be a quite long term, the moral arc of change is towards a legal and political culture in which the question whom a person chooses to marry (putting aside questions of coercion and adult capacity) becomes a matter of inviolable personal freedom. And maybe a matter of rather less significance than it has today and has had throughout American history.

What are the public policy implications of Professor Hartog's observation about the states as "laboratories of experimentation" with regard to marriage law? Is this a good thing or a bad thing for our country? What do you think the U.S. Constitution has to say about this state of affairs?

End of Examination

BASIC CHILD SUPPORT SCHEDULE

Both Parents' Combined Gross Monthly Income	Number of children					
	1	2	3	4	5	6
\$ 0 - 800	\$100	\$150	\$150	\$150	\$150	\$150
850	119	150	150	150	150	150
900	153	155	157	158	160	162
950	187	189	191	193	196	198
1,000	206	223	226	228	231	233
1,050	215	257	260	263	266	269
1,100	224	291	294	298	301	304
1,150	232	325	329	332	336	339
1,200	241	351	363	367	371	375
1,250	250	363	397	401	406	410
1,300	258	375	431	436	441	445
1,350	267	387	457	470	475	481
1,400	275	399	471	505	510	516
1,450	283	411	485	536	545	551
1,500	292	423	499	551	579	585
1,550	300	435	513	567	613	620
1,600	308	447	527	582	631	654
1,650	316	458	540	597	647	689
1,700	324	470	554	612	664	710
1,750	333	482	568	628	680	728
1,800	341	494	582	643	697	746
1,850	349	506	596	658	714	764
1,900	357	517	609	673	730	781

1,950	365	529	623	689	747	799
2,000	373	541	637	704	763	816
2,050	382	553	651	719	780	834
2,100	390	564	665	734	796	852
2,150	398	576	678	750	813	869
2,200	406	588	692	765	829	887
2,250	414	600	706	780	846	905
2,300	422	611	720	795	862	922
2,350	430	623	733	810	879	940
2,400	438	635	747	825	895	957
2,450	443	641	754	834	904	967
2,500	447	647	761	841	912	976
2,550	451	652	768	849	920	984
2,600	455	658	775	856	928	993
2,650	459	664	782	864	936	1,002
2,700	463	670	788	871	944	1,010
2,750	467	675	795	878	952	1,019
2,800	471	681	802	886	960	1,027
2,850	474	687	808	893	968	1,036
2,900	478	692	815	900	976	1,044
2,950	482	698	822	908	984	1,053
3,000	486	704	828	915	992	1,062
3,050	490	710	835	923	1,000	1,070
3,100	494	715	842	930	1,008	1,079
3,150	497	720	847	936	1,014	1,085
3,200	500	723	851	940	1,019	1,090
3,250	503	727	855	945	1,024	1,095
3,300	505	731	859	949	1,029	1,101

3,350	508	734	863	954	1,033	1,106
3,400	511	738	867	958	1,038	1,111
3,450	513	742	871	963	1,043	1,116
3,500	516	745	875	967	1,048	1,121
3,550	519	749	879	971	1,053	1,127
3,600	522	752	883	976	1,058	1,132
3,650	524	756	887	980	1,063	1,137
3,700	527	760	891	985	1,067	1,142
3,750	530	763	895	989	1,072	1,147
3,800	532	767	899	994	1,077	1,153
3,850	535	771	903	998	1,082	1,158
3,900	540	777	911	1,007	1,091	1,168
3,950	545	785	919	1,016	1,101	1,178
4,000	550	792	927	1,025	1,111	1,189
4,050	554	799	936	1,034	1,121	1,199
4,100	559	806	944	1,043	1,130	1,209
4,150	564	812	952	1,052	1,140	1,220
4,200	569	819	960	1,060	1,150	1,230
4,250	574	826	968	1,069	1,159	1,241
4,300	579	833	976	1,078	1,169	1,251
4,350	584	840	984	1,087	1,179	1,261
4,400	589	847	992	1,096	1,188	1,272
4,450	594	854	1,000	1,105	1,198	1,282
4,500	599	861	1,008	1,114	1,208	1,292
4,550	604	868	1,016	1,123	1,217	1,303
4,600	608	875	1,024	1,132	1,227	1,313
4,650	612	880	1,030	1,139	1,234	1,321
4,700	615	885	1,036	1,145	1,241	1,328

4,750	619	890	1,042	1,152	1,248	1,336
4,800	622	895	1,048	1,158	1,256	1,344
4,850	625	900	1,054	1,165	1,263	1,351
4,900	629	905	1,060	1,172	1,270	1,359
4,950	632	910	1,066	1,178	1,277	1,367
5,000	635	915	1,072	1,185	1,284	1,374
5,050	639	920	1,078	1,192	1,292	1,382
5,100	642	926	1,085	1,199	1,300	1,391
5,150	646	931	1,092	1,206	1,308	1,399
5,200	650	937	1,098	1,214	1,316	1,408
5,250	654	942	1,105	1,221	1,324	1,416
5,300	657	948	1,112	1,228	1,332	1,425
5,350	661	954	1,119	1,236	1,340	1,433
5,400	666	960	1,126	1,244	1,349	1,443
5,450	671	967	1,134	1,253	1,358	1,453
5,500	675	973	1,141	1,261	1,367	1,463
5,550	680	980	1,149	1,269	1,376	1,472
5,600	685	987	1,156	1,278	1,385	1,482
5,650	690	993	1,164	1,286	1,394	1,492
5,700	695	1,000	1,171	1,294	1,403	1,501
5,750	700	1,007	1,179	1,303	1,412	1,511
5,800	704	1,013	1,186	1,311	1,421	1,521
5,850	709	1,020	1,194	1,319	1,430	1,530
5,900	714	1,027	1,201	1,328	1,439	1,540
5,950	719	1,033	1,209	1,336	1,448	1,549
6,000	724	1,040	1,216	1,344	1,457	1,559
6,050	728	1,047	1,224	1,353	1,466	1,569
6,100	733	1,053	1,232	1,361	1,475	1,579

6,150	738	1,060	1,240	1,370	1,485	1,589
6,200	742	1,067	1,247	1,378	1,494	1,599
6,250	747	1,073	1,255	1,387	1,504	1,609
6,300	751	1,080	1,263	1,396	1,513	1,619
6,350	756	1,087	1,271	1,405	1,523	1,629
6,400	760	1,093	1,279	1,413	1,532	1,639
6,450	765	1,100	1,287	1,422	1,541	1,649
6,500	770	1,107	1,295	1,431	1,551	1,660
6,550	774	1,113	1,303	1,439	1,560	1,670
6,600	779	1,120	1,311	1,448	1,570	1,680
6,650	783	1,127	1,318	1,457	1,579	1,690
6,700	788	1,133	1,326	1,466	1,589	1,700
6,750	792	1,140	1,334	1,474	1,598	1,710
6,800	797	1,147	1,342	1,483	1,607	1,720
6,850	802	1,153	1,350	1,492	1,617	1,730
6,900	806	1,160	1,358	1,500	1,626	1,740
6,950	811	1,167	1,366	1,509	1,636	1,751
7,000	815	1,173	1,374	1,518	1,645	1,761
7,050	820	1,180	1,382	1,527	1,655	1,771
7,100	824	1,187	1,389	1,535	1,664	1,781
7,150	828	1,193	1,396	1,543	1,673	1,789
7,200	832	1,198	1,403	1,550	1,680	1,798
7,250	836	1,203	1,409	1,557	1,688	1,806
7,300	840	1,209	1,416	1,564	1,696	1,814
7,350	843	1,214	1,422	1,572	1,704	1,823
7,400	847	1,220	1,429	1,579	1,711	1,831
7,450	851	1,225	1,435	1,586	1,719	1,839
7,500	855	1,231	1,442	1,593	1,727	1,847

7,550	858	1,236	1,448	1,600	1,735	1,856
7,600	862	1,241	1,455	1,607	1,742	1,864
7,650	866	1,247	1,461	1,614	1,750	1,872
7,700	869	1,252	1,467	1,622	1,758	1,881
7,750	873	1,258	1,474	1,629	1,766	1,889
7,800	877	1,263	1,480	1,636	1,773	1,897
7,850	881	1,269	1,487	1,643	1,781	1,905
7,900	884	1,274	1,493	1,650	1,789	1,914
7,950	888	1,279	1,500	1,657	1,797	1,922
8,000	892	1,285	1,506	1,665	1,804	1,930

For gross monthly income greater than \$8,000, multiply gross by the following percentages:

11% 16.1% 18.8% 20.8% 22.6% 24%

WORKSHEET A - BASIC VISITATION

_____ JUDICIAL DISTRICT COURT

COUNTY OF _____

STATE OF NEW MEXICO

NO. _____

Petitioner,

vs.

Respondent.

MONTHLY CHILD SUPPORT OBLIGATION

	Custodial Parent	+ \$	Other Parent	= \$	Combined
1. Gross Monthly Income	\$ _____	+	\$ _____	=	\$ _____
2. Percentage of Combined Income (Each parent's income divided by combined income)	_____ %	+	_____ %	=	100%
3. Number of Children	_____				
4. Basic Support from Schedule (Use combined income from Line 1)	= _____				
5. Children's Health and Dental Insurance Premium	_____	+	_____	=	_____
6. Work-Related Child Care	_____	+	_____	=	_____
7. Additional Expenses	_____	+	_____	=	_____
8. Total Support (Add Lines 4, 5, 6 and 7 for each parent and for combined column)	_____	+	_____	=	_____
9. Each Parent's Obligation (Combined Column Line 8 x each parent's Line 2)	_____		_____		_____
10. Enter amount for each parent from Line 8	- _____	-	_____		
11. Each parent's net obligation (Subtract Line 10 from Line 9 for each parent).	_____		_____		

Other Parent
pays Custodial
Parent this Amount

_____ PAYS _____ EACH MONTH
\$ _____

Petitioner's Signature

Respondent's Signature

Date: _____

BASIC VISITATION

SHARED RESPONSIBILITY

WORKSHEET B

_____ JUDICIAL DISTRICT COURT

COUNTY OF _____

STATE OF NEW MEXICO

NO. _____

Petitioner,
vs.

Respondent.

Handwritten calculations:

$$\begin{array}{r} 920 \\ 1.5 \\ \hline 4600 \\ 920 \\ \hline 3680.0 \\ 2,085 \\ \hline 12 \overline{) 25,000} \\ 24 \\ \hline 100 \\ 96 \\ \hline 40 \end{array}$$

Handwritten calculations:

$$\begin{array}{r} 6,250 \\ \hline 12 \overline{) 75,000} \\ 72 \\ \hline 30 \\ 24 \\ \hline 60 \end{array}$$

Handwritten calculations:

$$\begin{array}{r} 499.75 \\ 418.50 \\ \hline 1377.75 \end{array}$$

MONTHLY CHILD SUPPORT OBLIGATION

Part 1 - Basic Support:

	Mother	Father	Combined
1. Gross Monthly Income	\$ 6,250	\$ 2,100	\$ 8,350
2. Percentage of Combined Income (Each parent's income divided by combined income)	74	26	100%
3. Number of Children	1		
4. Basic Support from Schedule (Use combined income from Line 1)			918.50
5. Shared Responsibility Basic Obligation (Line 4 x 1.5)			1377.75

Handwritten calculations for combined income:

$$\begin{array}{r} 18350 \\ 8350 \\ \hline 91850 \\ 42 \\ \hline 91850 \\ 1.5 \\ \hline 1377750 \end{array}$$

Handwritten calculations for percentage:

$$\begin{array}{r} 6250 \\ 2100 \\ \hline 8350 \\ 6250 \div 8350 = 74 \\ 2100 \div 8350 = 26 \end{array}$$

Handwritten calculations for basic support:

$$\begin{array}{r} 8350 \\ 16700 \\ \hline 8350 \\ 8350 \div 91850 = 918.50 \end{array}$$

out of time

6. Each Parent's Share (Line 5 x each parent's Line 2) 1,000 375 ≈

7. Number of 24 hour days with each parent (must total 365) 182.5 + 182.5 = 365

8. Percentage with each parent (Line 7 divided by 365) 50 + 50 = 100%

9. Amount retained (Line 6 x Line 8 for each parent) 500 187.5 ≈

10. Each Parent's Obligation (subtract Line 9 from Line 6) 500 187.5

11. Amount Transferred (subtract smaller amount on Line 10 from larger amount on Line 10.) Parent with larger amount on Line 10 pays other parent the difference. 312.50

Part 2 - Additional Payments:

12. Children's Health and Dental Insurance Premium _____ + _____ = _____

13. Work-Related Child Care _____ + _____ = _____

14. Additional Expenses _____ + _____ = _____

15. Total Additional Payments (Add Lines 12, 13 and 14 for each parent and for combined column) _____ + _____ = _____

16. Each Parent's Obligation (Combined Column Line 15 x each parent's Line 2) _____

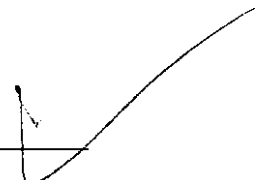
17. Amount transferred (Subtract each parent's Line 16 from his Line 15). Parent with "minus" figure pays that amount to other parent. _____

Part 3 - Net Amount Transferred:

18. Combine Lines 11 and 17 by addition if same parent pays on both lines, otherwise by subtraction. _____

Mother
\$ 312.50

_____ EACH MONTH



Petitioner's Signature

Respondent's Signature

Date: _____

SHARED RESPONSIBILITY

Line 5. Shared Responsibility Basic Obligation:

Multiply the basic obligation on Line 4 by 1.5.