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45 Landmark Decisions: Four Experts Look at the Most Significant Cases Handed Down during the Last Two Decades

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Editor's Note: *Family Advocate* asked four family law specialists to name the decisions that they feel have had the most impact on family law. Contributing to this list of cases (beginning on next page) are: Monroe L. Inker, a Boston attorney; Sanford N. Katz, professor at Boston College Law School; Frances H. Miller, professor at Boston University School of Law; and Walter Weyrauch, professor at the University of Florida College of Law in Gainesville. The introduction, which discusses major family law developments, is by Randall M. Chastain, professor at the University of South Carolina.

Liberal divorce reform, like most major social legislation, did not herald the coming of social changes, but reflected views that already existed. The interplay of forces seeking liberal or conservative divorce laws has been with us for years. The result, however, has not been a continuous, if gradual, movement toward more liberal approaches, but rather an up-and-down movement.

In 1849, for example, Connecticut passed a divorce law that permitted divorce for "any such misconduct as permanently destroys the happiness of the petitioner and defeats the purpose of the marriage relation." (Public Act 1849.17) Despite its reference to "misconduct," this was essentially a unilateral divorce statute since the nature of misconduct is made dependent upon the destruction of the petitioner's happiness and defeating the purpose of the marriage relation. The divorce rate in Connecticut rose so dramatically after the statute was passed that it was repealed in 1878.

The debate over what should constitute justifiable reasons for dissolving a marriage raged with vigor between the end of the Civil War and the beginning of World War
II. Legislatures tended to remain on the conservative side, reversing a trend toward liberalization that had existed before the Civil War. But by the late 1940s, the country had begun a process of social rethinking that continues to this day.

**NO-FAULT DIVORCE**

In the 1950s, however, the laws were not much different than when Chester G. Vernier surveyed the country’s divorce laws in 1931. At that time, every jurisdiction that permitted divorce—all American jurisdictions except South Carolina—recognized adultery as a ground for divorce. Not one jurisdiction directly recognized a no-fault ground. Then it was time for the pendulum to swing back to more liberal approaches to divorce access. And by 1969,

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### 45 Major Family Law Decisions

**1961**

_Cooper v. Lester_, 366 U.S. 299 (1961)
The Internal Revenue Code makes alimony payments pursuant to a written agreement taxable to the wife and deductible by the husband, except for the part of such payments that the agreement fixes as a sum payable for the support of minor children. In this case, the Supreme Court allowed the taxpayer to deduct the full amount of his payments to his former wife on the ground that the agreement did not “fix” the portion of the payments made as payable for the support of the children. The code “does not say that a ‘sufficiently clear purpose’ on the part of the parties would satisfy.” (at 311)

**1962**

_United States v. Davis_, 370 U.S. 65 (1962)
The Supreme Court held that the transfer of appreciated property by one spouse to another at divorce or pursuant to a separation agreement results in a taxable gain to the transferor.

**1965**

_Griswold v. Connecticut_, 381 U.S. 479 (1965)
Executives and medical directors of Connecticut Planned Parenthood League challenged conviction on the charge of violating a statute making use of contraceptives a criminal offense. They had given information, instruction, and advice to married persons to prevent conception. The Supreme Court held that the statute unconstitutionally invaded “a relationship lying within the zone of privacy created by several fundamental constitutional guarantees.” (at 485)

**1966**

_Painter v. Bannister_, 140 N.W. 2d 152 (Iowa 1966)
After mother’s death, father asked maternal grandparents to take temporary custody of his child. Two years later, after his remarriage, father sought to regain child’s custody. The Iowa Supreme Court held that the child should stay with the grandparents, focusing its attention on the best interest of the child. If return to natural parent is “likely to have a seriously disrupting and disturbing effect upon the child’s development, this fact must prevail.” (at 156)

**1967**

_Loving v. Virginia_, 388 U.S. 1 (1967)
The Supreme Court held that Virginia’s statutory scheme to prevent marriages solely on the basis of racial classifications violated the Equal Protection and Due Process Clauses of the Fourteenth Amendment.

**1971**

The Supreme Court held that “‘due process does prohibit a state from denying, solely because of inability to pay, access to its courts to individuals who seek judicial dissolution of their marriages.” (at 374)

_Thompson v. Thompson_, 57, 489 P.2d 1062 (Colo. 1971)
Husband’s noneconomic contribution during the marriage requires the same consideration as the wife’s for the purpose of property division.

**1972**

_Eisenstadt v. Baird_, 405 U.S. 438 (1972)
Baird challenged his conviction under Massachusetts law for giving contraceptive foam to a woman after a lecture to students on contraceptives. State law made it a felony to distribute contraceptives, except when a registered physician administered or prescribed it for a married person or a pharmacist furnished it to a married person under prescription. The statute was held to violate the equal protection clause in providing for dissimilar treatment of married and unmarried persons who are similarly situated.

If _Griswold_ held that the state could not ban distribution of contraceptives to married couples, then this statute is unconstitutional since the right of privacy
the California legislature passed a law permitting dissolution of marriage simply on the basis of irreconcilable differences. (See Cal. Civil Code § 4506 (w. 1970.) This enactment both legitimized and energized the already existing movement toward change, and was probably the single event in no-fault divorce.

By August 1980, Illinois and South Dakota were the only two states that still limited divorce to traditional “fault” grounds. And today, California has gone so far as to allow divorce to be granted by affidavit under some circumstances.

EQUITABLE DISTRIBUTION IN COMMON LAW STATES

As of 1981, Mississippi, Virginia, and West Virginia were the only three states that could be definitely cate-

1973

*Cleveland v. Cleveland*, 289 A.2d 909 (Conn. 1971), 328 A.2d 691 (Conn. 1973)

Courts have the power to direct parents to pay for school based on financial ability of parents, the schools attended by children prior to the divorce, and the special needs and general welfare of the children. (boarding school and college)

*Roe v. Wade*, 410 U.S. 113 (1973)

The Supreme Court held that included in the protection against state action invading the right to privacy of the Fourteenth Amendment’s due process clause is a qualified right of a woman to terminate her pregnancy. In the first trimester, state regulation of the abortion procedure cannot go beyond a requirement that the abortion be performed by a licensed physician. After the first trimester, the state “may regulate the abortion procedure to the extent that the regulation reasonably relates to the preservation and protection of maternal health,” at 163. (After the first trimester, a compelling state interest in health of the mother qualifies the woman’s privacy right.) After viability, “the State in promoting its interest in the potentiality of human life may, if it chooses, regulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother,” at 164-65.

1974

*Beek v. Beek*, 214 N.W.2d 170 (Iowa 1974)
gorized as “title” states in which their courts have no power to distribute property upon divorce unless one of the traditional equitable trust doctrines can be applied, or unless the property was jointly titled to begin with. While there is some question about the exact extent and reach of notions of equitable distribution of property to either spouse regardless of how it is titled, the bulk of the common law states have joined the eight community property states in at least considering the notion of marriage as partnership.

In *Wirth v. Wirth*, 326 N.Y.S. 2d 308 (App. Div. 1971), for example, the court refused to be “set in motion” by allegations that a husband lived solely off his wife’s earnings for more than ten years after representing to her that he was going to invest his earnings “for the two of them” for their “latter days,” and then claimed title to all the savings as well as the rest of the property. The court noted that it might be possible to make a moral judgment regarding the husband’s representations, activities, and claims, but was willing to do more than that.

But in 1980, New York passed a comprehensive equitable distribution statute. A memorandum that accompanied the revising act establishing equitable distribution included the following:

### 45 Major Decisions

#### 1976

An Oklahoma statute prohibiting the sale of 3.2 beer to males under 21 and females under 18 was attacked on the ground that the statutory gender-based differential constituted invidious discrimination against males 18-20 years old. This case articulated an equal protection test for gender-based discrimination: “classification by gender must serve important governmental objectives and must be substantially related to achievement of those objectives.” (at 197). The test was not met in this case.

To be valid, a separation agreement must be free from fraud and coercion, and must be fair and reasonable at the time the divorce judgment is entered.

The court held that “agreements between nonmarital partners fall only to the extent that they rest upon a consideration of meretricious sexual services.” Express contracts should be enforced, yet no express contract is necessary for courts to grant relief. In the absence of an express contract, conduct of the parties may demonstrate an implied-in-fact agreement, a partnership agreement, or a joint venture. When warranted, courts may apply quantum meruit or equitable remedies such as constructive or resulting trusts.

*See also Marvin v. Marvin*, 176 Cal. Rptr. 555 (2d Dist. 1981). Equitable remedies should be devised to protect expectations of nonmarital partners. The female cohabitant was not entitled to a rehabilitative award having benefited economically and socially, having suffered no damage, and where the male cohabitant was not unjustly enriched.

#### 1977

*Carlson v. Olson*, Minn., 256 N.W.2d 249 (1977)

#### 1978

Grandmother lived with her two grandsons, who were not brothers but first cousins, and was convicted of violating a city housing ordinance that restricted occupancy of dwelling units to members of a single family, where “family” was narrowly defined. This regulation was found unconstitutionally burdensome to the fundamental right to choose family living arrangements. (Distinguished from *Belle Terre*, in which the ordinance affected only unrelated individuals.)

*Kulko v. California Superior Court*, 436 U.S. 84 (1978)
The state court’s exercise of in personam jurisdiction over a nonresident, divorced father on the basis of his acquiescence of his child’s desire to live with the mother in a different style was held to be violative of the father’s due process rights.

*In re Marriage of Graham*, 574, P.2d 75 (Colo. 1978)
A professional degree is not property and therefore is not divisible. This is the leading case that rejects the concept of a spousal interest in a professional degree or license. The trend, however, is to recognize at least restitutionary relief for spousal investment in the attainment of the degree or license.

*In re the Marriage of Hortmann*, 263 N.W.2d 885 (Iowa 1978)
This legislation proposes the adoption of law to current social values. It is hoped it will serve to bring New York law into today’s reality which will serve the best interests of the family.

This indicates the shift in attitude in which marriage is no longer viewed as a joining together of a provider and homemaker. “Current social values” demand that marriage be treated as something of a business, which is commensurate with the attitude that it ought to be dissolvable when either party is dissatisfied with any aspect of it.

Because of this ready acceptance of dissolution and the easing of the way for it financially, the increase of divorce is likely to continue. This in turn will put pressure on family lawyers and family courts to process cases through the system in a prompt, efficient, and yet morally and emotionally satisfactory fashion.

**RECognition of Tax Consequences of Divorce and Settlements**

If lawyers do not specialize in tax law or family law, they may overlook the potential tax effects of support monies characterized as alimony and child support, and...
of property distributions characterized as division of previously owned property, support, or as property exchanged for release of marital rights. Because many thousands of dollars in federal and state taxes can ride on these determinations, the potential for malpractice liability is awesome.

The need to consider tax consequences thoroughly was illustrated in *United States v. Davis*, 370 U.S. 65 (1962) and *Commissioner v. Lester*, 366 U.S. 299 (1961). Although these decisions are 20 years old, their ramifications have taken some time to penetrate the profession.

Certainly tax consequences were important before *Davis* and *Lester*, which highlight the potentially devastating tax effects of an improperly planned divorce. But the radical tax increases that were needed to support the Second World War, which have remained on the scene, combined with the effects of inflation and the failure to index the tax laws to inflation, have rendered income tax considerations more important than they were in the 1940s and 50s.

### CHILD CUSTODY AND SUPPORT

Recent uniform acts such as the Uniform Reciprocal Enforcement of Support Act (URESA), its descendant, RURESA, and the Uniform Child Custody Jurisdiction Act (UCCJA), and federal enactments such as the Federal Child Support Enforcement Program under the Social Services Amendments of 1974 and the Parental Kidnapping Prevention Act of 1980, have in yet another way required the family lawyer to look beyond the narrow confines of state statute and decisional law. They reflect a social determination that the “local” business of child custody, child support, and enforcement of alimony decrees is a matter of nationwide concern.

Within the last decade, there has been an increased realization that white-and blue-collar workers are not on-
ly capable of earning reasonable incomes, but can be effectively traced by more efficient use of the mechanisms already in place. Thus, their earnings can be used for legitimate support purposes. Perhaps the single most effective national legal reform in the last several years has been the federal government’s creation of the Parent Locator Service. This service allows properly identified cases to be handled with the assistance of federal data.

INDEPENDENT LEGAL RIGHTS OF CHILDREN

During the last 25 years, courts and psychologists have recognized that legal infants—persons under the age of 18 years old—have independent legal rights and can to some extent see them enforced in the court system. Although there has been no clear consensus in this area, the developments have indicated that the court system, as well as the psychiatric and psychological professions, is aware of the need to evaluate children individually—not merely as insensate ciphers in a system in which the real participants are adults.

There is some tension between this concept and that of familial privacy. The interplay between parental rights and children’s rights and the working out of the limits of interaction between family units and the legal structure probably will be one of the principal areas of development in family law in the final two decades of the twentieth century.

Domestic relations law has and will continue to become more complex largely because of an increased social awareness of the consequences of legal decision making in family matters. Moreover, the role of the law in regulating both family activity and the interaction of the family with society bodes to become ever-greater. Whether this is as it should be is something we will have to decide in our legislatures and courts over the next 25 years.

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