

Essay Question No. 6

Answer this question in booklet #6

Wanda and Harry married in Alaska in 1996 and rented a condominium in Anchorage. They have one child, Carl, who was born June 4, 1999. They separated in June 2002, when Wanda filed for divorce. At the divorce trial in June 2003, the court heard the following facts:

Harry is a tax accountant with a busy practice. During tax season, January through April, he works 10 hours a day seven days a week. During the marriage, Harry left before Carl got up in the morning. However, even during tax season, Harry made sure he was home in time for dinner with Wanda and Carl. He played with Carl after dinner, except for three evenings a week when he left to play chess at the local club. On those evenings he did not get home until after Carl was in bed. Wanda was not employed and she stayed home during the day to take care of Carl. Wanda was in a book club that met once a month in the evening. During those meetings, she had her sister come over to give Carl his bath and put him to bed. Harry never gave Carl a bath or put him to bed because Wanda liked to do it and never asked him to help.

Most nights, after Carl was in bed, Wanda would relax and drink a glass of wine. Sometimes she drank more than one glass. She never drank enough to be hungover in the morning. Harry thought Wanda drank too much, particularly since she preferred to drink wine and put on headphones to listen to rock music instead of talking to him.

On Saturdays, when it was not tax season, Wanda, Carl, and Harry usually went on a family outing, however this became less frequent. A few months prior to their separation Wanda and Harry had begun to argue a lot and really did not like spending time together. They had a big fight right before their last Saturday outing. Harry took Carl to the zoo without Wanda. Wanda did not mind because she did not have to spend time with Harry and she wanted Harry to spend more time with Carl anyway. On Sundays Wanda, who is Methodist, took Carl to the church service with her. Harry did not go. He is not a member of a church.

After the parties separated, Harry moved out of the family condominium and into a nearby apartment. Both parties plan to stay in Anchorage. On Saturdays Harry takes Carl for the day and he visits Carl for a couple hours in the early evening every Monday and Wednesday. The chess club does not meet those evenings. Carl looks forward to Harry's visits. Recently, Carl was mad at Wanda because she said he could not have any more cookies before dinner and said, "I want to live with Daddy."

1. Wanda and Harry agree on joint legal custody but each wants primary physical custody of Carl. What legal framework should the court use to make this physical custody determination and how does this law apply to the facts of this case?

2. Assume the court awards Wanda sole physical custody of Carl, and a few years later Wanda tells Harry she is thinking about moving to California with Carl to be closer to her aging parents. If Harry were to file a motion asking the court to modify the custody arrangement and award him sole physical custody, what legal standard should the court apply in determining whether to grant Harry's motion and how would it apply here?