

ILLEGITIMACY AND PATERNITY

C O N T E N T S

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A. Chapter Competencies

After studying chapter 13 the student should be able to:

1. state the inheritance rights of an illegitimate child.
2. state whether illegitimate children are considered “children” or “heirs” in wills.
3. state who has the duty to support illegitimate children.
4. state the right of an illegitimate child to obtain (a) workers’ compensation, and (b) social security benefits through his or her parents.
5. state the parental responsibility consequences of artificial insemination.
6. state the ways in which illegitimate children can become legitimate.
7. assist a woman establish the paternity of her child.
8. identify the major procedural issues in a paternity proceeding.
9. state Lord Mansfield’s rule.
10. state how blood group tests are used in paternity proceedings.
11. state what is meant by probability of paternity.
12. state how DNA tests are used in paternity proceedings.
13. state the function of the voluntary recognition of parentage forms filled out in maternity wards.
14. distinguish between legal paternity and biological paternity.

B. Introduction

Here is a story you may want to share with the class while covering chapter 13:

“I’m appalled by their brazenness.”

This was the comment of Virginia Governor L. Douglas Wilder to a request by two death-row inmates to have their sperm frozen and used to inseminate their girlfriends. One of the inmates argued that because his execution will end his bloodline, not allowing him to have his sperm frozen constitutes cruel and unusual punishment. The requests were denied.

National Law Journal, 47 (9/2/91).

C. Assignment 13.4 (*Pettinato v. Pettinato*)

- a. *Legal paternity* results from a court declaration that Mr. X is the man with all the rights of a father of the child even if Mr. X’s sperm did not produce the child. It is a court declaration that Mr. X should in fairness and equity

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have all the rights of the father even if his sperm did not produce the child. *Biological paternity* is determined by whose sperm led to the birth of the child.

The distinction was critical in *Pettinato v. Pettinato*. Gregory was not the biological father but was declared the legal father because of his conduct and that of the child's biological and legal mother, Susanne.

- b. Under § 15-8-3(a)(3)(ii) there is a rebuttable presumption that Gregory is the father of Gregory, Jr. Note that in Assignment 13.4(b), Gregory is not trying to raise the paternity issue in a divorce case—which so upset the court in the *Pettinato* case. Here we do not have a case that is considering the rights of a parent whose legal presumption of paternity is challenged for the first time *during a divorce proceeding*. Here paternity is being challenged in a child support case.

The question is whether there is “clear and convincing evidence” to rebut the presumption and whether a court will consider it. The evidence in question would again be the blood tests that he isn't the father. In *Pettinato*, the court would not allow this evidence to be considered because of Susanne's conduct and because paternity was being challenged in a divorce proceeding. This is not the case here. Paternity is being challenged in a child support proceeding.

In *Pettinato*, there was conduct of the mother that showed she treated Gregory as the father. The court felt that this conduct made it inequitable for her to now challenge paternity by the evidence of the blood tests.

In the child support case, is there any conduct by Gregory that makes it inequitable for *him* to now deny paternity in the child support case? Yes. He treated the child as his own. He called the child his. He let his name appear on the birth certificate as the father. He took the child into his home (and into the home of his parents) and cared for it as his child. Is it now inequitable for him to come forward to say he is not the father—to illegitimize the child? Yes. This does not appear to be much different from what Susanne did in *Pettinato*. As to Susanne, the court said:

“We are concerned about the situation before the court wherein a mother can tell a man that he is the father of her child, marry him and live together as a family, and then illegitimize the child during a divorce proceeding by attacking the legal presumption of paternity that she helped to bring about.”

But doesn't this apply to Gregory as well in our new case? His conduct raised the presumption of his paternity which he now wants to discard and thereby illegitimize the child. Arguably, the following comment of the court applies to Gregory as well as it applied to Susanne:

“The underlying rationale of the equitable-estoppel doctrine is that ‘under certain circumstances, a person might be estopped from challenging paternity where that person has by his or her conduct accepted a given person as father of the child.’”

We need to know whether another man (other than Gregory) is presumed under § 15-8-3 to be a father at the time Gregory refuses to pay child support. If so, the statute states how to resolve such a conflict.

Final question on *Pettinato v. Pettinato*: What would happen if Susanne's Florida paramour appeared and demanded custody?

- c. No. *Troxel v. Granville* held that third-party visitation (by paternal grandparents) could not interfere with the constitutional right of a fit parent to make child-rearing decisions. Susanne's rights as a fit parent were not interfered with by what the *Pettinato* court did. The Rhode Island court ruled that Gregory was as much a parent as Susanne. He was a legal parent. Hence he is not in a similar position to the grandparents in the *Troxel* case. *Pettinato* concerned a parent vs. parent dispute, not a grandparent vs. parent dispute.

D. Ethics in Practice

An attorney cannot withdraw from a case unethically. Since Adams was appointed by the court to represent Edwinson, Adams would need the permission of the court to withdraw. Without this permission, the withdrawal is unethical.