



*Domestic Relations*

*Class 8*

Child Arrangements



FAMILY I

# Adoption

- Adoption generally gives the adoptive parents full parental rights and obligations and cuts off the parental rights and obligations of the biological parents!



# Adoption (cont.)

- Permission is required before an adoption can take place
  - Assuming that her parental rights have not been legally terminated, the consent of the biological mother is always necessary before a child can be adopted.
  - A marital father (a man who was married to the mother at the time of conception or birth of the child) also must consent for the child to be adopted.
  - A non-marital father has the constitutional right to refuse to allow an adoption if and only if he has cared for the child. If not, the state may dispense with his parental rights.
- Parental objection to adoption must be made in a timely manner to be effective.
- Consent to adoption can sometimes be revoked within a certain period of time, as determined by the state.
- “Best interest of the child” standard can override everything else in some cases.



# Termination of Parental Rights

- It is unconstitutional to deny paternal status to a father because of non-marital status. Custody and other parental rights can only be determined after notice and a hearing.



# Termination of Parental Rights (cont.)

- Things that can terminate parental rights:
  - 1) **Voluntary Termination:** Many government agencies allow for such abandonment to assure proper treatment for the child. Once done, this is generally irrevocable, especially if the child is adopted by someone else or put into a new home.
  - 2) **Involuntary termination** based on unfitness of the parent and that the best interest of the child demands the termination.
- Inherent indicia of unfitness:
  - Abandonment or “extreme parental disinterest,” including lack of visitation or contact
  - Abuse or neglect
  - Mental illness or deficiency
  - Alcohol or drug induced incapacity
  - Felony conviction or being in jail
  - Sexual abuse
  - Felony assault of child or sibling
  - Murder or manslaughter of sibling child





# Involuntary Termination of Parental Rights – Procedure

- All involuntary termination can only come after notice and a hearing. There is no inherent right to appointed counsel at these hearings (the state does not have to hire an attorney for an indigent person).
  - The first step in this kind of a case is temporary removal pending the hearing.
  - A child can be placed in “foster care” during the termination proceeding.
  - Once a child has been in foster care for a significant period of time, the state must either give the child back or commence a termination proceeding.
  - A social worker assigned to the case can develop a “re-unification” plan to allow the child back into the parent’s home pending certain conditions.
  - Once a hearing determines that parental rights should be cut off, that determination, though subject to appeal, is final and the parent must then apply for visitation rights to have any access to the child. In determining these visitation rights, the “best interest of the child” standard applies.
- Should there be liability for social workers who make determinations that do not turn out well?



# "Legitimacy"

- Today, the term "non-marital" is used instead of "illegitimate."
- In the old days, there were many legal distinctions between children born in and out of wedlock. Today, there is very little distinction.
  - "Wrongful birth" actions against parents for the social stigma of being "illegitimate" have not been allowed because they are against public policy.
  - However, other types of wrongful birth actions are available in some cases.
- Rules that differentiate between marital and non-marital children may violate the "Equal Protection" clause of the Constitution. A regulation that does differentiate must be substantially related to an important government interest to avoid being overturned on equal protection grounds.
  - Thus, limiting wrongful death actions to marital children was ruled unconstitutional.

