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Family Law: Children's Issues

Semester I, 1999-2000

UNM School of Law  
Final Examination  
Three Credits

Professor Sedillo Lopez  
Dec. 17, 1999  
9:00 a.m. to 12:00 Noon

INSTRUCTIONS

THIS IS A CLOSED BOOK EXAM. 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 relevant 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. You do not have extra unallocated time.

Clearly identify your answers in your bluebooks. Please skip lines.

GOOD LUCK!!!

END OF INSTRUCTIONS

**[Exam begins on next page]**

QUESTION ONE  
(30 minutes)

New York state has several requirements for those on public assistance. One requirement for staying in a homeless shelter is a requirement that an individual over the age of 16 must work in a state program (these programs require participants to clean highways and parks, landscape, clean offices, etc). New York has begun attempting to remove children from parents who refuse to participate in the welfare reform work requirements. New York alleges that parents who refuse to participate in work requirements will not receive welfare benefits and thus their failure to participate is child neglect. Child neglect in New York has been defined as failing to provide for a child's physical, educational, and emotional needs.

Analyze the constitutionality of New York state's attempt to remove children from parents under the above circumstances.

QUESTION TWO  
(45 minutes)

Ada and Al, have been married for four years. Ten days ago Ada gave birth to Barbie who was born with severe impairments, both mental and physical. In addition, Barbie suffers from a lesion in her intestinal tract. This lesion blocks the digestive system but can be repaired with a simple and common surgical procedure. If the operation is not performed fairly soon, Barbie will die because she cannot retain fluid or food. Ada and Al do not want to give consent to the operation (consent is required by state law). Ada is severely depressed. Al has deferred to Ada about this decision. Ada has always been the dominant partner in this relationship. Barbie's life expectancy without the operation is only a few weeks; with the surgery, it is between 30 and 40 years.

1) The child's physician, Dr. Crayola has come to you for your advice. Advise him.

Barbie's situation was brought to the attention of the community through a newspaper article. Della and Dale, an infertile couple who had been trying to adopt a child for several years offered to adopt Barbie, consent to and pay for her surgery. They filed an emergency petition in children's court alleging that Ada and Al's parental rights should be terminated and that they should be granted temporary custody pending a full home study and completion of the adoption papers. Ada objected to the termination of her parental rights. Al consented to the termination of his parental rights and wrote a letter to the judge. The letter stated that he "is happy that someone has chosen to love and protect Barbie. I give my permission for the adoption."

2) How should the court rule on Della and Dale's petition? Explain the court's reasoning.

QUESTION THREE  
(45 minutes)

Earl and Francie were 15 year old freshmen in high school when they began having sexual relations in the fall of 1997. The last time they had sex was December 23, 1997. Francie told Earl that she was pregnant in January of 1998. The couple broke off their relationship and did not communicate with each other through the spring. Francie began to date other boys. On September 2, Earl's mother, Gabriela learned of the pregnancy and contacted Francie's physician who told her the baby was due September 18 or 19. Gabriela contacted Francie and offered financial support and help with the child's upbringing. Gabriela asked Francie not to give the child up for adoption. Gabriela and Earl met with a representative of the Children's Assistance Society on September 12 who told them Earl had to acknowledge paternity or the adoption would proceed without him and the next day Gabriela discussed the matter with a social worker. The social worker mailed a copy of an Acknowledgement of Paternity certificate to Earl on September 17. Earl signed it and had it notarized on September 18 but he did not mail it in at that time.

The baby was born on the 23<sup>rd</sup> of September and on that day Earl, upon learning of the child's birth, mailed the form he had signed on the 18<sup>th</sup> of September to the Children's Assistance Society. He did not mail it earlier because he believed that if the child was born much later than the 23<sup>rd</sup> he might not be the father. A receptionist at the Children's Assistance Society opened the envelope. Upon seeing that the form had been mailed to the wrong address, she marked "WRONG ADDRESS/ RETURN TO SENDER" on the envelope. She dropped it in the afternoon mail on September 28. On September 30, Earl mailed it to the Registrar of Vital Records.

On September 24<sup>th</sup> Francie signed a consent to adoption form and released the child to Hallie and Ito, a couple who have been married for eight years. Hallie is a school teacher and Ito is a lawyer. They are Asian-Americans who expressed an interest in adopting a child of any race. They have been on the waiting list with the Children's Assistance Society for three years. They were overjoyed. They took the child home on September 25 and named her Ja. The Children's Assistance Society checked on the 23<sup>rd</sup>, 24<sup>th</sup> and 25<sup>th</sup> to see if an Acknowledgment of Paternity form had been filed with the Registrar of Vital Statistics. They checked again with the registrar on September 28. Each time the registrar responded that there was no acknowledgement on file. On September 30, the Registrar issued a "Certificate of Search" verifying there was no Acknowledgement of Paternity on file. Hallie and Ito filed a Petition for Adoption alleging that no notice to any father was required and attached the Certificate of Search from the Registrar on October 1.

The Acknowledgement of Paternity, postmarked on September 30 was received by the registrar on October 2. When it was received by the Registrar, a note was forwarded to Children's Assistance Society indicating that an Acknowledgement of Paternity had been filed. The Children's Assistance Society did not inform Hallie and Ito, their attorney or the Court of this fact.

The adoption statute allows mothers six months after the child's birth to revoke their consent. The state adoption statute does not allow fathers any time to revoke consent and no notice is required to a father who has not acknowledged paternity by the date a Petition for Adoption is filed. Ja lived with the Ito's during the pendency of the adoption, which was granted on May 17, 1998. On June 17, 1999 Earl filed a motion to set aside the adoption.

1) What are the arguments of the various parties concerning whether the adoption should be set aside? How should the court rule?

QUESTION FOUR  
(30 minutes)

Katie Snow is the mother of four children, three of whom are students in the public school. She is a high school graduate but has not attended college. At the beginning of the school year three years ago, Mrs. Snow read a story in her daughters sixth grade reader that involved mental telepathy. Reading further, she found additional themes in the reader to which she had religious objections. After discussing her objections with other parents. Mrs. Snow talked with the principal of the middle school and obtained an agreement for an alternative reading program for students whose parents objected to the assigned reader. The students who elected the alternative program left their classrooms during the reading sessions and worked on assignments from an older textbook series available in office or library areas.

After one year of these alternative reading arrangements, the local school board voted unanimously to eliminate all alternative reading programs and required every student in the public schools to attend classes using the chosen theories. Katie's three children were suspended. She began to teach them at home. She was then presented with an order to return the children to school or face sanctions under the state compulsory education laws that only permit home schooling if the parent doing the home schooling has a college degree.

Katie filed a lawsuit seeking an injunction permitting her to teach her children at home or alternatively reinstating the alternative reading program.

What are the arguments by the various parties? How should the court rule?

QUESTION FIVE  
(30 minutes)

Do you think the presumption in favor of joint custody furthers the best interests of the child in all cases. Why or why not?

[End of Examination]