LAW 258 LECTURE NOTES (Spring 2013)/Lecture One

I. GENERAL INTRODUCTION

A. *Introduce MCF*

- 1. MCF background and availability
- 2. 97% of what I tell you will be accurate as of the time I tell you. It's up to you to figure out which 3% isn't--although for purposes of this class it probably doesn't make much difference, as:
 - a. The *issues* presented are *more important* than the specific *solutions*
 - b. The *half life* of specific information imparted in law school isn't very long
 - c. "Correct" answers to questions of law vary:
 - i. From jurisdiction to jurisdiction (and even from judge to judge)
 - ii. Over time
 - iii. According to subtle differences in fact
 - d. So, my objectives for this course are:
 - i. *Not* to get you to learn a lot of rules (that are apt to change over time anyway) by rote, but rather to:
 - ii. Familiarize you with the vocabulary of Estate and Trust Law;
 - iii. Sensitize you to the problems and issues that arise in this area of the law; and

- iv. Acquaint you with the tools available with which to deal with these problems and the most common solutions to the same
- v. I am more interested in making sure that you can recognize the problems that are apt to arise in a Trust and Estate practice than teaching you any particular way of solving them

B. Scope of Class

- 1. This class deals with the study of the transmission of wealth at death and, increasingly, with the management and transmission of wealth during lifetime
- 2. As with all other areas of the law, once you understand the *issues* it is much easier to understand the solutions--so we will focus first on the overall problems in each unit and then explore the variety of solutions presented for each
- 3. Because we have an enormous amount of material to cover in this class, the class sessions will involve a combination of lecture and (hopefully) discussion--designed to elucidate and facilitate comprehension of the numerous, complex and interrelated issues presented in the text. You should feel free to interrupt at any point to comment and/or ask questions--to the end that you fully understand the materials as we go along.

C. Requirements

- 1. There can be a lot of *reading* for this class: we'll look at the appropriate sections of the Uniform and California Probate Codes; explore the supplementary reading materials; and (hopefully) read appropriate portions of some recent edition of Johansen and Dukminier's text
- 2. *Classes* will both explain and further illustrate the written materials and will not simply rehash them. Attendance at classes is a critically important part of the course
- 3. *Class participation* is highly desirable. Questions are always welcome--to make sure that you understand the course content as we plow through the materials. Class participation will also be considered in grading in close cases involving the award of Honors and High Honors
- 4. **Differences of opinion** will not only be tolerated, but encouraged. **Unconventional ideas** are welcome.
- 5. *Exams*: We will have a nine hour Take Home exam at the end of the semester, consisting of one bar exam style essay question, one combination computation/issue spotting question, and one creative writing question relating to the materials covered in this course.

D. P.C. Warning

1. As death is (at least so far) inevitable, this class covers material that will eventually affect everyone. Thus this class, almost more than any other in law school, deals with life.

Life is not P.C.

- 2. In an estate planning/administration practice, one must inevitably deal with clients who are:
 - --Controlling
 - -- Unreasonable
 - --Bigoted
 - -- Unfaithful
 - --Violent
 - --Misanthropic
 - --Misogynistic
 - --Irreligious
 - --Divorced
 - --Intolerant
 - --Living "Alternate" Lifestyles--including some that may seem very odd to most people
 - --Suicidal
 - -- Terminally ill
 - --Greedy
 - --Capable of every sin known to man

- 3. During the course of this class we will deal with the issues presented by such clients, and several more that some or all of you might find distasteful. If you have problems with any of this, please feel free to discuss the matters of concern directly with me
- 4. Explain my philosophy and attitude toward the class (I view you, and intend to treat you, as *future colleagues* with whom I wish to share what I have learned about the materials of the course and don't want or seek superior/subordinate relationship with any of you).

E. First Issues

With that out of the way, we come to the first two questions to be confronted in the study of Wills and Trusts, namely:

- I. Should one have the legal right to bequeath his/her estate to others at death? See generally D. & J.Ch 1
- II. Assuming that one may leave his/her wealth as s/he chooses, Who has an interest in the transfer of one's wealth at the time of his/her death?

We'll deal with each of these questions in turn

1. Should one have the legal right to bequeath his/her estate to others at death? See generally D. & J. Ch 1

- a. **Pro:** History and Tradition. Our democratic, laissez faire political-economic system favors giving individuals the right to do what they please--including the power to dispose of their wealth at death as they see fit.
 - --When given the chance, Californians overwhelmingly repealed the State Inheritance Tax in 1982.
 - --Virtually every mass society accepts the notion of inheritance, including Russia and China
- b. <u>Con:</u> (i) In an egalitarian society everyone should start on a even keel and no-one should have the advantage of unearned wealth; and (ii) unearned wealth destroys incentive, thus costing society the ingenuity and effort of those who rest on their ancestors' economic laurels
 - (Cf. The Hunt brothers dissipation of their family fortune and Bill Gates' statements that he does not intend to leave his daughter more than \$10MM)

If any one is interested, I think it would be very interesting (and helpful) to investigate what happens to great wealth as it moves down through the generations. My guess is that such wealth gets dissipated, but I'm not really sure. You could start by looking at what has happened over time to the wealth of John D. Rockefeller, Henry Ford, Cornelius Vanderbilt, the "Big Four" of American Railroads (Leland Stanford, Mark Hopkins, Collis P. Huntington, Charles Crocker), Joseph Kennedy, J. Howard Marshall [who married Anna Nicole Smith], H.L. Hunt [the father of the infamous Hunt Brothers], and John Jacob Astor-to name but a few. I would be happy to supervise anyone who wishes to tackle that subject to satisfy a writing requirement.

c. I have clients that come out on both sides of this debate, and who plan their estates accordingly.

Note especially the school teacher clients who made \$3,000,000+ through a lucky \$15,000 investment and who have decided that they will pay for their children's education and help them buy houses, but leave the balance of their estate to charity.

Note too the University professor who at the age of 62 made \$45,000,000 on an IPO, immediately gave \$15,000,000 to charity and set up his will so that his two kids will each receive \$5,000,000 with the balance to charity.

Note: Warren Buffet's statement that he wants to leave his children enough "so that they can do anything, but not so much that they can do nothing!" Note: As I have developed a wealthier clientele, I note increasingly [and with some surprise] that their primary objectives are not always to save taxes and pass their estates on to their children. They often have grave concerns about how much to leave their kids and fear leaving "too much." This is not, however, the norm for the clients of most of the big firm estate planners I have talked to, and may be somewhat unique to N. California We've ended up with a hybrid system with no significant constraints on testation but with a significant tax on amounts in excess of what society (through legislation by Congress and the various states) considers "enough"

2. <u>Changing Nature of Inheritance:</u>

a. In 1943, the year I was born, life expectancy at birth was 62.81 years for Caucasian Males [and 58.33 years for "all other" Males] and 67.29 years for Caucasian Females [and 55.51 years for "all other Females"]. Thus, children could expect to inherit in their late 30's or early 40's. As of 2009 [the last year for which complete data is available], life expectancy was up to 78.7 for Hispanic Males; 76.3 years for Caucasian Males; and 70.7 years for Black non-Hispanic Males--and 83.5 for Hispanic Females; 81.1 years for Caucasian Females; and 77.3 years for Black non-Hispanic Females--so children today may well be in their mid to late 50's [and often even in their 60's] before they inherit. [http://www.cdc.gov/nchs/fastats/lifexpec.htm]

- b. As a consequence of this increased longevity, the nature of inheritance is changing. The recent literature suggest that children's real inheritances consist of parental help with *educational costs* and assistance with the *purchase of a house*. Inheritance in one's 60's provides assistance with retirement, but not the kind of boost that it did 30-40 years ago.
- 3. Assuming that one may leave his/her wealth as s/he chooses, Who has an interest in the transfer of one's wealth at the time of his/her death?
 - a. The *decedent*
 - b. The *decedent's family*
 - i. Spouse
 - ii. Children/Other Descendants
 - iii. Ancestors
 - iv. Collateral relatives (siblings, siblings descendants, collateral ancestors and their descendants)
 - v. Spouse's collateral relatives
 - vi. Honorary Relatives
 - c. *Other interested persons*: lovers, companions, domestic partners and others having some reasonable expectation of benefit

- d. The *State*
- e. Creditors
- 4. Having identified the parties interested in one's estate, several questions follow, the first one of which is: How do you define "family?"

F. Characterization of Family

- 1. Changing social patterns are complicating the family relationship
- 2. The notion of a *marital relationship* is being stretched beyond the traditional husband/wife relationship

Can now include same sex relationships--at least it did for a while in CA after the decision in *In re Marriage Cases* (5/15/08) 43 Cal 4th 757/76 Cal Rptr 3d 683/183 P. 3d 384-overturning legislative and initiative measures banning same sex marriage and holding that marriage is a fundamental right under the CA Constitution and further holding that the Equal Protection Clause of the CA Constitution prohibits discrimination based on sexual orientation. It is especially noteworthy that the Court noted that CA had overturned anti-miscegenation statutes (banning interracial marriage) in 1948, almost two decades before the U.S. Supreme Court did in *Loving v. Virginia*, 388 U.S. 1 (1967). This holding, as you know, was overturned by Prop 8 in the 11/08 election. Prop 8 was then upheld by the CA SCt., but overturned by Fed. Judge Vaughn Williams of the N. Dist of CA. Jerry Brown, as Attorney General of California, and Arnold Schwarzenager when governor, refused to defend Prop 8, and thus the Fed 9th Cir Court ultimately heard the case and the US Supreme Court just granted cert on the same--with a decision expected by this June, 2013.

See generally:

http://en.wikipedia.org/wiki/California_Proposition_8
My guess is that one of these tacks will eventually succeed
and that same sex marriage will be allowed in CA—and
elsewhere. But the process may take another generation
Note ads by gay and lesbian coalitions apparently show
pictures of Jeb Bush and his Hispanic wife (and other
prominent Republicans married to persons of different

races) noting that as recently as **40** years ago such marriages would have been illegal!!

N.B. Per 2010 census: there were over 901,000 US households headed by gay and lesbian couples [http://www.census.gov/hhes/samesex/]

Finally, note that, per one of my lesbian friends, one of the judges who dissented in *In re Marriages Cases* [saying the Courts should defer to the legislature on the issue] is herself a lesbian, much to the consternation of the lesbian and gay community

Note also that 9 States now approve same sex marriage: <u>Connecticut</u>, <u>Iowa</u>, <u>Maine</u>, <u>Maryland</u>, <u>Massachusetts</u>, <u>New Hampshire</u>, <u>New York</u>, <u>Vermont</u>, and <u>Washington</u>. Also:

- i. In 1993 the **Hawaiian** Supreme Court (in <u>Baehr v.</u>

 <u>Anderson</u>) ruled that the restriction on civil marriage for same-sex couples violated the Hawaii

 Constitution--a decision that was subsequently reversed by a Constitutional Amendment permitting the legislature to "reserve marriage to opposite sex couples." Article I Section 23 of the Hawaiian Constitution.
- ii. In 1999 the **Vermont** Supreme Court (in <u>Baker v.</u> <u>State</u>) ruled that same-sex couples can no longer be denied full and equal protections, benefits, and responsibilities under the law and gave the legislature first crack at deciding how to provide equality
- iii. In 2003 the **Massachusetts** Supreme Court (in *Good-rich v. Department of Public Health*) ruled that

- civil marriage can't be limited to different-sex couples
- iv. In 2008 the **Connecticut** Supreme Court decided the <u>Kerrigan v. Commissioner of Public Health</u>, 289 Conn. 135, 957 A.2d 407
- v. In 2008 the **California** Supreme Court decided the <u>In</u> <u>Defense of Marriage Cases</u>, mentioned above
- vi. In 2008 the **Iowa** Supreme Court decided the *Var-num v. Brien*, 763 N.W.2d 862, (Iowa 2009)
- vii. Effective 1/1/2010 **New Hampshire** adopted legislation approving same sex marriage
- viii. Effective 3/3/2010 **the District of Columbia** adopted legislation approving same sex marriage
- ix. In the 2012 elections just completed, the voters of Maine, Maryland and Washington approved same sex marriage, the first time such approval has been obtained by popular vote.

See generally: http://en.wikipedia.org/wiki/Samesex_marriage

b. May include *quasi-contractual relationship* such as

those in the *Marvin*, 18 Cal.3d 660; 557 P.2d 106; 134 Cal.Rptr.815 (1976) and *Carey*, 34 Cal.App.3d 345; 109 Cal.Rptr.862 (1973)cases

--N.B. Herma Hill Kay filed an amicus brief on behalf of Lee Marvin in the Marvin case.

- c. Has been stretched by the recognition of "domestic partners" and other cohabitation relationships (both same sex and opposite sex relationships)--culminating in the various cases cited above
 - i. Note the 2001 adoption of *AB 25* permitting "*Domestic Partners*" to register and granting registered partners extensive rights.
 - ii. AB 25 was extended in 2002 so that effective 7/1/03, a "surviving "domestic partner" obtained additional right (approaching those granted spouses in traditional marriages)--including the same intestate rights as those of a surviving spouse
 - iii. §297.5 of the CA Fam C, effective 1/1/05 gives all registered domestic partners the same rights as married couples to the extent that it is possible to do so under CA State law-this includes the right to have and hold community property
 - -- See generally *§§297 et seq Family Code*; §§37 (Definition), 1813.1 (Conservatorship), 4716 (Health Care Decisions), 6122.1 (Effect of Termination on Wills) 6401 and 6402 (Intestate Rights), 8461 (Appointment as Administrator) of the Prob Code; and §1714.01 Civ Code (Damages for Negligent Infliction of Mental Distress)
 - iii. Only same sex couples over 18 and opposite sex couples one of whom is over 62 and eligible for Social Security can register §297 Family Code
 - iii. Registration is fairly simple, involves a \$10 filing fee and must be filed with the Secretary of State.

- iv. More information can be obtained from:
 - --The Secretary of State (http://www.ss.ca.gov/business/sf/sf_dp.htm)
 - --Lambda Legal Defense and Education Fund (http://www.lambdalegal.org)
 - --L.A. Gay & Lesbian Center (http://www.laglc.org)
- d. With all of the hoopla about marriage between same sex v. opposite sex parties and the "In Defense of Marriage Act" [see appendix, attached] definition of marriage as between a "man and a woman," it has come to my attention that the situation is even more complicated than that:
 - i. Reading <u>Middlesex</u> (Jeffrey Eugenides) raised fundamental questions of gender determination itself
 - ii. I had a colleague (Norlen Drossel) who was meeting with an apparently lesbian couple in which it turned out that one of the women was the Father of "her children"
 - iii. I then heard about another couple in Albany in which the male had "sexual reassignment surgery," but stayed married and continue to live together with their teenage daughter
 - iv. I then met with a couple in which the husband has decided that he is really a woman. They have three young children (including 4 year old twins) and

have so far remained together. The husband's change in gender has, however, put a strain on the marriage--particularly over the husband's desire to have: (i) a feminine name [they ultimately negotiated a gender neutral name like Kim, Sasha or Chris], and (ii) [more problematically] sex reassignment surgery. Also, husband reports that his co-workers have accepted his changed gender and caused no difficulty re the same.

- v. I know a local lawyer whose twin daughters are now his twin sons, and have clients whose daughter is now their son
- vi. The issue seems to be coming more into the open-especially as gay and lesbian issues seem to have become yesterday's news!
- vii. I followed up a lead in Middlesex (which indicated there might be in excess of 100,000 "hermaphrodites" in the US) and looked up the Intersex Society of North America on the web. It actually exists [see http://www.isna.org/]. A couple years ago a student wrote a great, and very topical, paper in this subject--examining the rights of intersexuals to marry in Texas

- 3. The scope of the *parent/child relationship* has been stretched significantly beyond its traditional bounds. The law now defines and recognizes at least <u>SEVEN</u> different types of parent/child relationship *in addition to* the "normal" parent/child relationship created by the birth of a child during the lifetime of its natural, married parents. See gen §§6402 and 6450ff PC See also Fam C §§7500 et seq
 - a. *Nonmarital children*--whose family law/inheritance rights differ:
 - i. By parent (always have rights with re: mother)
 - ii. Depending upon acknowledgment by father
 - iii. Prob C §6452. See also Fam C §§7610 et seq
 - §6452 PC reads: If a child is born out of wedlock, neither a natural parent nor a relative of that parent inherits from or through the child on the basis of the parent and child relationship between that parent and the child unless both of the following requirements are satisfied:
 - (a) The parent or a relative of the parent acknowledged the child.
 - (b) The parent or a relative of the parent contributed to the support or the care of the child.
 - b. *Husband's Wife's children* (conceived during marriage, but not necessarily with the husband's help)
 - i. A child conceived while the husband and wife were cohabitant is conclusively presumed to be the husband's *unless* the husband was impotent or sterile (§§7540 and 7611 Fam Code) OR a timely determination is made by

- blood tests that the husband was not the father (*§*7541 Fam Code)
- ii. A child conceived during marriage by artificial insemination (with the semen not the husband's) will be considered the child of the husband *if* he has consented in writing to the insemination (§7613 Fam Code)
- iii. To what extent should the *Husband's Wife's children* share with children actually sired by the husband?

c. Adopted children

- i. Six different types of adoption
 - (aa) Agency Adoption §§8700ff Fam C
 - (bb) Independent Adoption §§8800ff Fam C
 - (cc) Intercountry Adoption §§8900ff Fam C
 - (dd) Stepparent Adoption §§9000ff Fam C
 - (ee) Adult Adoption §§9300ff Fam C
 - (ff) Equitable Adoption Cf. §6455 Prob C (can include "gift" children)
- ii. Inheritance Issues:
 - (aa) May adoptee inherit *through*, as well as *from*, adoptive parents
 - (bb) May adoptive parents and their relatives inherit *from* adoptee
 - (cc) Should child adopted by a *stepparent* (married to the surviving natural parent)

be treated differently than other adoptees? See Prob C §6451

- iii. There have recently been a few cases in which adoptive parents have sought to undo an adoption because the child turned out to be "defective" (oftentimes as a result of the gestational mother's substance abuse during pregnancy)
 - --How should we (as a society) handle these problems?
- ples be able to adopt children? Answer in general seems to be yes--but there is still tremendous variation from state to state, county to county and even judge to judge (tell Sparrow story re: name change)
 - --Note recent case where genetic mother in a lesbian couple [where the partner was the gestational mother] was denied custodial and visitation rights when the couple split up, based on a literal reading of a genetic material release document [that was likely an adhesion contract] The decision in this case K.M. v. E.G. was reversed five years ago (on 8/22/05) by the CA Supreme Ct which said same sex couples have the right to be parents with all of the privileges and responsibilities thereto pertaining!
- d. Stepchildren. See Prob C §6402(g)

- e. Afterborn children. See Prob C §6407
 - i. Fetus viable at the time of dissolution/death?("Posthumous Child")
 - ii. Fetus conceived after decedent's death ("Extreme Posthumous Child")
 - In 2004 California adopted legislation (in *§§249.5 ff PC*) dealing with extreme post-humous children. See text in appendix
 - iii. *Cf. Calif. Prob. C.* §21208 (the possibility of posthumous births is to be disregarded for purposes of applying the Rule Against Perpetuities)
- f. Foster children
- g. Technotots
 - i. *Sperm Donor Dads* (issue raised by technique of artificial insemination) *Cf. §7613 Fam Code*
 - --*N.B*. Sperm Banks presently are largely unregulated
 - --N.B. Sperm can apparently now be "harvested" even after a man has died. See Stephen v. Barnhart 386 F. Supp. 2d 1257, 1259 (M.D. Fla. 2005)--where wife harvested the sperm of her husband of 3 weeks (who died of a sudden heart attack) 30 hours after his demise and got pregnant with that sperm more than 2 years later.
 - ii. Surrogate Mom's
 - (aa) Genetic v. Gestational Motherhood

- iii. Test Tube Babies
- iv. Cryopreservation and post-mortem children

 (conceived through the use of cold storage
 sperm and, perhaps someday, ova). See Hecht
 case (D&J pp 101-02) and Stephen case, supra.
- v. The increasing possibility of *cloning*
- vi. The increasing possibility of *genetically designed children* (sex selection is the simplest form of selection/native intelligence, appearance, athletic ability, etc. present more complex problems--all of which the human genome project will require us to confront)
- vii. This whole area is a developing hotbed with increasing attention being paid to the same
- viii. Actual cases illustrating the possibilities:
 - (aa) The case of *Hart v. Shalala* [No. 94-3944 (E.D.La. 1994)--unpublished opinion] (and reported in Ellen Goodman's column at the top of page A25 in the Thursday, 1/26/95 edition of the S.F. Chronicle) wherein the state of La. held that a child conceived after the father's death with the mother's deceased husband's frozen sperm was illegitimate and thus ineligible for Social Security benefits. The case has since been reversed on appeal!

--Cf. Woodward v. Commissioner of Social Security [435 Mass. 536, 541 (2002)], (D&J pp 102ff); Estate of Kolacy [332 N.J. Super. 593, 595 (Super. Ct. 2000)]; and Gillett-Netting v. Barnhart [371 F.3d 593, 594 (9th Cir. 2004)--interpreting AZ law]--all of which cases involved applications for Social Security benefits on behalf of an extreme posthumous child whose father donated sperm in anticipation of recovering from cancer after treatments that would render the father sterile.

In *Woodward* the observed that the question of whether posthumously-conceived children may inherit under the intestate statute implicated three state interests: 1) the best interest of the child, 2) the State's interest in the orderly administration of estates, and 3) the reproductive rights of the deceased parent. The Court in this case (again involving Social Security Benefits) found the existence of a parent child relationship--with implied consent by the deceased sperm donor dad to the conception of the child.

N.B. Stephen v. Barnhart 386 F. Supp. 2d 1257, 1259 (M.D. Fla. 2005), above, came out the opposite way because the sperm was "harvested" some 30 hours after the "father" diedand thus could not have given consent (actual or implied) to the posthumous use of his sperm

(bb) Dutch case in which mom impregnated

through in vitro fertilization gave birth to "twins" of two different races

- --Recent case of surrogate delivering biracial child from donated sperm/ova and contractual parents wish to reject the child
- (cc) *Irvine clinic* implanting women with zygotes from other couples (presumably to enhance its success rate and to increase claims of successfully impregnating older patients)

There is a great paper to be written about this incident. I had a classmate [John Lundberg] who was the attorney who handled these cases (142 in number!!) on behalf of UC. All of the cases involved the "theft" of genetic material from young women who sought the assistance of the fertility clinic. The thefts were perpetrated to both: (i) enhance the clinic's "success rate" helping "older women" to get pregnant, and, amazingly, (ii) to assist Latin American women [who knew they were receiving donated ovum] to have blond haired, blue eyed children!!!! All of the children thus con-

ceived were the natural offspring of the males of the couples that had the kids. All of the cases ultimately settled, for a total of some \$25,000,000.

- (dd) "Five Parent"/No-one entitled to custody case in Alameda County
 - --genetic mother
 - --surrogate mother
 - --sperm donor dad
 - --adoptive father
 - --adoptive mother (who ended up as the only one who wanted custody, but who must wait patiently to adopt.
 - Q: what legal responsibilities do each of the foregoing persons have? Especially the adoptive dad who declined to proceed with the adoption after marriage broke up, but before the child was born)
- (ee) Israeli parents who joined a young women and petitioned the Israeli Court to use the sperm of their unmarried, deceased soldier son to impregnate the young woman to give the parents a grandchild the son would never otherwise have

http://blog.eteacherhebrew.com/israel-news/a-sperm-bank-for-israeli-soldiers/

- --topped by the LA mom who used her unmarried deceased son's sperm to impregnate herself!!!! (is this incest? wise? massive Hollywood fiction?)
 - --N.B. Israel apparently permits soldiers to make sperm bank deposits prior to combat
- (ff) Recent case of contractual parents suing surrogate who refused to abort one of twin fetuses and issue of what to do with the second (unwanted) child

 Query: how do you determine which child goes
 - to whom? What if one child is "defective?"
- (gg) <u>Hecht v. Superior Court</u> 16 Cal. App. 4th 836, 20 Cal. Rptr. 2d 275 (1993) See D&J pp 101-02
- (hh) Lesbian couple where one donated an ova that was fertilized in a test tube and implanted in the other. The genetic mother signed a contract giving all parental rights to the gestational mother/partner. They later split and the gestational mother sought to deny the genetic mother visitation. On 8/22/05 Cal Sup Ct said both mom's are entitled to full parental rights including custody, visitation and duty to support. K.M. v. E.G.
- (ii) Note: after teaching a class on this issue in Contra Costa County, a lawyer who attended

the class told me that he had just completed Wills for a young couple who were about to fly off on vacation and wanted to provide for the child then gestating in the surrogate mother with whom they had contracted a baby

(jj) I was also consulted in a recent case of a young man who has just been diagnosed with testicular cancer and wanted to donate sperm to use after he was done with chemo (which would render him sterile). Issue was: what should happen to the donated sperm if he failed to survive the treatment? His parents were adamant that they did *not* want his wife to be able to use the sperm to get pregnant if he died! What rights do the various parties have? Is the sperm a separate or community property asset?

--How much should society permit these relationships to be defined and governed by private contracts?

--What laws should be adopted to handle these

- ix. <u>Chimeras</u> (Cross species combinations):
 - (aa) When first asked about this possibility at a

 CLE class a few years ago, I dismissed the
 questioner as dreaming, as I assumed the fellow was either heavily into mythology or
 science fiction. Upon further investigation,
 however, I discovered that the possibility is

real (see the Article Animal-Human Hybrids Spark Controversy in the 1/25/05 issue of National Geographic:

http://news.nationalgeographic.com/news/20 05/01/0125 050125 chimeras.html

- (bb) The article reports that Mayo Clinic Researchers have created pigs with human blood, and that at the Shanghai Second Medical University, scientists fused human cells with rabbit eggs.
- (cc) Needless to say, this raises incredible complex ethical issues.
 - --How much should society permit these relationships to be defined and governed by private contracts?
- --What laws should be adopted to handle these

§249.5 CALIFORNIA PROBATE CODE

- §249.5. For purposes of determining rights to property to be distributed upon the death of a decedent, a child of the decedent conceived and born after the death of the decedent shall be deemed to have been born in the lifetime of the decedent, and after the execution of all of the decedent's testamentary instruments, if the child or his or her representative proves by clear and convincing evidence that all of the following conditions are satisfied:
- (a) The decedent, in writing, specifies that his or her genetic material shall be used for the posthumous conception of a child of the decedent, subject to the following:
 - (1) The specification shall be signed by the decedent and dated.
- (2) The specification may be revoked or amended only by a writing, signed by the decedent and dated.
- (3) A person is designated by the decedent to control the use of the genetic material.
- (b) The person designated by the decedent to control the use of the genetic material has given written notice by certified mail, return receipt requested, that the decedent's genetic material was available for the purpose of posthumous conception. The notice shall have been given to a person who has the power to control the distribution of either the decedent's property or death benefits payable by reason of the decedent's death, within four months of the date of issuance of a certificate of the decedent's death or entry of a judgment determining the fact of the decedent's death, whichever event occurs first.
- (c) The child was in utero using the decedent's genetic material and was in utero within two years of the date of issuance of a certificate of the decedent's death or entry of a judgment determining the fact of the decedent's death, whichever event occurs first. This subdivision does not apply to a child who shares all of his or her nuclear genes with the person donating the implanted nucleus as a result of the application of somatic nuclear transfer technology commonly known as human cloning.

DEFENSE OF MARRIAGE ACT APPENDIX

Defense of Marriage Act
From Wikipedia, the free encyclopedia
Defense of Marriage Act
Full title Defense of Marriage Act
Acronym / colloquial name DOMA
Enacted by the 104th United States Congress
Citations Public Law 104-199
U.S. Statutes at Large 110 Stat. 2419 (1996)

- * Introduced in the House of Representatives as H.R. 3396 by Robert L. Barr, Jr. on May 7, 1996
- * Committee consideration by: Committee on the Judiciary (Subcommittee on the Constitution)
 - * Passed the House on July 12, 1996 (Yeas: 342; Nays: 67)
 - * Passed the Senate on September 10, 1996 (Yeas: 85; Nays: 14)
- * Signed into law by President Clinton on September 21, 1996

Major amendments

The Defense of Marriage Act, or DOMA, is the short title of a federal law of the United States passed on September 21, 1996 as Public Law No. 104-199, 110 Stat. 2419. Its provisions are codified at 1 U.S.C. § 7 and 28 U.S.C. § 1738C. The law has two effects:

- 1. No state (or other political subdivision within the United States) need treat a relationship between persons of the same sex as a marriage, even if the relationship is considered a marriage in another state.
- 2. The Federal Government may not treat same-sex relationships as marriages for any purpose, even if concluded or recognized by one of the states.

The bill was passed by Congress by a vote of 85-14 in the Senate[1] and a vote of 342-67 in the House of Representatives[2], and was signed by President Bill Clinton on September 21, 1996.

At the time of passage, it was expected that at least one state would soon legalize same-sex marriage, whether by legislation or judicial interpretation of either the state or federal constitution. Opponents of such recognition feared (and many proponents hoped) that the other states would then be required to recognize such marriages under the Full Faith and Credit Clause of the United States Constitution.

Including the results of the 2006 midterm elections, two states (Massachusetts and California) allow same-sex marriage, five states recognize some alternative form of same-sex union, twelve states ban any recognition of any form of same-sex unions including civil union, twenty-five states have adopted amendments to their state constitution prohibiting same sex marriage, and another twenty states have enacted statutory DOMAs.

On May 15, 2008 the California DOMA was found unconstitutional by the California Supreme Court as a violation of equal protection; the decision came into effect on June 16, 2008.[3][4] A proposed constitutional amendment overriding the Court's decision has been placed on the 2008 California general election ballot.[5][6]