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Modern families will keep lawyers busy for years to come

The law frequently plays catch-up with the real world. Nowhere is that more true than in the area of personal and family relationships.

Couples are cohabiting in record numbers, yet the law is still trying to evaluate the rights of married people and decide whether to extend them to gay couples. The children of unmarried parents only recently have come to be treated as fully and fundamentally equal under the law.

Our statutes on paternity and artificial insemination lag far behind all the options that science offers. Many children in many schools have “two moms” or “two dads” and the word “partner” could mean your partner in law, but it could just as easily be your partner in love.

New forms of relationships are rapidly evolving without enough underlying law to support them. This is true even when they are going well, let alone when they fail.

Unmarried and uncoupled partners in parenting

The newest challenges in the arena of relationships and rights is evident in the brave new world of those unmarried noncouples who choose to “partner” only to conceive and raise a child.

Believe it or not, there are at least five websites where an adult person of either sex can go searching for the perfect other parent of a child they want to have — without any thought of romance.

On these sites, people are absolutely not looking for love, but they are searching for the other parent of their not yet conceived child. They plan to be just friends — but with kids.

Two years ago, there was a movie called “Friends With Kids,” where two people who were “just friends” decided to have a child in order to avoid all the pitfalls of

their unhappily married peers who had insisted on romance before conception.

In the end, they fell in love and had a Hollywood ending.

That “happily ever after” ending is not the goal of the new parenting partners.

Their goal is instead to raise, nurture and support a child as a team, albeit a team who may never live together, and who may already be or ultimately be romantically involved with different people.

How would one counsel a client as to what to look for in a parenting match and who would write the rules of this unique relationship?

The answers to both questions are still evolving even while lives are being lived, assuming that being “friends with kids” is not only acceptable but legally protectable.

Just a few hypotheticals

Assuming your client has found the perfect co-parenting partnership match, the legal issues get really interesting.

What happens if one of the co-parents becomes ill or, God forbid, should die?

Whose child is the child of their “partnership” anyway, and what rights does that child have to an inheritance?

More importantly, who has rights to raise the child in the aftermath?

What happens if the original co-parents decide they do not like each other or their “deal” anymore and want to walk away from each other but not from their child.

The only possible and not necessarily enforceable answer to those questions must be created by written legal contracts.

Best interests of children

First and foremost, we know that each state differs remarkably in its view of these new relationships.

Consistent with that high level

HOLLYWOOD LAW



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of inconsistency is the fact that relationship contracts in general are suspect, particularly in Illinois.

We still have a puritanical view regarding any contracts between unmarried partners, although contracts which have or imply the obligation to care for children have fared much better than those simply designed to protect property rights.

Ultimately the judgment on any of these new parenting arrangements will be based on the “best interests” of the child or children — a concept that must be the foundation of all the legal advice one gives.

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A preliminary checklist on co-parenting

Couples should take into account several legal issues before they enter into a platonic type of co-parenting. A family lawyer can walk them through the steps.

Consider all the methods of conception available and the different legal consequences of each one, depending on the jurisdiction involved.

In Illinois, for example, a known sperm donor, and particularly one who evinced an intention to be a parent, is a parent, but other state statutes, presumptions and prerequisites vary widely.

Know not only your state law regarding personal relationship contracts but also the developing case law trends. Be prepared to explain to your client the choice of law options as well as the consequences of moving out of state at a later date.

Develop a contract by which the parenting partners will establish the rules of their chosen parenting road.

The typical parenting agreement in a divorce or paternity case can provide guidance, but the ultimate questions of inheritance and parenting roles are significantly more complex for “friends with kids.”

Investigate and advise on the potential problems of enforceability with these contracts and help your client to do everything possible to secure their rights whether by adoption or guardianship or any other more traditional remedy than simply a contract.

The era of true modern families has just begun, which means the role of private agreements is on the rise.

We lawyers have some fascinating challenges in drafting and advising on these new co-parenting contracts — and some powerful, looming liability issues if the research we do is incomplete or our answers ineffective.