



Domestic Relations

Class 7

Child Arrangements



FAMILY

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 this 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 (cont.)

- 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 liable a man as if he were the biological father on a theory of estoppel!



Assisted Reproduction and the Impact on Parental Status

- **Artificial Insemination** (when 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!



Assisted Reproduction and the Impact on Parental Status (cont.)

- **In Vitro Fertilization** (The 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 (cont.)

- 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 being against public policy.
 - Different states have different rules regarding these agreements.



