
INTERNATIONAL SOCIETY OF FAMILY LAW

THE FAMILY LETTER: NEWSLETTER OF THE ISFL
WINTER 2017



Published by the International Society of Family Law by Professor Robin Fretwell Wilson, Newsletter Editor, Roger and Stephany Joslin Professor of Law and Director, Family Law and Policy Program, University of Illinois College of Law, email: wils@illinois.edu

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PRESIDENT'S MESSAGE

In some years we will be celebrating the 50th anniversary of the ISFL. The Society was launched at the University of Birmingham, UK, in April 1973, on the initiative of Professor Zeev Falk (Hebrew University, Israel). But now, there is very little we know about our past, and some of our historical members are stepping down. We are at risk of losing our memory. However, the history of our associations (and of the great issues of family law) and its world success, respecting diversity of opinions and beliefs, deserve to be preserved.

Thanks to the diligence of previous officers of the ISFL, minutes and archives have been kept, but only partly.

Pr Dr Piotr Fierdorczy had kindly accepted the request to manage a small working group to rebuild our history. If you have photos, papers, programs, or if you want to share your memories by mail, letter, film or any kind of record, please do not hesitate. The memory of the Society is our memory and the memory of the Society of tomorrow!

Hugues Fulchiron
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WORLD CONFERENCE NEWS

The 16th ISFL World Conference Successfully Held in Amsterdam, Netherlands

The 16th World Conference of the International Society of Family Law (<http://acfl.nl/en/isfl-2017-world-congress/>) 'Family Law and Family Realities' took place in Amsterdam, The Netherlands from 25 July to 29 July 2017 at the *Vrije Universiteit* of Amsterdam. The Conference was dedicated to the subject of whether existing national family laws adequately reflect the rapidly changing realities of family life.



372 Participants from 57 countries from all over the globe took part in the conference. 286 participants made presentations during 5 plenary sessions and 65 workshops. The abstracts of these presentations are available at the conference website (<http://acfl.nl/en/isfl-2017-call-for-abstracts/>).

During the conference, experts in family law, the social sciences, and empirical research methods explored and discussed the relationship between family law, both on the books, and in action with respect to a range of family types (married and unmarried, with children and without children, opposite sex and same sex, nuclear and blended or extended). Speakers discussed the needs of various types of family members (e.g. adults, children, elderly persons, persons with disabilities and



members of sexual minorities) in different social, cultural, and religious settings (e.g. western, non-western, religious, secular, modern and traditional). They also addressed methods of achieving a better fit between family law and family realities, including interdisciplinary research and closer cooperation between legal professionals and social scientists and between academics and legislatures.

A selection of conference papers will be published in a forthcoming volume of the International Survey of Family Law. Other papers will be published on the ISFL website.

Conference participants uniformly described the conference in glowing terms. They particularly appreciated the wide range of legal systems discussed at the conference, the variety of cultures represented, the breadth and depth of formal presentations, and the opportunity to discuss, both formally and informally, their own research with others working on similar issues in the context of different legal and cultural contexts.



Prof. dr. Masha Antokolskaia
The Convenor

UPCOMING IMPORTANT DATES

Symposium and Executive Council Meeting

The Symposium “The Influence of International Human Rights Bodies on The Evolution of Domestic Family Law,” will be held on May 4-5, 2018 in Strasbourg, France. The Executive Council meeting will take place on May 5.

Hugues Fulchiron
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REPORT OF THE NEWSLETTER EDITOR

This edition of the Newsletter features a brief article about family law changes in the Czech Republic for the “What’s New?” section. Your reports are particularly welcome in the intervals between

World Congresses and we continue to learn much from you. We would love to have others also write about developments of interest in their countries in the spring.

We are pleased to report that the Newsletter now has its own ISBN number, which appears below. Per your suggestions, we have also indicated that it is faculty edited so that the scholarly work by contributors can be better recognized in your home countries.

Contributors may explore specific topics that they believe would be interesting to an international audience. Country reports offer an excellent opportunity for newer scholars to become known to an international audience of family law colleagues, so we encourage our newer members to contribute as well. For the spring newsletter, we ideally would receive your report, news or announcement by March 15th, 2018. We also continue our Comparative Law series, working this time from a parentage and child welfare problem that I offered. These brief family law questions and your “answers” from your countries’ perspective and using your bodies of law are informative but also useful for comparative family law. Please let us know if you find them valuable. If you have a problem to offer for future editions, I would be grateful to hear from you.

If you change your email address, could you please amend your entry in the directory on the website, or email your new email address to Jo Miles jkm33@cam.ac.uk. As always, I and the Executive Council welcome comments about the general format of the newsletter.

Robin Fretwell Wilson, Editor
The Family Letter
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REPORT OF THE INTERNATIONAL SURVEY EDITOR

Dear Friends,

The 2017 volume of the International Survey should have reached you already. If not, write me at mbrinig@nd.edu, and I will contact the publisher to try to locate it. A few people not on the usual list have indicated interest in writing for 2018. We are excited to be working with our new publisher, Intersentia, but dates for submission of manuscripts will be about the same (end of February, 2018), with expected length under 10,000 words. We are particularly searching for writers from Latin America, but feel free to email me even if you wish to write about another country’s developments. The Executive Council knows that writing for the Survey is particularly valuable for scholars at the beginning of the careers.

Margaret F. Brinig, General Editor
International Survey of Family Law

WEBSITE SECURITY AND PASSWORDS

To protect the data of the members of the council, its personal contact information was moved to the Members Only section.

ANNOUNCEMENTS

ISBN NUMBER

We now have an ISBN number for our newsletter, which appears below.

"SAVE OUR MEMORY!"

Dear Friends,
Members of the ISFL,

In 2023 our Society will be celebrating the 50th anniversary of its existence. President Hugues Fulchiron is right that it is an exceptional occasion to sum up our activities. It was his idea to ask me – a historian of family law – to prepare some proposals which should be discussed among members before final project will be elaborated. Please find some of them below:

1. We agreed we should establish small group which will work on the project. We know that earlier the Historical Committee had existed in the Society, so it would be a kind of continuity. All members are invited to join the group.
2. We should consider applying for external funds to make the project well prepared.
3. The main idea is to organize world congress in 2023 with the topic: ISFL: 50 years of changes in the family and family law – yesterday, today, tomorrow. Of course the title may be modified, but the general idea – we think – should be similar.
4. We think that before that date we should make and publish on the Internet the interviews with our outstanding members. Among them we can mention Andrew Bainham, Ruth Deech, John Ekelaar, Michael Freeman, Marsha Garrison, Mary Ann Glendon, Brenda Hale, Sanford Katz, Harry Krause, Nigel Lowe, Therese Meulders-Klein, and David Pearl. The list is not complete and you are asked to help us make it better. Is the idea of making interviews correct? Should we rather ask them to write the memories about the history of our Society?
5. We could make the review of the published ISFL conference books and consider if it would be justified to publish them again – but in the electronic version. However, the problem of copyright arises.
6. The role of the Survey should be somehow pointed out. Any ideas?
7. We would like to publish a jubilee book after 2023 conference. Perhaps you have suggestions about what to include in the book?

You probably agree that there is much to be done. I hope you have some ideas to make the project more interesting. We kindly ask you to share them with us. We would like to discuss them during next Executive Committee meeting in May 2018.

We are waiting for your proposals!

Best regards,

ISBN: 978-0-9964805-1-2

Faculty Edited

CONFERENCES AND CALL FOR PAPERS

North American Regional Conference: Inequality and the Future of Family Law will be held at the University of Minnesota Law School, Minneapolis, Minnesota on April 27-28, 2018.

Call for Papers: Proposals to participate in the conference should be sent to June Carbone at jcarbone@umn.edu no later than **February 1, 2018**. The proposals should include the participant's name, affiliation, indication of whether the proposal is for an individual presentation, panel, workshop or Author Meets Reader roundtable, and abstract describing the content of the proposal. If the proposal is for a panel or roundtable, it should include the name and affiliation of all of the proposed participants. Abstracts should not exceed a single page for each presentation. Accepted paper presenters will be notified by **March 1**. Proposals may be submitted at any time. Please indicate if you need an earlier acceptance date in order to arrange travel or funding.

FAMILY LAW AROUND THE WORLD: WHAT'S NEW?

Note: All members are invited to submit country-specific updates on important legislative or case law developments in your home country. We are deeply grateful for the following country.



NEWS FROM THE CZECH REPUBLIC

SAME-SEX COUPLE, A CHILD AND THE CASE LAW OF THE CONSTITUTIONAL COURT OF THE CZECH REPUBLIC

Associate Professor Zdeňka Králíčková
Faculty of Law, Masaryk University, Brno, Czech Republic

As it was mentioned in the Newsletter from spring 2017, the Czech Republic does not stay out of the European development regarding same-sex couples. Although there are more models of legal regulation in different countries, we can see some common trends thanks to the case law of the European Court of Human Rights and the national Constitutional Courts.

In 2006, after many futile attempts, the Parliament of the Czech Republic passed the Act on Registered Partnership (Act No 115/2006 Coll.), which was a political compromise. Ten years ago, in 2016, the Constitutional Court of the Czech Republic cancelled the section 13 subsection 2 of Act on Registered Partnership that provided “*Continued partnership impedes one of the partners from becoming the adopter of a child.*” (Pl. ÚS 7/15). A common adoption of a minor child, including a step-parent adoption, remained allowed only to a husband and a wife.

However, the Czech Republic, like many other countries, faces new phenomena. Czech same-sex
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citizens marry abroad, use the “service” of surrogate mothers and then try to register a child born abroad in the birth register in the Czech Republic.

Only recently, in June 2017, the Constitutional Court of the Czech Republic said “yes” to recognition of two men as parents of a child, but only in this specific case (I. ÚS 3226/16). Three important arguments of the Constitutional Court should be mentioned.

First, the Constitutional Court stated that there should be harmony between biological, social and legal parenthood. Once the child has two legal fathers according to foreign law (it means the child’s status is legally established), once there are genetic and social ties, common dwelling etc., the Czech legal order, vital registers or courts are not allowed to build barriers and refuse to register the child in the Czech Republic.

Secondly, the Constitutional Court found out that the case under consideration meets the criteria for defining family life in light of the case law of the European Court of Human Rights, for instance case “X and other v. Austria”.

Finally, the Constitutional court stressed that the best interest of the child must prevail over the abstract principles, namely public order etc. According to the United Nations Convention on the Rights of the Child, its article 3, “*In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*” So, in the situation that there is a family life between the child and his or her parents, that was established on a legal basis abroad, the state must protect such a family life and give the child all the necessary guarantees for his or her development and happy life.

Zdeňka Králíčková
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Past Conferences and Events of Interest



NEWS FROM CHILE

ECONOMIC EFFECTS ON FAMILY LAW: CURRENT AND PENDING ISSUES



A Regional Conference was held on “Economic Effects on Family Law: Current and Pending Issues” November 23-24, 2017 in Chile, at the Faculty of Law of the National University of Chile. The presence of many of our Latin American members was announced. Several members of Chilean universities attended. Contact information: clepin@derecho.uchile.cl

Ursula Basset
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NEWS FROM CHINA

SYMPOSIUM ON MARRIAGE AND FAMILY LAW AMENDMENT AND FAMILY TRIAL REFORM

On May 26, 2017, the Symposium on Marriage and Family Law Amendment and Family Trial Reform was grandly held

in the Library’s Academic Hall of Southwest University of Political Science and Law (SWUPL), Chongqing. The theme of the conference was to discuss the legislative issues of revising Marriage and Family law and exchange experience of Family Trial Reform. This seminar was co-hosted by SWUPL and Chongqing Higher People's Court, and co-organized by the Civil and Commercial Law School of SWUPL and the Foreign Family Law and Women’s Theory Research Center of SWUPL.

More than 100 participants including experts and scholars from China University of Political science and Law (CUPL), East China University Of Political Science And Law (ECUPL), Northwest University of Political Science and Law (NWUPL), Jilin University (JLU), Nanjing Normal University (NNU) and other colleges and universities, judges from pilot court of the Family Trial Reform in Guangdong, Fujian and Chongqing, leading cadres participating in Family Trial Reform from All-China Women's Federation (ACWF) and Chongqing Women's Federation, and teachers and students of SWUPL, attended the meeting.

In the morning of May 26, 2017 (9:00 a.m.), Professor ZHAO Wanyi, Dean of the Civil and Commercial Law School of SWUPL, hosted the opening ceremony.

Firstly, Vice President of SWUPL, Professor YUE Caishen, delivered a welcoming speech on behalf of the school. He stressed that this symposium would have tremendous theoretical and

practical significance on revising and perfecting China's Marriage Law, drawing lessons from Family Trial Reform, and promoting the construction of socialist country ruled by law and harmonious family.

Then, the meeting entered the stage of keynote address. At this stage, a total of five speakers delivered their speeches. They were: Professor XIA Yinlan, President of China's Marriage Law Society under China Law Society and professor of CUPL; GAO Shawei, Minister of the Department for Women's Rights and Interests of the ACWF; Tan Ling, Vice President of Guangdong Higher People's Court; TANG Yalin, full time member of Judicial Committee of Chongqing Higher People's Court; and LI Mingcai, Minister of the Department for Women's Rights and Interests of the Chongqing Women's Federation.

During the stage of workshop, four topics were discussed. They were: the legislation on marital property relationship; the formulation for the procedure law of Family Trial Reform; the modification and perfection for the substantive law of Family Trial Reform, and the protection of rights and interests for women and minors in family cases. Participants expressed their opinions enthusiastically, which made the discussion very heated.

At 17:15 p.m., Professor CHEN Wei, Vice President of China Marriage Law Society and Director of the Foreign Family Law and Women's Theory Research Center of SWUPL, hosted the closing ceremony. Professor Zhao Wanyi, Dean of the Civil and Commercial Law School of SWUPL, made a conclusion for this symposium. He emphasized that this conference, which closely focused on the revision of Marriage and Family Law in China, combined theoretical research with practical issues, and summed up the experience and analyzed the deficiency closely around the family trial reform pilot work. In addition, it also offered advice and suggestions for continuously promoting Family Trial Reform pilot work. The results of the conference would be of great reference value on modification and improvement of the Marriage and Family Law and the compilation on the Marriage and Family Law of China's Civil Code. Finally, he expressed his heartfelt thanks to the participants, undertakers and service staffs of the conference.

Photo: CHEN Zhao & ZHANG Wencai
News Writer: CHEN Wei & GUO Qingmin
(26-05-2017)

EXPERT SYMPOSIUM OF MARRIAGE AND FAMILY VOLUME OF CHINESE CIVIL CODE

On August 16, 2017, Zhang Rongshun, deputy director of the Legislative Affairs Commission of the National People's Congress Standing Committee of China, formed a four-person research group to conduct legislative research from Beijing to Chongqing City, China. At 10:30 on the that day, Deputy director Zhang Rongshun held the " Marriage and Family Volume of Chinese Civil Code " expert symposium in the conference room of Chongqing Wudu Hotel, Professor Chen Wei, vice-chairman of Marriage Law Research Association of Chinese Law Society, Director of Foreign Family Law and Women's Theoretical Research Center in Southwest University of Political Science and Law, was invited to attend the meeting. At the meeting, According to the legislative difficult problems in the survey outline, including marriage and divorce registration, the nature of living together in the name of couple but not registered, how to improve the marital property system, the

education and maintenance for the children, how to determine the value of housework, whether some conditions of adoption should be relaxed, etc, Professor Chen Wei put forward relevant legislative proposals for reference by the legislature in accordance with China's legislation and judicial interpretation, learned experience from foreign legislation and combined with the reality of China's marriage and family.

It is reported that from January 7 to 8, 2017, Chinese Law Society key project “Legislation Seminar of Civil Code Marriage and Family Volume” held in Beijing. The meeting discussed on the legislative provisions in each chapter of the Legislative Proposal Drafts. Professor Chen Wei proposed legislative provisions and the reasons for a brief introduction as people in charge of organizing and writing the chapter of the guardian system. The guardianship chapter is divided into three parts: the general system of guardianship is co-authored by Professor Chen Wei and Dr. Li Yan. The guardianship system for minors is co-authored by Professor Liu Shufen and Professor Ye Yingping ect.. The adult guardianship system is co-authored by Professor Li Xia and Professor Zhang Wei etc. After that, Professor Chen Wei organized the authors to modify the guardianship system continuously and complete the finalization. The draft was submitted to the Secretariat of the Marriage Law Society and handed over to the Chinese Law Society for transferring to the Legislative Affairs Commission of the National People's Congress Standing Committee, China for reference.

Written by Chen Wei and Dong Siyuan
August 28, 2017

THE 2017 ANNUAL MEETING OF THE CHINA MARRIAGE LAW SOCIETY

At 8:30 on the morning of September 16th, 2017, the 2017 Annual Meeting of the China Marriage Law Society (CMLS) and the Seminar on Major Legislative Issues of the Marriage and Family Law of the Civil Code was held at Wang Jian Law School of Soochow University in Jiangsu province, China. More than 160 representatives from all over the country, including experts and scholars, judges, lawyers, woman cadres attended at the meeting. Professor Chen Wei, vice president of CMLS, director of Foreign Family Law and Women’s Theory Research Center of Southwest University of Political Science and Law (SWUPL), and Associate Professor Zhang Huagui of SWUPL took part in the conference.

The opening ceremony was chaired by Prof. Long Yifei, standing vice president of CMLS. Meanwhile, representatives from the national legislature—Mr. Yang Minglun from the economic law office of the legislative affairs commission of the NPC Standing Committee and Ms. Hu Jihua, from the civil law office of the legislative affairs commission of the NPC Standing Committee, took a seat on the rostrum. Mr. Rui Guoqiang, Secretary of the commission for discipline inspection of Soochow University, and Prof. Hu Yuhong, dean of the Soochow University Law School, successively delivered a welcome speech. Then Prof. Xia Yinlan, President of CMLS, made an annual work report.

At the stage of special discussion, participants were divided into five groups to discuss five topics around the relationship between the General Provisions of the Civil Law and the marriage & family, marriage system, divorce system, parent-child relationship and matrimonial regime. Prof. Chen Wei as the group leader of the first group presided over the group discussion. This group heatedly discussed the relationship between the General Provisions of the Civil Law and the marriage & family, the basic principles of marriage and family and the general principles of kinship,

which aimed to make suggestions for marriage and family law of the Civil Code in China.

Chinese Report: Bai Yu
Translation : Chen Wei & Guo Qingmin
September 16th, 2017



NEWS FROM THE UNITED STATES

The New ART of Family: Developments in the Law of Assisted Reproductive Technologies



On September 14, 2017, Professor Naomi R. Cahn, the Harold H. Greene Professor of Law at The George Washington University Law School, spoke at the University of Illinois College of Law on The New ART of Family: Developments in the Law of Assisted Reproductive Technologies. The University of Illinois Family Law and Policy Program awarded Professor Cahn its 2017 Lifetime Achievement award in Family Law. She joins the inaugural recipients, Professor William Eskridge,

the John A. Garver Professor of Jurisprudence at Yale Law, and Harry Krause, the Max L. Rowe Professor Emeritus at the University of Illinois College of Law, as well as the 2016 recipient, Professor John Witte, Jr., the Robert Woodruff Professor of Law at Emory Law School.

Professor Cahn's remarks may be viewed here: <https://robinfretwellwilson.com/flpp/>

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Marriage and Family Law Research Project Symposium on Family and Religion

The Marriage and Family Law Research Project at the Brigham Young University Law School and the Ave Maria Law School co-sponsored a Symposium on "Family and Religion." The one-day symposium was held at the J. Reuben Clark Law School at Brigham Young University on Friday, October 13, 2017. Law professors were welcomed to attend at no cost. Papers will be published later in the Ave Maria Law Review and in the BYU Journal of Public Law.

Lynn Wardle
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COMPARATIVE LAW PROBLEM & COUNTRY RESPONSES:

Thanks to Robin Fretwell Wilson, University of Illinois College of Law, for generating this problem for discussion.

Holli has two children, Haleigh age six, and Samantha age four, when she marries Jason. Holli and Jason have a child together, Cody, a year later. All the children called Jason “daddy.” He played ball with them in the backyard, practiced softball with them and coached their teams, took them to activities and provided financial support to the family. A mechanic, he taught Haleigh how to work on cars and renovated her room with Haleigh helping. On Friday and Saturday nights, the family would have “movie nights,” eating popcorn and watching movies together. Haleigh and Samantha have no relationship to and have never known their biological fathers and Holli has never identified them.

When Haleigh is eleven, she suffers a traumatic brain injury and is admitted to the hospital. Shortly after, Holli dies. Jason requests that the courts allow him to make medical decisions for Haleigh.

Question 1. Would the law of your jurisdiction give Jason decision-making authority, residential care/custody of Haleigh or visitation under any legal doctrines like de facto parenthood, in loco parentis, psychological parenthood, or some other concept? If so, what doctrine or decisional framework would be used?

Question 2. Assuming Holli had not died, but the couple was divorcing, would Jason receive any residential care/custody or visitation rights with Haleigh and Samantha? Could Jason receive legal decisionmaking powers, like joint legal custody? Could he be made to pay child support for Haleigh and Samantha?

Question 3. Imagine the same scenario, but now assume that Jason and Holli lived together without being married. Do any of the legal outcomes at divorce change as a result of being a nonmarital couple?

Question 4. Do the genders of the adults matter? In other words, if we replaced Jason with Jennifer, a same-sex partner, would the fact that the cohabiting or marital relationship (if same-gender couples can marry in your jurisdiction) change the result upon the adults’ break up or Holli’s death?

Question 5. Does the conjugal relationship of the adults matter? In other words, if Jennifer and Holli are sisters living together and raising Holli’s children, could they be considered de facto parents or be designated with a similar status, giving Jennifer decisionmaking rights or custody upon Holli’s death or if Jennifer moved out?

Question 6. In the real-life case from which these facts are drawn, state officials believed Jason and Holli together perpetrated the abuse that resulted in Haleigh’s injury. Holli later committed suicide. How would that fact of possible abuse by Jason change the legal outcome under the doctrines used at divorce or the death of the legal parent, Holli?



ANSWER FROM BRAZIL

Question 1. Would the law of your jurisdiction give Jason decision-making authority, residential care/custody of Haleigh or visitation under any legal doctrines like de facto parenthood, in loco parentis, psychological parenthood, or some other concept? If so, what doctrine or decisional framework would be used?

Let's assume that Haleigh dies. The number of organ donors grows every day in Brazil. Nowadays, the national program of organ transplantation is one of the biggest in the world. To be an organ donor, it is not necessary for the person to leave a written consent, since the donation will happen if their relatives authorize the doctors to do so and it was a brain death.

Article 4 of Brazilian Law 9.434/97 says that the authorization can be granted by any of the person's capable relatives, but only if it is a direct or collateral relative within the fourth degree. It does not clarify, however, if this rule applies only for the blood relatives or if it is extended to the relatives by affinity, but considering the purpose of the law (and that it says "**any**" of the person's capable relatives), the main understanding is that the collateral relatives can grant the authorization.

It is important to mention, however, that if the person who died was legally incapable, the post-mortem removal of his tissue, organs and body parts can only be accomplished if it is authorized by his or her both parents or all of his or her legal representatives, as stated in Article 5 of the Brazilian Law 9.434/97. Therefore, in the present case, Jason could not be given decision-making authority, because, although he is a collateral relative, Haleigh, being a minor, is legally incapable, needing both of her parents to give their consent.

On another level, concerning the residential care/custody of Haleigh or visitation, taking in account that Jason has been present in her life since she was six, that they are so close she calls him "daddy", that he helps in her education and provides financial support, I understand that he could absolutely claim those rights, since there is a clear socio-affective parenthood.

The Brazilian Supreme Court and other courts have understood that socio-affective parenthood is equal to normal parenthood in terms of rights and duties, on behalf of the best interest of the child and the dignity of the person. It is a relationship that is based on a *de facto* situation, but that is legit as any other and provides its benefits. Article 1.593 of the Brazilian Civil Code states that there are numerous possibilities of parenthood, be it originated from blood or not. Thus, a biological father is equal to a socio-affective father in practice.

Question 2. Assuming Holli had not died, but the couple was divorcing, would Jason receive any residential care/custody or visitation rights with Haleigh and Samantha? Could Jason receive legal decision making powers, like joint legal custody? Could he be made to pay child support for Haleigh and Samantha?

When a marital bond breaks it brings many consequences into a familiar relationship, not just between the wife and husband but among parents and their children. This also occurs when there is a good relationship between the children and their stepparents. Many times, due to individual interests, the parents end up using their children as a contention object. However, thinking about the best interest of a child and seeking the end of parents' contentions, the law has been innovating and

presenting new models of custody, including shared custody between both parents and stepparents. Thus, the legal institution named as joint custody applies on stepparents and stepchildren and Jason could receive it, considering his good relationship with Holli's children.

Nevertheless, since it is a relationship that is based on a *de facto* situation, it does not guarantee the full protection of the minor, which is why Jason could not receive full custody of the child – only a **provisional** guardianship, which would allow the socio-affective parent to travel abroad with the child, include the child on his health insurance and enroll him or her on a school, for instance. Socio-affective parents can also fill a unilateral adoption judicial action in instances when they prove that the blood parents do not assist their children, in every way of the word. In that case, if the motion is granted, a new birth certificate is made and the old blood lace is undone.

Until today, these are the only ways recognized by law and by the Courts that socio-affective parents have in order to pursue the full custody of their stepchildren. However, we have seen already a very few number of cases in which full custody was given to the stepmother or stepfather because the child was heard and said that she or he preferred it that way, instead of being with his/her biological parent. Once more, the decision was inspired by the best interest of the child and Article 1.584 of the Brazilian Civil Code.

About the payment of child support, although relatives by affinity are not the same as blood relatives according to Brazilian law, as it was said before, Brazilian courts understand, each day more, that the stepfather has the duty to pay child support to his stepchildren, in case emotional ties between them were formed and there is financial dependence, since the stepfather contributed to the family's life quality during the time they lived together. As a consequence of that, it is established the duty of supporting them, once the stepfather is the wealthiest and also in respect to Article 20 of Brazilian Law 8069/1990, which says that every child, generated during marriage or not, should have the same rights and the same qualification.

Question 3. Imagine the same scenario, but now assume that Jason and Holli lived together without being married. Do any of the legal outcomes at divorce change as a result of being a nonmarital couple?

The legal outcomes at divorce will remain the same, but only if Jason and Holli manage to prove the existence of a common law marriage between them, otherwise Jason will not be considered the children's stepfather if they were simply dating. Once the common law marriage is proved to exist, it will generate the same effects as if they were a marital couple and, because of that, Jason will have to honour his rights and duties, once he is a relative by affinity of Holli's daughters.

Common law marriage is a family entity that is generated by a *de facto* situation and is only identified when we can notice between the couple certain characteristics, such as public family living, continuous coexistence, stability and intent on building a family, as stated on Article 1.723 of the Brazilian Civil Code. Ideally, people who are on an informal marriage should bring a legal action or make a public deed to declare its existence and recognition and have their rights and ties protected by the Brazilian Law.

Question 4. Do the genders of the adults matter? In other words, if we replaced Jason with Jennifer, a same-sex partner, would the fact that the cohabiting or marital relationship (if same-gender couples can marry in your jurisdiction) change the result upon the adults' break up or Holli's death?

No. The genders of the adults do not matter in Brazil, since same-gender marriage was approved on May 14th, 2013, by Resolution 175 of the Brazilian National Justice Council. Thus, judges and notaries are obliged to register the union, such as they are obliged to convert the same-gender common law marriages into formal marriages, in case these couples wish to do so.

Since same-gender couples and heterosexual couples have the same rights and duties provided by law, as they all have the right to have their love recognized, a break up or the death of a same-sex partner (Jennifer) would imply the same consequences, just as it was explained above, be it a cohabiting or a marital relationship. If it is proved that Jennifer contributed to the family's life quality in a necessary way and that the rest of the family depends on her income, she will have the legal duty of providing child support.

Question 5. Does the conjugal relationship of the adults matter? In other words, if Jennifer and Holli are sisters living together and raising Holli's children, could they be considered de facto parents or be designated with a similar status, giving Jennifer decision making rights or custody upon Holli's death or if Jennifer moved out?

The conjugal relationship of the adults does not matter nowadays in Brazil due to the concept of extended family, which is gaining a lot of popularity and strength, comparing to the concept of natural family. According to Article 25, sole paragraph of Brazilian Law 8069/1990, extended family is the one that is formed by close relatives, going beyond the ties of the couple itself. This idea goes along with the idea of socio-affective parenthood, which, as previously said, disregards the theory that parenthood can only be formed by blood.

Thus, since Jennifer and Holli's children are blood relatives (which makes it easier to give her decision making rights) and considering that Jennifer helped Holli raise them, she could perfectly formalize the *de facto* situation and request the children's custody by proving, for instance, that emotional ties between them were formed and there is financial dependence. It would be just a formalization, since, in practice, she already acts as if she were their parent.

It is important to mention, however, that in case Holli is still alive, the chances that any custody is granted to Jennifer are smaller, because the original idea is still that the child stays with her biological mother, unless it is proved that she abandoned the child, emotionally and financially.

Question 6. In the real-life case from which these facts are drawn, state officials believed Jason and Holli together perpetrated the abuse that resulted in Haleigh's injury. Holli later committed suicide. How would that fact of possible abuse by Jason change the legal outcome under the doctrines used at divorce or the death of the legal parent, Holli?

If it was proven that Jason did commit the abuse that resulted in Haleigh's injury, this would mean that, in addition to being criminally responsible for his act, he would be forbidden to continue raising Haleigh, because it would mean that he is a threat to her health and well-being by hurting her and presenting a tremendously cruel and unbelievably nasty behavior.

Furthermore, Article 13 of Brazilian Law 8069/1990 states that even the suspicion of an event like this must be notified to the closest guardianship council, and paragraph 2 complements the idea

of the government granting help and assistance to children who suffered any kind of violence. There, they would discuss which outcome would be better for the child, assuring, however, that she would not be close to her stepfather again.

To confirm the idea that Jason would not have any rights regarding Haleigh, it is important to mention the Article 1.638 of the Brazilian Civil Code, which states that, in case the parents punish their children or abandon them, this will generate the loss of the family power, and the children will be, at least provisionally, under the government's protection.

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ANSWER FROM CHINA

1. According to Article 36 of Marriage Law of China, after divorce, both parents shall still have the right and duty to bring up and educate their children. And this clause applies to not only de facto parenthood, but also to adoptive parents and children. As to whether apply to the relationship between step-parents and step children, the situation is a little special. If they stepchildren receive care and education from their step father or step mother, then the relationship from care and education became fictitious relative, so they have the right to make decision about their children .But if they didn't established care and education relationship, except the step father and mother's agreement, they didn't have duty to raise stepchildren. And in this case, Jason give education and residential care to Haleigh and Samantha, Jason and Holli get married, Jason and Haleigh became fictitious relatives, so Jason have decision-making authority and visitation right.

2. According to Article 36(1) of Marriage Law of China, the relationship between parents and children shall not come to an end with the parents' divorce. After divorce, whether the children are directly put in the custody of the father or mother, they shall remain the children of both parents. And Jason gives residential care and education to Haleigh and Samantha, in fact, they have established fictitious relative. So Jason can continue the relationship, and if he want he also have the right like their natural father, he can receive residential care like indirect parent or visitation rights with Haleigh and Samantha. And as to some important things about their children he also have decision making right. In principle, he should pay child support for Haleigh and Samantha.

3. According to Article 8 of Marriage Law of China, both the man and the woman desiring to contract a marriage shall register in person with the marriage registration office. If the proposed marriage is found to conform with the provision of this law, the couple shall be allowed to register and issued marriage certificates. The husband-and-wife relationship shall be established as soon as they obtain the marriage certificates. A couple shall go through marriage registration if the couple has not done so. So just lived together doesn't give Jason have legal identity of a father. And after Jason and Holli divorce, Jason shouldn't pay for the children and he doesn't have authority of residential care and visitation right.

4. A marriage between persons of the same sex is not permitted legally. So, the cohabiting and marital relationship doesn't give Jennifer receive residential care and visitation right. So, if Holli

died, Jennifer cannot become legal guardian of Haleigh and Samantha either, since that is the right of a parent.

5. Parents have legal custody of their child. And this come from a marriage between father and mother. And other relatives who lived together like an aunt do not have this kind of right like father and mother, and she cannot be considered a de facto parent or be designated with a similar status. As a relative, she can become intended guardian of the child when meeting legal conditions or she can adopt them, then she would have some decision making right or custody upon Holli's death. So I think the relationship and relative duty and right of parents and children is based on the relationship of husband and wife. And according to Marriage Law of the People's Republic of China, a legal marriage must happen between two different gender person and register in person with the marriage registration office. Otherwise, they might not receive relative right without conjugal relationship.

6. According to the case, the parents perpetrate abuse to the child and the mother committed suicide, then whether step father have the residential care of the child. Court shall make a judgment in accordance with the rights and interests of the child and the actual conditions of both parents. And the possible abuse by Jason can become an important factor that affects the court's judgment. In a normal situation, when a party died or a couple divorce, the other party or both father and mother have legal custody right to their child, and in this case, the father Jason might have perpetrated abuse to the child, so, for the child's interests, the court should not give the father authority to decision making or other rights that may hurt the child.

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ANSWER FROM CHINA

Holli has two children, Haleigh age six, and Samantha age four, when she marries Jason. Holli and Jason have a child together, Cody, a year later. All the children called Jason "daddy." He played ball with them in the backyard, practiced softball with them and coached their teams, took them to activities and provided financial support to the family. A mechanic, he taught Haleigh how to work on cars and renovated her room with Haleigh helping. On Friday and Saturday nights, the family would have "movie nights," eating popcorn and watching movies together. Haleigh and Samantha have no relationship to and have never known their biological fathers and Holli has never identified them.

When Haleigh is eleven, she suffers a traumatic brain injury and is admitted to the hospital. Shortly after, Holli dies. Jason requests that the courts allow him to make medical decisions for Haleigh.

Question 1. Would the law of your jurisdiction give Jason decision-making authority, residential care/custody of Haleigh or visitation under any legal doctrines like de facto parenthood, in loco

parentis, psychological parenthood, or some other concept? If so, what doctrine or decisional framework would be used?

According to Article 27 in the Marriage Law of China, as a step-father, Jason lived with the two minor step girls for a long time. They have a de facto support and education relationship. Thus, Jason and Haleigh, Samantha have legal rights and duties as a birth parent, including medical decisionmaking right. After the death of the birth mother, Jason should continually support these two children. If the birth father of these two children would like to raise these two children himself while Jason disagrees, the birth father may bring the case to the court. The court should consider the facts that these two children have been living with Jason who supported and educated them for quite a long time for five years and that these two children have no contact with their birth father and they did not know their birth father and Holli did not tell them of their birth father. Based on these facts, the court should determine that these two children should continually be raised by Jason in accordance with the child's best interest principle.

Question 2. Assuming Holli had not died, but the couple was divorcing, would Jason receive any residential care/custody or visitation rights with Haleigh and Samantha? Could Jason receive legal decisionmaking powers, like joint legal custody? Could he be made to pay child support for Haleigh and Samantha?

Regarding the second question, in accordance with Chinese law, Jason's willingness to support the children is an important fact the court should consider. If Jason is willing to raise these two children and gets permission from their birth mother, Jason acquires the right of residential care/custody or visitation rights with Haleigh and Samantha. Jason receives legal decision-making powers like joint legal custody. However, according to the judicial interpretation on how to deal with child support when hearing divorce cases issued by the supreme people's court in 1993, it stipulates at Article 13 that if Jason does not want to support these two children, they should be raised by their birth parents. That means the legal relationship between the step father and the step-children ended. Jason has no legal obligation to pay child support regarding Haleigh and Samantha.

Question 3. Imagine the same scenario, but now assume that Jason and Holli lived together without being married. Do any of the legal outcomes at divorce change as a result of being a nonmarital couple?

In a scenario where Jason cohabit with Holli, even if Jason raised and educated these two children, that could not make the relationship between him and these two children become legally binding like birth parent and child. Where Jason separates with Holli, Jason has no residential care/custody or visitation rights regarding Haleigh and Samantha even if Holli agrees to that.

Question 4. Do the genders of the adults matter? In other words, if we replaced Jason with Jennifer, a same-sex partner, would the fact that the cohabiting or marital relationship (if same-gender couples can marry in your jurisdiction) change the result upon the adults' break up or Holli's death?

In China, same-sex marriage is not recognized by Chinese law, but the cohabitation of same-sex people is not lawless. Therefore, same-sex couples cannot acquire legal parent status. If China's law finally recognizes same-sex couples, the difference between a marriage and a cohabitation can be found from the above answer to question 3.

Question 5. Does the conjugal relationship of the adults matter? In other words, if Jennifer and Holli are sisters living together and raising Holli's children, could they be considered de facto parents or be designated with a similar status, giving Jennifer decisionmaking rights or custody upon Holli's death or if Jennifer moved out?

If Jennifer and Holli are sisters, Jennifer would not be recognized as a de facto parent. She is one member of the family. When Holli goes away from this house, Jennifer would be recognized as a temporary guardian. However, Holli would be the legal guardian in the first priority. When Holli cannot fulfill her duties regarding guardianship since she leaves, the temporary guardian can replace her role and take care of these children. In accordance with Article 27 in the General Principle of the Civil Law (GPCL) 2017, where Holli is dead, Jennifer would be appointed as a legal guardian of these two children. Thus, she legally acquires the parental authority including decision making rights.

Question 6. In the real-life case from which these facts are drawn, state officials believed Jason and Holli together perpetrated the abuse that resulted in Haleigh's injury. Holli later committed suicide. How would that fact of possible abuse by Jason change the legal outcome under the doctrines used at divorce or the death of the legal parent, Holli?

Where there is positive proof regarding child abuse, the court may decide that Jason committed domestic violence and it seriously hurt Haleigh. According to Article 36 in the GPCL 2017, committing such acts that seriously damage the physical or mental health of the ward would be counted as a fact to deprive him of guardianship. That is, committing domestic violence would be a fact to deprive Jason of guardianship. Even if Jason divorces Holli or Holli is dead, Jason cannot be Haleigh's guardian. After deprivation of Jason of his guardianship, the people's court should appoint a guardian as Haleigh's legal guardian such as grandparents who have ability to support the child in accordance with the principle of benefiting the ward most. Before that, the court may order temporary measures to take care of her. According to Article 32 in the GPCL 2017, where there is no fit person to be appointed, the civil affair department could be appointed too, or the villagers' committee or the residents' committee which is qualified.

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ANSWER FROM CROATIA

Holli has two children, Haleigh age six, and Samantha age four, when she marries Jason. Holli and Jason have a child together, Cody, a year later. All the children called Jason "daddy." He played ball with them in the backyard, practiced softball with them and coached their teams, took them to activities and provided financial support to the family. A mechanic, he taught Haleigh how to work on cars and renovated her room with Haleigh helping. On Friday and Saturday nights, the family would have "movie nights," eating popcorn and watching movies together. Haleigh and Samantha have no relationship to and have never known their biological fathers and Holli has never identified them.

When Haleigh is eleven, she suffers a traumatic brain injury and is admitted to the hospital. Shortly after, Holli dies. Jason requests that the courts allow him to make medical decisions for Haleigh.

Question 1. Would the law of your jurisdiction give Jason decision-making authority, residential care/custody of Haleigh or visitation under any legal doctrines like de facto parenthood, in loco parentis, psychological parenthood, or some other concept? If so, what doctrine or decisional framework would be used?

Under Croatian jurisdiction, upon death of Holli, Haleigh would have been placed under guardianship. Jason as a step-father would have probably been appointed as guardian, since their harmonious relationship (of course under the condition that he fulfils other preconditions to be appointed as a guardian) would have been an additional guarantee that he would be making decisions in Haleigh's best interest.

In that regard, he would in general be able to decide upon medical status of Haleigh. However, if such a decision would have significant influence on her status, a special approval by the social welfare center would be needed. If such a decision would include the resuscitation measures, neither Jason nor the social welfare center would be authorized to make such a decision, since it is in the exclusive competence of a court acting in an extra-contentious procedure.

Question 2. Assuming Holli had not died, but the couple was divorcing, would Jason receive any residential care/custody or visitation rights with Haleigh and Samantha? Could Jason receive legal decision-making powers, like joint legal custody? Could he be made to pay child support for Haleigh and Samantha?

In this case, Jason would have been granted visitation rights with Haleigh and Samantha, taking into consideration that their previous harmonious relationship is significant for their further development and would have beneficial effect upon it. Of course, if the competent court would have established that such contact with Jason is not to their benefit, it could be limited or banned.

Jason in any case would not have joint custody, but he could be made to pay child support for Haleigh and Samantha during the divorce procedure. However, his obligation even in this limited time span would have been subsidiary. Namely, the child should be provided support by Holli first, than by their grandparents (in this case only Holli's, since the identity of other grandparents remains unknown).

An interesting situation would occur if Holli died during the divorce procedure, since Jason would be obligated to maintain Haleigh and Samantha if he had lived with them at the time of Holli's death.

Question 3. Imagine the same scenario, but now assume that Jason and Holli lived together without being married. Do any of the legal outcomes at divorce change as a result of being a non-marital couple?

Holli and Jason would have been obligated to undergo obligatory counselling procedure, or even the first session of family mediation. After their breakup, he would have been granted visitation rights, due to his special relationship with Haleigh and Samantha. The difference which would occur is that

he would not have been obligated to provide maintenance for them.

Question 4. Do the genders of the adults matter? In other words, if we replaced Jason with Jennifer, a same-sex partner, would the fact that the cohabiting or marital relationship (if same-gender couples can marry in your jurisdiction) change the result upon the adults' break up or Holli's death?

Same-gender couples cannot marry in Croatian jurisdiction; they can conclude registered partnerships. In accordance with the Law on life partnership of same-sex persons, the rules regarding heterosexual partners are applied in an adequate manner. Therefore, the effects would have been the same.

Question 5. Does the conjugal relationship of the adults matter? In other words, if Jennifer and Holli are sisters living together and raising Holli's children, could they be considered de facto parents or be designated with a similar status, giving Jennifer decision-making rights or custody upon Holli's death or if Jennifer moved out?

Jennifer would not be considered as a de facto parent. Upon Holli's death, Jennifer would have probably been appointed as guardian, since their family relationship and close ties (of course under the condition that she fulfils other preconditions to be appointed as a guardian) would have been an additional guarantee that she would be making decisions in Haleigh's best interest. If Jennifer moved out, she would have been granted visitation rights with Haleigh and Samantha, taking into consideration that their previous harmonious relationship is significant for their further development and would have beneficial effect upon it. Of course, if the competent court would have established that such a contact with Jennifer is not to their benefit, it could be limited or banned.

Question 6. In the real-life case from which these facts are drawn, state officials believed Jason and Holli together perpetrated the abuse that resulted in Haleigh's injury. Holli later committed suicide. How would that fact of possible abuse by Jason change the legal outcome under the doctrines used at divorce or the death of the legal parent, Holli?

In such a situation, the crucial fact would be the final court decision passed in a criminal offence procedure, confirming that Jason perpetrated the abuse. Irrespective of the fact if such a decision is passed or not, regarding their family law status, Jason probably would not have been appointed as guardian to Haleigh. Namely, the conflict of interest (whether real or a presumed one) is one of the obstacles for the appointment as a guardian. Having that in mind, it would be highly unlikely that Jason would be appointed as guardian to Samantha as well.

Furthermore, Jason could ask for the visitation rights but it would be an open issue whether they would be granted or not. The best interest of the child would be the paramount criterion in deciding upon his request.

Since the children after Holli's suicide would be without parental care, having in mind that the fathers remain unknown, they would probably be placed in foster family or in an institution. If all the preconditions were met, they could be adopted as well. In this scenario, Jason would not be in the position to influence the outcome of the adoption procedure. In this case, as well as in any other regarding children, the paramount criterion would be the best interest of the child.



ANSWER FROM DENMARK

Holli has two children, Haleigh age six, and Samantha age four, when she marries Jason. Holli and Jason have a child together, Cody, a year later. All the children called Jason “daddy.” He played ball with them in the backyard, practiced softball with them and coached their teams, took them to activities and provided financial support to the family. A mechanic, he taught Haleigh how to work on cars and renovated her room with Haleigh helping. On Friday and Saturday nights, the family would have “movie nights,” eating popcorn and watching movies together. Haleigh and Samantha have no relationship to and have never known their biological fathers and Holli has never identified them.

When Haleigh is eleven, she suffers a traumatic brain injury and is admitted to the hospital. Shortly after, Holli dies. Jason requests that the courts allow him to make medical decisions for Haleigh.

Question 1. Would the law of your jurisdiction give Jason decision-making authority, residential care/custody of Haleigh or visitation under any legal doctrines like de facto parenthood, in loco parentis, psychological parenthood, or some other concept? If so, what doctrine or decisional framework would be used?

Due to the fact that the child does not have a guardian, Jason probably would be able to become a guardian. Since the child has lost her mother and there is no father, Jason would be able to gain visitation rights/contact with all the children. However, in your scenario in Denmark, Holli would have chosen either to let Jason adopt her children. There is no requirement or demands to Jason if the couple have lived together for 2 ½ years with the children – as they have. Another option would be that Holli have chosen to give Jason parental rights.

Question 2. Assuming Holli had not died, but the couple was divorcing, would Jason receive any residential care/custody or visitation rights with Haleigh and Samantha?

Holli and Jason could agree on visitation rights for Jason – that would be the case even if Jason has not adopted or gained custody/parental rights and responsibilities.

Could Jason receive legal decisionmaking powers, like joint legal custody?

As mentioned above, yes.

Could he be made to pay child support for Haleigh and Samantha?

No, only if he has adopted.

Question 3. Imagine the same scenario, but now assume that Jason and Holli lived together without

being married. Do any of the legal outcomes at divorce change as a result of being a nonmarital couple?

No.

Question 4. Do the genders of the adults matter? In other words, if we replaced Jason with Jennifer, a same-sex partner, would the fact that the cohabiting or marital relationship (if same-gender couples can marry in your jurisdiction) change the result upon the adults' break up or Holli's death?

No; and in Denmark same-sex partners can marry.

Question 5. Does the conjugal relationship of the adults matter? In other words, if Jennifer and Holli are sisters living together and raising Holli's children, could they be considered de facto parents or be designated with a similar status, giving Jennifer decisionmaking rights or custody upon Holli's death or if Jennifer moved out?

Good question! I have not heard about such a case. But it would be possible, yes.

Question 6. In the real-life case from which these facts are drawn, state officials believed Jason and Holli together perpetrated the abuse that resulted in Haleigh's injury. Holli later committed suicide. How would that fact of possible abuse by Jason change the legal outcome under the doctrines used at divorce or the death of the legal parent, Holli?

He would probably not be able to become a guardian – depending on the circumstances – or receive parental rights and obligations. But visitation rights are an option if it is considered in the best interest of the child.

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ANSWER FROM ENGLAND & WALES

Holli has two children, Haleigh age six, and Samantha age four, when she marries Jason. Holli and Jason have a child together, Cody, a year later. All the children called Jason "daddy." He played ball with them in the backyard, practiced softball with them and coached their teams, took them to activities and provided financial support to the family. A mechanic, he taught Haleigh how to work on cars and renovated her room with Haleigh helping. On Friday and Saturday nights, the family would have "movie nights," eating popcorn and watching movies together. Haleigh and Samantha have no relationship to and have never known their biological fathers and Holli has never identified them.

When Haleigh is eleven, she suffers a traumatic brain injury and is admitted to the hospital. Shortly after, Holli dies. Jason requests that the courts allow him to make medical decisions for Haleigh.

Question 1. Would the law of your jurisdiction give Jason decision-making authority, residential care/custody of Haleigh or visitation under any legal doctrines like de facto parenthood, in loco parentis, psychological parenthood, or some other concept? If so, what doctrine or decisional framework would be used?

In England, there is a distinction between parenthood and decision-making authority (parental responsibility). He does not become a parent upon marriage, but could acquire parental responsibility if the mother agreed (and entered into a “parental responsibility agreement”) or upon application to the court (s4A Children Act 1989). This would have to have occurred while Holli was alive.

After Holli had died, Jason could apply without leave to the courts (if he had been living with the children for more than 3 years, under s10(5) CA 1989) for an order for Haleigh to live with him (“child arrangements order” under s8 CA 1989), which would be granted if it were in her best interests. This would bring with it decision-making authority (s12(2) CA 1989).

Question 2. Assuming Holli had not died, but the couple was divorcing, would Jason receive any residential care/custody or visitation rights with Haleigh and Samantha? Could Jason receive legal decisionmaking powers, like joint legal custody? Could he be made to pay child support for Haleigh and Samantha?

Jason could receive residential care/custody or visitation rights under a “child arrangements order” (s8 CA 1989). Whether or not this is ordered depends on an evaluation of the child’s best interests. In deciding where the child’s best interests lie, the courts can recognise the role of psychological parents, although in relation to having the child live with him, courts will give weight to biological and legal ties (see Re G [2006] UKHL 43; Re B [2009] UKSC 5).

In relation to parental responsibility, the answer is the same as above.

In relation to child support, liability under the Child Support Act 1991 is directed at legal parents of the child, which Jason is not. However, the courts retain some jurisdiction to make a capital or maintenance award in respect of a child who is a “child of the family”, but who is not the legal child of the non-resident parent. A “child of the family” is defined, in relation to the parties to a marriage, as:

- (a) a child of both those parties; and
- (b) any other child, not being a child who is placed with those parties as foster parents by a local authority or voluntary organisation, who has been treated by both of those parties as a child of their family. (s105, Children Act 1989)

Question 3. Imagine the same scenario, but now assume that Jason and Holli lived together without being married. Do any of the legal outcomes at divorce change as a result of being a nonmarital couple?

This does not make any difference under English law, except in relation to financial provision, where the children would not be “children of the family.”

Question 4. Do the genders of the adults matter? In other words, if we replaced Jason with Jennifer, a same-sex partner, would the fact that the cohabiting or marital relationship (if same-gender

couples can marry in your jurisdiction) change the result upon the adults' break up or Holli's death?

This does not make any difference under English law (on this point, see *Re G* [2006] UKHL 43).

Question 5. Does the conjugal relationship of the adults matter? In other words, if Jennifer and Holli are sisters living together and raising Holli's children, could they be considered de facto parents or be designated with a similar status, giving Jennifer decisionmaking rights or custody upon Holli's death or if Jennifer moved out?

This does not make any difference under English law. Jennifer could apply under the same provisions of the Children Act for a "child arrangements order" for the children to live with her, or spend time with her. This will be awarded if it is in the child's best interests. If the order was related to the children living with her, she would automatically acquire decision-making rights (parental responsibility) while that order was in force (s12(2) CA 1989) – if it only made provision for her to spend time with them, then the court has discretion as to whether parental responsibility is awarded (s12(2A) CA 1989).

As stated above, the genetic tie will be an important feature in deciding where the child's interests lie, but it is by no means determinative (see *Re B* [2009] UKSC 5).

Question 6. In the real-life case from which these facts are drawn, state officials believed Jason and Holli together perpetrated the abuse that resulted in Haleigh's injury. Holli later committed suicide. How would that fact of possible abuse by Jason change the legal outcome under the doctrines used at divorce or the death of the legal parent, Holli?

When deciding whether an order should be made for the child to live with or spend time with Jason, the courts are directed to look at a number of factors under s1(3) Children Act:

- (a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);
- (b) his physical, emotional and educational needs;
- (c) the likely effect on him of any change in his circumstances;
- (d) his age, sex, background and any characteristics of his which the court considers relevant;
- (e) any harm which he has suffered or is at risk of suffering;
- (f) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;
- (g) the range of powers available to the court under this Act in the proceedings in question.

The harm suffered by Holli would be taken into consideration under s1(3)(e), although the extent that this could be attributed to Jason would depend on the evidence available.

Moreover, if Jason made an application for a "child arrangements order", the Court has the power under s37 CA 1989 to order the Local Authority to undertake an investigation as to whether any child protection measures may be necessary.



ANSWER FROM ENGLAND & WALES

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When Haleigh is eleven, she suffers a traumatic brain injury and is admitted to the hospital. Shortly after, Holli dies. Jason requests that the courts allow him to make medical decisions for Haleigh.

Question 1. Would the law of your jurisdiction give Jason decision-making authority, residential care/custody of Haleigh or visitation under any legal doctrines like de facto parenthood, in loco parentis, psychological parenthood, or some other concept? If so, what doctrine or decisional framework would be used?

There are two preliminary questions: if Haleigh is physically capable of making such decisions herself, it would need to be decided whether she had sufficient competence to do so in terms of the Gillick principle (which is not impossible); if not, it would need to be determined whether the decisions are of such a nature that they fall within the authorization for persons without parental responsibility who have de facto care of a child to ‘do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the welfare of the child’ (Children Act 1989, s. 3(5)). Unless these are really complex long-term decisions, I suspect the medics may not be overly legalistic, and would accept Jason’s decisions. However, if those two questions are resolved against allowing Jason to make decisions, Jason would not have such authority unless, being a step-parent, he and Holli had made a ‘parental responsibility’ agreement giving him ‘parental responsibility’: that is however a formal matter. If they had not done so, Jason would need to obtain a parental responsibility order from a court. Also, as a step-parent, Jason has a right to apply for a ‘child arrangements order’ under which he could be granted residential care if that was in the ‘best interests’ of Haleigh. If that is granted, then the court must grant him parental responsibility at the same time. So the advice would be for him simply to apply for a child arrangements order according to which Haleigh would live with him. As a step-parent, irrespective of the position regarding parental responsibility, Jason has financial duties towards Haleigh, whom he has treated as a ‘child of the family’.

Question 2. Assuming Holli had not died, but the couple was divorcing, would Jason receive any residential care/custody or visitation rights with Haleigh and Samantha? Could Jason receive legal decisionmaking powers, like joint legal custody? Could he be made to pay child support for Haleigh

and Samantha?

If the matter came up in the context of divorce, Jason could apply for a child arrangements order with respect to Haleigh and Samantha, and the matter would be decided according to the best interests of the child test. He would be granted parental responsibility with respect to any child who would live with him under the order, and might be granted it with respect to any child who would not live with him (but with whom, for example, he might have contact). All that would be based on the best interests test. As Jason had treated them as children of the family, he would be liable to pay them maintenance.

Question 3. Imagine the same scenario, but now assume that Jason and Holli lived together without being married. Do any of the legal outcomes at divorce change as a result of being a nonmarital couple?

As Jason had been living with the children for more than three years, he has the right to apply for a child arrangements order (if it had been for less he would have needed the leave of the court to make the application, but there is no reason why this should not be given). Again, if the children are to live with him, he must be given parental responsibility; but if not, he still may be granted it. He would not, however, have any financial liability to maintain them.

Question 4. Do the genders of the adults matter? In other words, if we replaced Jason with Jennifer, a same-sex partner, would the fact that the cohabiting or marital relationship (if same-gender couples can marry in your jurisdiction) change the result upon the adults' break up or Holli's death?

The answers would be the same.

Question 5. Does the conjugal relationship of the adults matter? In other words, if Jennifer and Holli are sisters living together and raising Holli's children, could they be considered de facto parents or be designated with a similar status, giving Jennifer decisionmaking rights or custody upon Holli's death or if Jennifer moved out?

If they were sisters, Jennifer and Holli would not be able to marry, so they would be treated like unmarried cohabitants, so the answers would be the same as for Q 3.

Question 6. In the real-life case from which these facts are drawn, state officials believed Jason and Holli together perpetrated the abuse that resulted in Haleigh's injury. Holli later committed suicide. How would that fact of possible abuse by Jason change the legal outcome under the doctrines used at divorce or the death of the legal parent, Holli?

It would be very relevant to the likelihood that any application by Jason for a child arrangements order under which Haleigh would live with him, or even have contact with him, would be successful. In fact, it is likely that the welfare authorities would make an application for a care order under the child protection legislation, and the matter dealt with within that legal framework.

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ANSWER FROM GERMANY

Question 1:

In the present constellation when the legal parent dies and the other parent is unknown, the stepparent can be awarded custody and residential care by being appointed as legal guardian by the family court (German Civil Code, sec. 1779 and 1789) or by adoption (German Civil Code, sec. 1741 para. 2).

Because adoption proceedings take an extended period of time and result in a lifelong responsibility including maintenance obligations and inheritance claims, a guardianship initially is the best possibility to obtain custody and contact rights with the stepchild for the time of its minority.

Sec. 1779 of the German Civil Code is not specifically tailored for stepfamilies, but applies to the child's stepparents as well as other close persons. In German law, specific rules for stepfamilies do not exist.

Provided that the parent with custody did not designate a legal guardian for the case of his death (German Civil Code, sec. 1776 para. 1), the family court is obligated to appoint a legal guardian (German Civil Code, sec. 1779 para. 1).

A guardianship requires that the stepparent is suited to take responsibility for his stepchild in view of his personal circumstances, his financial situation and other circumstances (German Civil Code, sec. 1779 para. 2 sentence 1). If there are several suitable persons, the family court has to take the presumed will of the parent(s), the personal relationship of the person to the child, the religion of the ward as well as if there is an affinity into consideration (German Civil Code, sec. 1779 para. 2 sentence 2). An affinity between stepchild and stepparent is given if the latter one was married to the parent (German Civil Code, sec. 1590 para. 1). After the evaluation of all circumstances, the family court makes a decision. The stepparent does not have a claim to be appointed as legal guardian.

Irrespective of guardianship or adoption, the stepparent has a right to contact his stepchild if he assumed actual responsibility for it so that it constitutes a so-called "family and social relationship" (German Civil Code, sec. 1685 para. 2 sentence 1). An assumption of actual responsibility is presumed if the child and the person to whom it relates closely lived in a domestic community for a long period (German Civil Code, sec. 1685 para. 2 sentence 2).

In the present case, it is likely that Jason is appointed as legal guardian by the family court. That a family relationship between Haleigh and Jason exists is indicated by several circumstances: Firstly, Haleigh and Jason have lived in a common household for several years. Secondly, Haleigh has called Jason "daddy".

Thirdly, Jason has played ball in the backyard with Haleigh, has practiced softball with her and has coached her team. Fourthly, the stepfather has taken her to activities. Fifthly, Jason has taught his stepdaughter how to work on cars and has renovated her room with Haleigh helping.

Furthermore, Jason has provided financial support to the family.
Circumstances indicating that Jason is not suitable as legal guardian do not exist.

In any case, Jason has a contact right due to sec. 1685 para. 2 sentence 1 of the German Civil Code. The precondition that he assumed responsibility for Haleigh so that there is a “family and social relationship” is given, as shown by the circumstances listed up above.

Question 2:

In the case that a legal parent and a stepparent get divorced, there is no possibility for the stepparent to receive any parental responsibility. There is no way for the family court to grant the stepparent custody for his stepchild.

The stepparent only has a contact right due to sec. 1685 para. 2 sentence 1 of the German Civil Code. If Holli and Jason get divorced, Jason is only granted the right to contact Haleigh and Samantha.

Question 3:

The legal outcomes at divorce do not change if the couple is not married.

If the partners of an informal relationship separate, there is no possibility for the stepparent to be awarded custody for his stepchild. The formalization of the relationship between legal parent and stepparent has no influence on the existence of a contact right according to sec. 1685 para. 2 sentence 1 of the German Civil Code.

If Holli and Jason separated as nonmarital couple, Jason would have been granted the right to contact Haleigh and Samantha.

Question 4:

The genders of the adults do not matter. This applies irrespective of whether the couple’s relationship is illegitimate or formalized in form of a registered partnership or marriage. The institution of marriage is opened up for homosexual partners since 1st October 2017.

In the present case, same-sex partners’ rights do not differ from those of heterosexual partners.

Question 5:

The legal framework does not differ if a person living with a legal parent without having a conjugal relationship to it and taking care for its partner’s children that live in the same household moves out or the legal parent dies.

In case of the parent’s death a person that did not have a conjugal relationship with the deceased can be appointed as legal guardian by the family court and also – even if this person is related to the child in question – adopt the child. A person moving out of the common household has no possibility to obtain custody.

Both in case of the parent’s death and in case of separation, the non-parental attachment figure has a contact right according to sec. 1685 para. 1 or 2 of the German Civil Code.

In case of Holli's death, Jennifer could therefore be appointed as legal guardian for her nieces and her nephew. Notwithstanding the above, she would have a contact right according to sec. 1685 para. 2 sentence 1 of the German Civil Code. If Jennifer moved out, there would be no possibility for her to receive any custody for her nieces and her nephew. She would only have a contact right according to sec. 1685 para. 2 sentence 1 of the German Civil Code.

Question 6:

The impact of a potential maltreatment that resulted in a severe traumatic brain injury of the child on an appointment as legal guardian and the granting of a contact right has not yet been adjudicated by a German court.

If a judge had to decide such a case, the potential abuse committed by the stepfather has to be considered in the context of the requirement of the best interests of the child. In case of the opening of criminal investigations at the request of prosecutors that are obliged to institute preliminary proceedings if there is an initial suspicion (sec. 152 para. 2 German Code of criminal procedure) it is quite unlikely that Jason is appointed as legal guardian during the ongoing proceeding. The same is true for the case that the main proceeding is opened.

The necessity that the judge has to take adequate account of the child's best interests is valid both for the appointment as legal guardian according to sec. 1779 of the German Civil Code as well as for granting a contact right pursuant to sec. 1685 para. 2 sentence 1 of the German Civil Code as the state holds a constitutional duty to protect children in such a situation.

If the suspicion of the state official was neither verified nor refuted in the proceeding it would still be possible that the stepfather be appointed as legal guardian and be granted a contact right. The potential abuse would pose a certain risk that would have to be taken into consideration. However, other factors would also be relevant for the evaluation of the best interests of the child, e.g. the quality of the relationship between the ward and the potential legal guardian as well as the fact that the child could continue living in its familiar surroundings if the stepfather be appointed as legal guardian. Ultimately, the best interests of the child are the guiding principle.

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ANSWER FROM JAPAN

Holli has two children, Haleigh age six, and Samantha age four, when she marries Jason. Holli and Jason have a child together, Cody, a year later. All the children called Jason "daddy." He played ball with them in the backyard, practiced softball with them and coached their teams, took them to activities and provided financial support to the family. A mechanic, he taught Haleigh how to work on cars and renovated her room with Haleigh helping. On Friday and Saturday nights, the family would have "movie nights," eating popcorn and watching movies together. Haleigh and Samantha have no relationship to and have never known their biological fathers and Holli has never identified them.

When Haleigh is eleven, she suffers a traumatic brain injury and is admitted to the hospital. Shortly after, Holli dies. Jason requests that the courts allow him to make medical decisions for Holli.

Question 1. Would the law of your jurisdiction give Jason decision-making authority, residential care/custody of Haleigh or visitation under any legal doctrines like de facto parenthood, in loco parentis, psychological parenthood, or some other concept? If so, what doctrine or decisional framework would be used?

Under the Civil Code of Japan, biological parents or adopting parents have rights and duties over their children and the parents rights and duties consisting of two elements such as care and control of them (custody) and administrating the assets of children.

Section 820

A person who exercises parental authority holds the right, and bears the duty, to care for and educate the child for the child's interests.

Section 824

A person who exercises parental authority shall administer the property of the child and represent the child in any legal juristic act in respect of the child's property; provided, however, that if an obligation requiring an act of the child is to be created, the consent of the child shall be obtained.

In the case of non-marital couple, a biological father needs to recognize his child (acknowledgement of paternity) in order to obtain parental rights and duties, otherwise he has no legal relationships with his 'child'.

Section 779

A father or a mother may affiliate his/her child out of wedlock.

As long as both biological parents live, another person cannot claim any legal status over their children except of the following cases: 1. declaration of missing is made by the family court (a missing person is interpreted as dead) and 2. both parents are forfeited of their rights and duties because of abusing their children.

Section 838 Guardianship shall commence in the following cases:

- (i) if there is no person with parental authority over a minor or if a person with parental authority is unable to exercise the right of administration of property.
- (ii) if there has been an order for commencement of guardianship.

Section 834

If a father or mother has abused his/her child or abandoned the child in bad faith, or a child's interests are extremely harmed due to considerable difficulty or inappropriateness in the exercise of parental authority by his/her father or mother, the family court may, at the request of the child, any relative of the child, a guardian of a minor, a supervisor of a guardian of a minor, or a public prosecutor, make a ruling of loss of parental authority with regard to the father or mother; provided, however, that this shall not apply if the cause thereof is expected to cease to exist within two years.

Section 834-2

(1) If a child's interests are harmed due to difficulty or inappropriateness in the exercise of parental authority by his/her father or mother, the family court may, at the request of the child, any relative of the child, a guardian of a minor, a supervisor of a guardian of a minor, or a public prosecutor, make a ruling of suspension of parental authority with regard to the father or mother.

(2) If the family court makes a ruling of suspension of parental authority, it shall determine the period of suspension of parental authority within a period not exceeding two years, taking into account the period expected to be required for the cause thereof to cease to exist, the physical and mental conditions, and the living circumstances of the child, and all other circumstances.

Scenario 1: she is a legitimate child of the biological father.

In this case, he has no authority over Haleigh even he has acted like their father in everyday life unless he adopted Haleigh. When he needs to obtain legal status over Haleigh, he can make an application of guardianship similar to parental rights and duties to the family court if whereabouts of her father by birth is unknown or he can make an application of custody over her to the family court.

Scenario 2: she is an illegitimate child and not acknowledged by the biological father

He can make an application of guardianship to the family court since she had no parent.

In the case of medical decisions, parents with parental rights and duties can exercise their legal authority over their children for making consent to medical treatments except of medical operation.

Question 2. Assuming Holli had not died, but the couple was divorcing, would Jason receive any residential care/custody or visitation rights with Haleigh and Samantha? Could Jason receive legal decision making powers, like joint legal custody? Could he be made to pay child support for Haleigh and Samantha?

1. No particular provision in the Civil Code relating to visitation rights. Visitation rights is interpreted as a part of custody.
2. No joint custody system exists in the Civil Code.
3. Jason (a ex-relative by affinity) has no duties of maintenance for them.
4. In a very exceptional case (such as Holli abused her children), Jason can be appointed as a person with custody by a family court decision.

Section 766

(1) If parents divorce by agreement, the matters of who will have custody over a child, **visitation and other contacts** between the father or mother and the child, sharing of expenses required for custody of the child and any other necessary matters regarding custody over the child shall be determined by that agreement. In this case, the child's interests shall be considered with the highest priority.

(2) If the agreement set forth in the preceding paragraph has not been made, or cannot be made, the matters set forth in the preceding paragraph shall be determined by the family court.

(3) The family court may change the agreement or determination under the provisions of the preceding two paragraphs and order any other proper disposition regarding custody over the child, if it finds this necessary.

(4) The rights and duties of parents beyond the scope of custody may not be altered by the provisions of the preceding three paragraphs.

Question 3. Imagine the same scenario, but now assume that Jason and Holli lived together without being married. Do any of the legal outcomes at divorce change as a result of being a nonmarital couple?

In the case of non-marital couple, no legal relationships between children and their mother's partner exist but Jason can be appointed as a custodian like above no.4.

Question 4. Do the genders of the adults matter? In other words, if we replaced Jason with Jennifer, a same-sex partner, would the fact that the cohabiting or marital relationship (if same-gender couples can marry in your jurisdiction) change the result upon the adults' break up or Holli's death?

1. The Civil Code has no provisions over same-sex marriage or partnership. 2. Jennifer can only make an application of guardianship to the family court in the case of Holli's death or of custody like above no.4.

Question 5. Does the conjugal relationship of the adults matter? In other words, if Jennifer and Holli are sisters living together and raising Holli's children, could they be considered de facto parents or be designated with a similar status, giving Jennifer decisionmaking rights or custody upon Holli's death or if Jennifer moved out?

1. Jennifer has no legal status like parent as long as Holli is alive.

2. Jennifer can claim guardianship to the family court only in the case of Holli's death.

3. Jennifer can make an application to the family court for custody if a court forfeits or suspends Holli's rights and duties.

Question 6. In the real-life case from which these facts are drawn, state officials believed Jason and Holli together perpetrated the abuse that resulted in Haleigh's injury. Holli later committed suicide. How would that fact of possible abuse by Jason change the legal outcome under the doctrines used at divorce or the death of the legal parent, Holli?

As mentioned above, Jason has no legal rights and duties over the children during the period of cohabiting with Holli. If Jason jointly abused Haleigh, he will not be approved to be a custodian in the case of divorce or a guardian in the case of Holli's death.

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ANSWER FROM UNITED STATES:

Though there are not many reported cases involving parental rights of stepparents, some US states have extended some legal recognition to stepparents, particularly when the courts determine the stepparent has acted *in loco parentis* to the child by taking on significant parenting roles. *Robinson v. Ford-Robinson*, 208 SW 3d 140 (Ark. 2005). The most significant obstacle typically is the legal

parent's objection since the rights of that parent are constitutionally protected and their decisions about a child's upbringing must be given great deference. *Troxel v. Granville*, 530 US 57 (2000). Here, where the mother has died and the biological father is completely absent, concern about disturbing the legal parent's prerogatives would not prevent Jason from exercising parental rights, especially given the long-term relationship to the child. Some US states recognize the *de facto* parent status in which a non-parent is given some rights of a legal parent based on a finding that he or she shared caretaking for a child or acted as a parent and, critically, the relationship between the non-parent and child was fostered by the legal parent. Robin Fretwell Wilson, *Trusting Mothers: A Critique of the American Law Institute's Treatment of De Facto Parents*, 38 HOFSTRA L. REV. 1103 (2010), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3015916; Robin Fretwell Wilson, *Limiting the Prerogatives of Legal Parents: Judicial Skepticism of the American Law Institute's Treatment of De Facto Parents*, 25 J. Am. Acad. Matrimonial Lawyers 477 (2013), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3042798. A non-parent sometimes becomes a psychological parent to the child. Some courts then frame the question of whether the non-parent should receive custody or contact with the child in terms of whether potential harm to the child is likely to result if the relationship with the non-parent is ended. In re *E.L.M.C.*, 100 P. 3d 546 (Colo. Ct. App. 2004).

Given the facts, courts that recognize these concepts would likely extend recognition for purposes of care/custody, visitation, and legal decisionmaking to Jason.

Question 2. Assuming Holli had not died, but the couple was divorcing, would Jason receive any residential care/custody or visitation rights with Haleigh and Samantha? Could Jason receive legal decisionmaking powers, like joint legal custody? Could he be made to pay child support for Haleigh and Samantha?

In many US jurisdictions, as discussed above, Jason could be granted some of the legal rights of parenthood. If Holli objected, he would likely have to show that the grants of these rights was in the child's best interests or, in some cases, that severing his relationship with the child would cause harm to the children. In addition, doctrines of standing may preclude him as a legal stranger to the child from seeking rights. See, e.g., *Jones v. Barlow*, 154 P. 3d 808 (Utah 2007); Robin Fretwell Wilson, *Trusting Mothers: A Critique of the American Law Institute's Treatment of De Facto Parents*, 38 HOFSTRA L. REV. 1103 (2010), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3015916.

Many US states have statutes that require stepparents to provide financial support for stepchildren, such as Vermont, but the duty extends only to when the child lives in the home and not after the adults' relationship ends. 15 Vt. Stat. Ann. § 296. Some courts have held that a stepparent owes no legal duty of support to a stepchild. If a stepparent receives parental rights, they will usually be expected to pay child support. Katharine K. Baker, *Asymmetric Parenthood* in RECONCEIVING THE FAMILY: CRITIQUE ON THE AMERICAN LAW INSTITUTE'S PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION 121 (Robin Fretwell Wilson ed., 2006). Notably, the American Law Institute's recommendations about *de facto* parent status would not have extended legal decisionmaking to or required child support, even as it gave custody or visitation rights. See American Law Institute's PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION: ANALYSIS AND RECOMMENDATIONS §§ 2.08-2.12 (2000).

Question 3. Imagine the same scenario, but now assume that Jason and Holli lived together without

being married. Do any of the legal outcomes at divorce change as a result of being a nonmarital couple?

Most of the prominent cases involving findings of *de facto* or psychological parent arose in the context of unmarried couples. *See, e.g., In re Parentage of LB*, 122 P. 3d 161 (Wash. 2005). Thus, the lack of a marriage relationship would not, in itself, preclude Jason from asserting a claim to some legal incidents of parenthood. Those doctrines are not as well established as stepparent doctrines and case law are, though. Further, the lack of marriage relationship could be a hurdle to establishing the kinds of parental rights since the breakup of their relationship would not trigger a formal divorce process, with the built-in opportunity to assert custodial and visitation rights or for the legal parent to seek child support. Thus, Jason would have to initiate an independent claim to custody or visitation.

Question 4. Do the genders of the adults matter? In other words, if we replaced Jason with Jennifer, a same-sex partner, would the fact that the cohabiting or marital relationship (if same-gender couples can marry in your jurisdiction) change the result upon the adults' break up or Holli's death?

In addition to arising in the context of cohabitation rather than marriage, *de facto* parenthood and psychological parenting were developed at least in part as a way to respond to the unique situation of same-sex couples who could not be joint biological parents and who not long ago could not marry in the US. *See, e.g., Elisa B. v. Superior Court*, 117 P. 3d 660 (Cal. 2005). Moreover, states legislatively added second parent adoption statutes precisely to connect same-sex parents to their children. *See Colo. Rev. Stat. § 19-5-203*. Of course, the need for such doctrines has ebbed now that same-sex couples may marry after *Obergefell v. Hodges*, which announced a right to same-sex marriage. 135 S. Ct. 2584 (2015). The analysis applicable to stepparents would apply and presumably provide access to parenting rights. Any differential treatment of same- and opposite-sex married couples might raise constitutional concerns under state constitutional and perhaps federal constitutional guarantees. *Gartner v. Iowa Dept. of Public Health*, 830 N.W. 2d 335 (Iowa 2013).

Question 5. Does the conjugal relationship of the adults matter? In other words, if Jennifer and Holli are sisters living together and raising Holli's children, could they be considered de facto parents or be designated with a similar status, giving Jennifer decisionmaking rights or custody upon Holli's death or if Jennifer moved out?

This is an area where there is little or no case law or statutory authority. If a child's parent is deceased, states often try to place the child with a family member, so in this scenario, Jennifer would have a very good chance of receiving custody, perhaps as the guardian of the children. Non-parents entrusted with the care of a child for long stretches of time can be awarded custodial care and decisionmaking rights over the legal parent's objection when the legal parent is unfit or extraordinary circumstances warrant that result.

Many of the rationales for stepparent and cohabiting-partner status would likely apply with equal force to a non-partner who has provided care for the child. Canada recently allowed two unrelated women, who were not living together to jointly adopt. *See Radhika Sanghani, Child-Sharing: Meet the Best Friends Who've Legally Adopted Together*, THE TELEGRAPH (March 31, 2017), <http://www.telegraph.co.uk/women/family/child-sharing-meet-best-female-friends-whove-legally-adopted/>. There are no similar reported cases in the United States.

When financial reasons bring a non-parent into a caring relationship with the child, courts and law reform proposals would not permit paid care for the child to form the grounds for finding parental rights. In other words, the nanny cannot successfully assert claims. PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION: ANALYSIS AND RECOMMENDATIONS §§ 2.08 (2000).

Question 6. In the real-life case from which these facts are drawn, state officials believed Jason and Holli together perpetrated the abuse that resulted in Haleigh's injury. Holli later committed suicide. How would that fact of possible abuse by Jason change the legal outcome under the doctrines used at divorce or the death of the legal parent, Holli?

Since analyses leading to designation of a *de facto* or psychological parent or finding that a non-parent stands as *in loco parentis* to a child are premised on the idea that such recognition is in the child's best interests or would result in harm to the child absent the recognition, a concern that the non-parent seeking parentage rights had harmed the child would certainly preclude a finding that the non-parent should have any kind of parental authority.

Ironically, under the ALI's test for *de facto* parents, no affirmative finding is required that recognizing a non-parent as a *de facto* parent serves the best interests of the child or protects the child's welfare. Consequently, courts that adopt the ALI's truncated test would have to add that requirement back in as an express element. Massachusetts did this in the case that formed the basis for this comparative law question, *Care and Protection of Sharlene*, 445 Mass. 756 (Mass. 2006): "The standard established by these cases presumes that the bond between a child and a *de facto* parent will be, above all, loving and nurturing."

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MEMBER NEWS

Xi Li

In July 2017, she received a ¥200,000 from the National Social Science Foundation of China to support "Research on Voluntary Guardianship of the Elders."

In August 2017, she was appointed the founder and the editor-in-chief of the journal of Elder Law by the prestigious British social scientific publishing company. Elder Law is the first magazine among 9,470 official licensed publications in China. It has also established its first bilingual approach to China and overseas (English, German, French, Japanese and other languages).

Dara Purvis

Was promoted from Assistant Professor to Associate Professor at Pennsylvania State Law School, effective July, 2017.

RECENT AND FORTHCOMING PUBLICATIONS

John Eekelaar

ISBN: 978-0-9964805-1-2

Faculty Edited

The second edition of my book, *Family Law and Personal Life*, will be published by Oxford University Press in December, 2017.

Xi Li

Professor Xia Li published a paper titled “Revocation and Recovery of Guardianship: A Review on Article 34 and 35 of the Consultation Draft of the General Principles of Civil Law of the People's Republic of China” in the *Social Policy Review*, and another titled “Modern Transformation of Adult Guardianship System” in the *Social Policy Review (English)*.

Professor Xia Li accepted the invitation of law school of St. John’s University to attend the Legal Research and Practical Seminar, from 9th Aug. to 12th Aug., on the International Family Law and delivered a speech titled “The Draft Work and Legislative Process of the Marriage and Family Law Division of China Civil Code”.

Professor Xia Li attended China Marriage and Family Law Annual Meeting, from 15th Sep. to 17th Sep., and submitted a paper named “The Challenge of China's New Adult guardianship in the Implementation.”

Solangel Maldonado

Sharing a House But Not a Household: Extended Families and Exclusionary Zoning Forty Years After Moore, 85 *Fordham L. Rev.* 2641 (2017).

Romantic Discrimination and Children, 92 *Chi.-Kent L. Rev.* 105 (2017).

Bias in the Family: Race and Culture in Custody Disputes, 55 *Fam. Ct. Rev.* 213 (2017).

Jo Miles

“Child & Family Law Quarterly Exploring Brexit& Family Law,” following a seminar we held in Cambridge in March. Details are here:

-Re special issue: <https://www.family.law.cam.ac.uk/press/news/2017/10/cfl-cflq-special-issue>
-Re seminar from which papers taken:
<https://www.family.law.cam.ac.uk/press/news/2017/03/brexit-and-family-law-joint-conference-cambridge-family-law-and-child-family-law>

Robert Rains

The Vermont Law Review has accepted for publication the article which I presented at the ISFL World Conference in Amsterdam, “Icing on the Wedding Cake: Same-Sex Marriage and Religious Objections—Is There an Accommodation That Will Make Everyone Equally Happy (or Unhappy)?”

Robin Fretwell Wilson

Professor Wilson published the following books:

DOMESTIC RELATIONS: CASES AND MATERIALS, 8th edition (Walter Wadlington, Raymond C. O'Brien, & Robin Fretwell Wilson, Foundation Press, 2017)

FAMILY LAW STATUTES: SELECTED UNIFORM LAWS, MODEL LEGISLATION, FEDERAL STATUTES, STATE STATUTES, AND INTERNATIONAL TREATIES, 5th edition (Walter Wadlington, Raymond C. O'Brien, & Robin Fretwell Wilson, Foundation Press, 2017)

Her new volume will be forthcoming in the Spring: THE CONTESTED PLACE OF RELIGION IN FAMILY LAW (Robin Fretwell Wilson, ed., Cambridge University Press, 2018) (in press), <https://www.cambridge.org/core/books/contested-place-of-religion-in-family-law/1AE22C76D155AEE6548587F77CE74740>.

UPDATED ADDRESSES

NOTE: To receive the current ISFL international survey, you must have updated your address on the webpage by June 1, 2018.