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**634 CHILDREN'S LAW**  
Semester II, 2001-2002

Final Examination  
UNM School of Law  
Three Credits

Professor Barbara Bergman  
Friday, May 3, 2002  
Friday, May 10, 2002  
9:00 a.m. to 12:00 noon

**INSTRUCTIONS**

This examination consists of three questions. Each question is worth 1/3 of the examination grade. I suggest you allocate your time accordingly. Please answer the entire examination in your bluebooks. Please be sure to:

- (a) Put your examination number on each page of the your exam and on each bluebook.
- (b) **Please write on only one side of the page and skip every other line.** (I find that much easier to read.) And please try to write legibly. (I realize I do not have standing to make that request, but I would really appreciate it.)
- (c) Turn in everything at the end.

This is a MODIFIED OPEN BOOK EXAMINATION. You are permitted to use your notes, any outlines that you and/or your classmates prepared, any required texts, and any materials distributed in class. You may **not** use any commercial outlines.

End of Instructions

GOOD LUCK!

**[THE QUESTIONS BEGIN ON PAGE 2]**

**QUESTION 1**  
**(1/3 of the exam grade)**

You are a Children's Court judge in New Mexico. You are holding an adjudicatory hearing today *In the Matter of Joseph Carter*. The petition alleges that the child's mother has both abused and neglected her son.

During the hearing, the Children's Court Attorney presents the following evidence:

Joseph is nine years old. His father was killed in a car accident when Joseph was one. His mother, Mary Carter, has raised Joseph on her own since then. Ms. Carter is a cardiac physician who makes a good living and provides a comfortable lifestyle for herself and Joseph. When Joseph was five years old, Dr. Carter had him tested to determine his intellectual abilities. As she never hesitates to tell anyone who will listen, Joseph is a genius. His overall I.Q. on these tests measures 180. She is convinced that he is so brilliant that the available tests simply cannot fully measure his intellectual capacity. She had suspected as much when Joseph was younger, but the tests merely confirmed what she already knew.

She immediately enrolled Joseph in a very expensive school for gifted children. When he was unable to do the work required of him there, the principal gently suggested to Dr. Carter that perhaps Joseph was too young to be put into such a high pressure environment. Dr. Carter told her not to be ridiculous. Joseph was simply bored because the work was not demanding enough. She insisted that the school needed to give him more challenging assignments. The principal refused, explaining that, despite the test results reported by Dr. Carter, Joseph was not an intellectually gifted child. In fact, he seemed somewhat below average. In disgust, Dr. Carter took Joseph out of the school and decided to teach him at home.

Dr. Carter has now been home-schooling Joseph for four years (and has complied with the home schooling regulations in Nirvana). According to Dr. Carter, Joseph speaks five different languages, although no one other than Dr. Carter apparently has heard him speak anything other than English. Although Joseph can barely add and subtract, Dr. Carter claims that he is adept at calculus, which is more appropriate for him to study anyway.

The social worker had investigated a neighbor's complaint that she thought Joseph was being abused by his mother. The social worker found Joseph to be an extremely shy child with virtually no social skills. He almost never interacts with other children his age because his mother insists that he must study all the time. Dr. Carter states that she has never struck her son in anger but that she has spanked him on occasion for not completing his school work and that she has yelled at him when she became frustrated when he would refuse to do the school work she had assigned to him.

The next door neighbor, Mrs. Allison, a kindly, elderly former school teacher, reluctantly testifies that she hears Dr. Carter screaming at her son for hours at a time. She has never seen Dr. Carter hit her son, but she has also never seen her show the least bit of affection to him either. Whenever she has seen Joseph, he has seemed withdrawn and sad – “sort of like a beaten puppy.” She does not like to meddle in other people’s affairs, but she felt so sorry for the little boy that she called the abuse hotline.

The Children’s Court Attorney and the guardian ad litem argue that Dr. Carter is acting irrationally and inflicting emotional and psychological abuse on her son. They also argue that she has failed to provide proper care for her son. Neither has any additional evidence to offer. Dr. Carter’s attorney argues that she is a good, but demanding mother and the state has no business interfering with her decisions about how to raise her son.

The potentially relevant portions of New Mexico’s abuse/neglect statute define an abused and/or neglected child as follows:

§ 32A-4-2 Definitions.

As used in the Abuse and Neglect Act [this article]:

...

B. "abused child" means a child:

(1) who has suffered or who is at risk of suffering serious harm because of the action or inaction of the child's parent, guardian or custodian;

(2) who has suffered physical abuse, emotional abuse or psychological abuse inflicted or caused by the child's parent, guardian or custodian; . . .

(4) whose parent, guardian or custodian has knowingly, intentionally or negligently placed the child in a situation that may endanger the child's life or health; or

(5) whose parent, guardian or custodian has knowingly or intentionally tortured, cruelly confined or cruelly punished the child; . . .

E. "neglected child" means a child:

...

(2) who is without proper parental care and control or subsistence, education, medical or other care or control necessary for the child's well-being because of the faults or habits of the child's parent, guardian or custodian or the failure or refusal of the parent, guardian or custodian, when able to do so, to provide them; . . .

The standard of proof at the adjudicatory hearing on an abuse/neglect petition in your state is preponderance of the evidence.

How do you rule on this abuse/neglect petition and what are the reasons for your ruling?

**QUESTION 2**  
**(1/3 of the exam grade)**

You are an Assistant District Attorney assigned to the Juvenile Division here in Albuquerque. Your supervisor has asked you to handle Tim Tuttle's new case. Tim is fourteen years old and has been charged with criminal sexual penetration. You are quite familiar with Tim since you have prosecuted him on five prior occasions for offenses ranging from robbery to shoplifting. Unfortunately, you managed to get adjudications in only two of those cases. In one case, in January 2000, the Children's Court judge found Tim guilty of one count of burglary and in the other case, in February 2001, the court found him guilty of two counts of robbery. He was placed on probation in the burglary case and then placed in a more intensively supervised probation program on the robbery charges.

Tim last attended school from the best you can tell about three years ago. He cannot read or write. He has been a member of a gang for three years and spends more time with his fellow gang members than with anyone in his family. Physically, Tim is small for his age although he makes up for his lack of height and brawn with an attitude that does not encourage anyone to "mess" with him.

His grandmother, Rachel Johnson, raised him because his mother was a drug addict, and his father was a drug dealer, who was killed by a rival drug dealer when Tim was four. All five of Tim's older brothers are either in jail or prison at the moment. Mrs. Johnson seems to care for Tim, but she is simply incapable of controlling him.

Tim's probation officer in the intensive supervision program, Armando Arias, has found Tim to be a challenging probationer. Despite all the trouble that Tim manages to get into, Armando seems to like Tim and thinks Tim has real potential. He is bright, despite his lack of formal education, and Armando had thought that Tim was starting to respect and trust him.

Tim is now accused of raping a twelve-year-old neighbor girl, Melinda Simms. Tim told the arresting officer that he did not rape Melinda. He did have consensual sex with her, but when her father came home unexpectedly and walked in on them, she told her father that Tim had raped her. Melinda seems quite upset and has bruises on her face and body that she claims were caused by Tim.

Assume that you are successful in this prosecution and the jury finds Tim guilty of criminal sexual penetration. Do you ask the court to sentence Tim as an adult under the youthful offender provisions of the New Mexico Children's Code? Why or why not? (Assume that you had filed a timely motion to that effect to keep your options open.) If you do not ask for an adult sentence, what disposition do you ask the court to impose and why?

The following provisions of the New Mexico Children's Code may be of assistance to you:

§ 32A-2-3 Definitions.

1. "youthful offender" means a delinquent child subject to adult or juvenile sanctions who is:
  - (1) fourteen to eighteen years of age at the time of the offense and who is adjudicated for at least one of the following offenses:  
... (h) criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978; . . .
  - (2) fourteen to eighteen years of age at the time of the offense and adjudicated for any felony offense and who has had three prior, separate felony adjudications within a three-year time period immediately preceding the instant offense. The felony adjudications relied upon as prior adjudications shall not have arisen out of the same transaction or occurrence or series of events related in time and location. Successful completion of consent decrees are not considered a prior adjudication for the purposes of this paragraph; . . .

§ 32A-2-20 Disposition of a youthful offender.

A. The court has the discretion to invoke either an adult sentence or juvenile sanctions on a youthful offender. The children's court attorney shall file a notice of intent to invoke an adult sentence within ten working days of the filing of the petition, provided that the court may extend the time for filing of the notice of intent to invoke an adult sentence, for good cause shown, prior to the adjudicatory hearing. A preliminary hearing by the court or a hearing before a grand jury shall be held, within ten days after the filing of the intent to invoke an adult sentence, to determine whether probable cause exists to support the allegations contained in the petition.

B. If the children's court attorney has filed a notice of intent to invoke an adult sentence and the child is adjudicated as a youthful offender, the court shall make the following findings in order to invoke an adult sentence:

- (1) the child is not amenable to treatment or rehabilitation as a child in available facilities; and
- (2) the child is not eligible for commitment to an institution for the developmentally disabled or mentally disordered.

C. In making the findings set forth in Subsection B of this section, the judge shall consider the following factors:

- (1) the seriousness of the alleged offense;
- (2) whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;
- (3) whether a firearm was used to commit the alleged offense;
- (4) whether the alleged offense was against persons or against property, greater weight being given to offenses against persons, especially if personal injury resulted;
- (5) the sophistication and maturity of the child as determined by consideration of the child's home, environmental situation, emotional attitude and pattern of living;
- (6) the record and previous history of the child;
- (7) the prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the child by the use of procedures, services and facilities currently available; and

(8) any other relevant factor, provided that factor is stated on the record.

D. If the court invokes an adult sentence, the court may sentence the child to less than, but shall not exceed, the mandatory adult sentence. A youthful offender given an adult sentence shall be treated as an adult offender and shall be transferred to the legal custody of an agency responsible for incarceration of persons sentenced to adult sentences. This transfer terminates the jurisdiction of the court over the child with respect to the delinquent acts alleged in the petition.

E. If a juvenile disposition is appropriate, the court shall follow the provisions set forth in Section 32A-2-19 NMSA 1978. A youthful offender may be subject to extended commitment in the care of the department until the age of twenty-one, pursuant to the provisions of Section 32A-2-23 NMSA 1978. . . .

**QUESTION 3**  
**(1/3 of the exam grade)**

You have just been elected to the State Legislature here in New Mexico. One of the largest financial contributors to your campaign has asked you to do the following favors for her:

- (1) introduce legislation to abolish the Children's Court jurisdiction over any acts that would constitute a criminal offense so that such matters would be handled entirely in adult court;
- (2) introduce legislation to permit the Children's Court to "lock up" runaways and truants in some sort of juvenile detention facilities so that they can be protected and helped, whether they want the state's help or not; or
- (3) introduce legislation to modify the definition of abuse/neglect to explicitly cover illegal drug use by pregnant women.

You would like to keep this contributor happy.

Would you feel comfortable honoring any of these requests? If so, which ones and why? Which ones would you not want to honor and why?