

Question 5 – February 2018 – Selected Answer 1

(1) Presumption of Paternity

Henry is the presumed father of Chad.

Under the Texas Family Code there is a presumption of paternity when: (1) a child is born within 300 days of marriage or attempted marriage (2) child born before marriage and alleged father signs acknowledgement, voluntarily signs birth certificate, etc. (3) alleged father lives with the child for the first two years of the child's life and represents to others that the child is his. An alleged father is simply someone being presented as the father of the child by either the mother or the alleged father himself.

Here, Henry would be the presumed father of Chad because he was born during the marriage and because Chad just turned three and Henry has lived with Chad for the first two years of his life and represented to others that Chad was his. Peter is not a presumed father under the Family Code he is just an alleged father.

Therefore, Henry is a presumed father and Peter is an alleged father.

(2) Rebutting Presumption of Paternity

There is a 4 year statute of limitations to challenge presumed paternity unless: (1) parties did not reside with or have relations during the time of conception (2) presumed father believed the child was his biological child due to misrepresentations by mother. Paternity is established by genetic testing. If a test shows that an alleged/presumed father is not the father the court shall enter an order that he is not the father. The Court can apply Paternity by Estoppel and disallow disproof of paternity when a party with knowledge continues to act as a parent. You can also swap out an acknowledged father by having another tag in by acknowledging their paternity (see below #3 for further analysis).

Here, Henry would be allowed to challenge because it is within the four years since Chad is three and also because it involves misrepresentations of Wendi that he was the father. He would have to put forth the facts that he is not subject to paternity by estoppel due to Wendi's misrepresentations of his being the biological father and his not knowing about the affair. He may seek to disprove himself as the father by genetic testing if the court does not apply paternity by estoppel. Henri can also swap out as an acknowledged father by having Peter tag in by acknowledging his paternity (see below #3 for further analysis).

(3) Peter's Rights to Chad

Peter can bring a paternity suit as an alleged father or both he and Henry can agree to sign an acknowledgment of Peter's paternity and a release of Henry's.

Genetic testing is used to prove natural fathers in Texas. In a contested case you will have to file a paternity suit to have the court order genetic testing to prove paternity. If a person is proved by

genetic testing of 99% match to be the father the court shall enter an order naming them the adjudicated father. In an uncontested case you can sign a document acknowledging paternity and have them sign a document releasing their claim of paternity to become an acknowledged father - has the same effect as an adjudicated father.

Here, it seems as though Henry does not want Paternity so he may be able to tag in by signing the document acknowledging paternity if Henry agrees. Peter may also file a paternity suit and seek genetic testing to be ordered by the court if contested.

Question 5 – February 2018 – Selected Answer 2

1. There is a presumption that Harry is Chad's legal father. At issue is whether a man who has held himself out to be the father of a child is presumed to be the father even when the mother knows that he is not.

Under the Texas Family Code, the presumption of paternity arises when a child is born to married couple and the couple is married until at least 300 days before the child's birth, a man acknowledges he is the father in a recorded document such as a birth certificate with the county office of vital statistics, or a man lives with the child during the child's first two years of life while the man holds out to others that the child is his.

In the facts provided, Chad was born during Henry and Wendy's marriage and it is not stated that Henry ever held out to others that he was not Chad's father during the first two years of marriage. It is also not stated that Henry is not the father listed on the birth certificate. This places the presumption of Chad's paternity on Henry.

2. In Texas, to rebut the presumption of paternity a person must plead that there was either no sexual intercourse during the time of conception or that there was infidelity at the time of conception. To be proven, a genetic test must take place before a hearing of which the paternity is contested. Usually the statute of limitations on these presumptions is four years from the time of birth though this can be extended if a new presumed father had no knowledge of the child. This action to determine paternity may be instigated by a child, mother, presumed father, alleged father, grandparent, or state agency. Another way to determine paternal rights is if the presumed father disavows his rights in a sworn writing while another alleged father acknowledges in a sworn writing that the child is his.

3. Peter may assert his paternal rights over Chad. There are two ways to assert paternal rights in Texas. Peter must either get genetic testing or have Henry disavow the child in an affidavit while acknowledging the child as his in an affidavit. Due to the impending divorce, a suit affecting parent-child relationship (SAPCR) will also need to be filed by Henry and Wendi, which is the perfect opportunity for Peter to join in and assert his parental rights. It is likely that Henry will gladly give up his rights to Chad as the facts state that he was furious and asserts that only Bethany is a child of the marriage.

Question 5 – February 2018 – Selected Answer 3

(1) The presumption of paternity will apply to Henry. The issue is whether there is a presumption as to Henry or to Peter as to who is Chad's real father. In general, there is a presumption of paternity in three situations. First, if the man and woman are married at the time the child is born or the child is born within 300 days after divorce, there is a presumption. Second, when the man and woman marry after the child is born and the man has filed his paternity with the vital records office, signed the birth certificate, or has otherwise agreed to provide for the child, there is a presumption. Last, a presumption arises when the man and the child are living together, the man is providing for the child's necessities and welfare, and the man is holding himself out as the child's father, there is a presumption.

As to Henry, he will be presumed the father of Chad because Chad was born while he and Wendi were married. The second presumption is inapplicable, although it can be presumed that Henry signed Chad's birth certificate. Last, Henry has also been providing for and living with the child during his first two years and presumably telling people it is his child. Henry will be presumed to be Chad's father.

As to Peter, applying the same tests above, Peter will not be presumed to be Chad's father. We are told that he lives in Oklahoma, had no knowledge of Chad or how he was allegedly conceived (although he presumably would remember the encounter with Wendi at their high school reunion). He and Wendi were not married so the first presumption situation is inapplicable. He is also not presumed to be the father under the second situation. He and Wendi have not gotten married and he presumably did not register as the father with vital records office or sign the birth certificate. Last, he has not been living with Chad or providing for him (he did not even know of his conception or birth). Thus, Henry is presumed the father, not Peter.

(2) The issue is what must be shown to rebut or disprove the presumption of paternity. The presumption of paternity can be challenged and rebutted in two ways. First, the presumption can be overcome if the presumed father takes a DNA test comparing his DNA to that of the child. A person who is a 99% match is deemed the father. But if the DNA test shows that the presumed father is not the father, then the presumption will be overcome. Thus, here Henry can take a DNA test to show that he is not the father. Presumably Peter if willing could also take a DNA test to either confirm or dispel any parentage as well. The second way to rebut the challenge is to have the presumed father file an affidavit acknowledgement with the court affirming that he is not the father coupled with an acknowledgement of parentage by the real father. Thus, if Henry and Peter were willing to do so, both could file together these affidavits and acknowledgments with the court. This action will overcome the presumption and Peter will be legally deemed the father.

(3) Peter may assert his paternal rights if he establishes his parentage as noted above. This can be established by a DNA test or by the acknowledgement of parentage coupled with the presumed father's relinquishment of his rights. Generally, a suit to establish parentage must be brought within 4 years of the child's birth. Here, we are told Chad is 3 years old, so as long as Peter acts

before the statute of limitations runs, he can attempt to establish parentage so he can assert parental rights.