

Good example of family law m4 essay

[Family](#), [Parents](#)



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Question One

In family law and public policy, child support and visitation has been a matter of public discourse and intense debate, with no end in sight. Child support refers to a periodic payment made by a parent for the financial benefit following the termination of marriage, its dissolution or other relationships. This maintenance is either paid directly or indirectly by an obligor or an obligee to help in the care and support of children out of a relationship that has come to an end. In most of the cases, the obligor who is required to make the payments is usually a non-custodial parent while the obligee is usually the custodial parent, a guardian or even the state. It is the duty of any parent, whether the mother or the father, to pay child support when the parents are not living together and this may be over and above the payment of alimony. Being the case that the custodial parent pays the child support to the non-custodial parent, it follows that where the parents are estranged, then the custodial parent who is making payments is usually given the right to visit the child. It is noteworthy that this right to child support is internationally recognized even by international instruments such as the

1992 United Nations Convention on the Rights of a Child. This is further anchored in the domestic law of most jurisdictions. In most of the jurisdictions, the two rights and obligations of child support and visitation are separate and enforceable, in their individual capacity. Occasionally, there has been debate on what measures should be used to ensure that child support impacts visitation. As a consequence, some parents have denied visitation to the other parent when they have failed to make the periodic payments necessary for the support or maintenance of the child. Though this is not sanctioned by law, we feel that this is the best way to enable compliance and ensure that a non-custodial parent makes payments for child support. Essentially, a non-custodial parent who fails to meet his or her financial obligations in support for the child should then lose or have his visitation rights limited. However, in most jurisdictions, custodial parents are not allowed to punish the other parent by denying them visitation for failure to meet their financial obligations. On the other hand, a non-custodial parent is expected to pay child support even in the event that such parent is denied visitation.

Question Two

Under the Uniform Marriage and Divorce Act (UMDA) there is an alternative provision where all property is considered marital property and subject to equal apportionment irrespective of the time or mode of their acquisition. Under the UMDA, some of the states use the common law approach which emphasizes the equal apportionment of all the property while other states employ the communal property approach. In the common law states, property is divided into both marital and non-marital shares. The shares may

be in the form of age, health, skills, income contribution of each party in acquisition of each property or contribution as home maker. In other the alternative under the UMDA with respect to communal property states, separate property is given to each of the spouses. In these states, communal property is divided equitably as determined by contribution to homemaking and acquisition as well as the value of separate property. Other factors of consideration include the duration of the marriage and the prevailing economic circumstances. With the exception of the three California Rule community property states, the division of property is usually dependent on the particular judge and the attendant circumstances and less on the jurisdiction. Equitable distribution basically refers to the process by which a court identifies, categorizes and makes a distribution order among two people who are or have been married. Three types of ownership property regime are recognized by the law. The first rule is known as marital property and denotes all property that is obtained or acquired during the subsistence of the marriage. The second type of property is separate property that encompasses all that which is brought to the marriage by a party and all that is received by a party in the marriage by way of inheritance or as a gift. Though the term equitable distribution may seem to suggest that the property is divided equally between the parents in the event of separation, it implies that the court distributed the property according to the principles of fairness.

Question Three

A number of presumptions exist within the realm of custody decision making by the family courts whenever matters touching on custody comes before it.

Historically, these presumptions have tended to favor mothers who are given the first priority in having custody of the young children. This presumption has been informed by the notion or fact that the mother, unlike the father, would provide better care for the child. This presumption has prevailed over time since the court looks at the best interest of the child. The presumption against giving the custody of a child to a mother can only be displaced by the father if he is able to demonstrate to the court that the mother is incapable of providing proper care to the child. The Uniform Marriage and Divorce Act define the best interest of the child to include the wishes of the child's parents as to his custody, the adjustment of the child to his home, school or community, the physical and mental health of the individual involved and interaction of the child with his parents and other persons that may affect his best interest. The biggest advantage of relying on the best interest of the child while granting custody is that the decision made revolves around the development and psychological needs of the child rather than on the demands of the parent or stereotypes in the society. Another advantage of this standard is that it responds to the dynamic social and legal trends. Indeed, this standard has had the benefit of enabling fathers who had taken care of a child before the divorce to have custody of the child, a feat they would not have achieved on application of the historical maternal rule. The disadvantage that is associated with using the best interest of the child standard as the determinant of child custody is the absence of uniformity on what interests to consider and how to define and weigh the various factors. The effect of the lack of uniformity is that lawyers interpret these factors in a way to suit their client and through this way they leave the judges with

difficult decisions to make. The upshot of this is outcomes that are uneven across or even within jurisdictions.

References

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