



Domestic Relations

Class 15

Child Arrangements



FAMILY D

Awarding Child Custody after a Divorce

- **Factors that a court may consider in determining custody:**
 - Which parent has been the "primary care giver;"
 - The age of the child;
 - The physical and mental health of the child;
 - The parent's fitness to care for the child, including the parent's emotional stability;
 - The financial situation of the parents; and
 - The input of the child (after a certain age).
- **Factors that a court will NOT (generally) consider in determining custody:**
 - Gender (women do NOT get a presumption of custody).
 - Sexual orientation or sexual activity of the parent, unless it has an adverse effect on the child.
 - Race of the parent.
 - Physical handicap (unless it will adversely affect the child).
 - Religious practices of a parent, unless they will adversely affect the child.



Custody Arrangements

- The presumption in any divorce proceeding will favor some level of joint custody between parents who are getting divorced.
- Joint custody includes:
 - **Joint legal custody:** Both parents have an equal say in making decisions regarding the raising of the child (e.g., choosing schools, etc.)
 - **Joint physical custody:** Doesn't necessarily mean equal living time with each parent; just that the child spends time with each parent.
- Parents are presumed to be competent to raise their children. Only a clear showing otherwise will cause a court to deny custody to a parent or order sole custody to the other parent!
- **Parent vs. Non-Parent**
 - The Supreme Court, in *Troxel v. Granville* held that the right to raise one's child as one sees fit is part of the fundamental right to privacy inherent in the Constitution. Therefore, a custodial parent can prevent a non-parent from any visitation and state law is powerless to do anything about this!



Visitation

- **Visitation** is generally determined by the "best interest of the child" standard; other than the parent's fundamental right to raise his or her own child discussed above.
- Typically, since the presumption is that two parents are good for children, some form of visitation is allowed to the non-custodial parent.
- Will a court order visitation in spite of child's reluctance?
- Depends on:
 - age of child
 - reason for reluctance
- Parents have a legal duty to comply with visitation and acts to thwart visitation can result in:
 - contempt of court
 - awarding greater custody to the other parent





Jurisdiction in Custody Disputes

- **State Law: Uniform Child Custody Jurisdiction Act (UCCJA)**
 - Adopted in all states.
 - Allows jurisdiction in custody disputes even in states where no personal jurisdiction applies over both parents.
- **The jurisdiction is based on various factors:**
 - home state of the child.
 - best interest of the child (based on where the parents are, where his or her friends are, etc.)
 - if the child has been abandoned there.
- **Uniform Child Custody Jurisdiction and Enforcement Act**
 - Helps remedy conflicts between state laws and state courts.
- **Federal Law: Parental Kidnapping Prevention Act**
 - Directs states to follow the mandates of other state's courts regarding custody (based on the full faith and credit clause).

