



Moot Court Competition

INDORE INSTITUTE OF LAW

(Affiliated to D.A.V.V. & Bar Council of India, New Delhi)

THE NATIONAL LAW FEST

“LEX BONANZA-2016”

STRIVING FOR LEGAL EXCELLENCE

CHAPTER V

MOOT PROBLEM ON SURROGACY



MR SIMPSON AND MRS. VELMA

V.

MS. EMILY

1. **Mr Simpson and Mrs. Velma** is Hindu by religion and they are straight sex couple who live in the **Australia** in **Melbourne City**. Mr Simpson and Mrs. Velma are Indians by nationality though they have initiated the process of acquiring Australian citizenship. Mr Simpson and Mrs. Velma have been together in their relationship since **2005** and live together in the same house in the Australia in Melbourne city.
2. Mr Simpson and Mrs. Velma were desirous to start a family and for this purpose, Mr Simpson and Mrs. Velma have started looking for surrogate mothers who should be an Indian. Mr Simpson and Mrs. Velma plan is to get a child through surrogacy and when the child is born, and then they want to bring that baby with them to the Australia on a long term visa.
3. In the year **2010**, Mr Simpson and Mrs. Velma acknowledged an agency (**MYZ FERTILITY**) based in **New Delhi** who offers surrogacy to foreigners with good fee. Mr Simpson and Mrs. Velma commenced negotiations with the agency and implicit the terms of the agreement. So Mr. Simpson and Mrs. Velma finally agreed to the surrogacy that it would be traditional surrogacy with Mr. Simpson who should be the genetic father of the child and the surrogate mother being the genetic mother of the child. The agreement was signed while both Mr Simpson and Mrs. Velma were living in Australia when the emails have been exchanged. So Mr. Simpson and Mrs. Velma deposited the first sum **1 Lac Rs.** to the agency, whose amount was paid in **September, 2010**.
4. In **February 2011**, Mr Simpson and Mrs. Velma travelled to India and Mr. Simpson has an artificial fertilisation which was carried out on the surrogate mother. **Ms. Emily** was a surrogate mother who was selected to carry the child. Thereafter, Mr Simpson and Mrs. Velma returned to Australia. After reaching Australia Mr Simpson and Mrs. Velma made the second instalment of the payment of **2 Lacs** in the same month.



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5. On **20th December, 2011**, the child was born; the child was a healthy baby girl, which was born by the surrogate mother Ms. Emily in New Delhi in **MYZ FERTILITY** Centre. Mr Simpson and Mrs. Velma both returned to India from Australia and they have directly gone to the hospital at the time of the birth of the baby which has been delivered by Ms. Emily.
6. The couple Mr Simpson and Mrs. Velma has made the final payment of **2 Lacs** to the Surrogate agency on **21st January, 2012** and as a sign of gratitude, Mr Simpson and Mrs. Velma has also paid **1 Lac Rs.** to Ms. Emily. Mr Simpson and Mrs. Velma have made an application before the appropriate court that they should be considered as the child's sole legal guardian.
7. On **26th of January 2012** itself, Mr Simpson had suddenly to return to Australia, on urgent business and which could not be postponed. Mrs. Velma stayed in India at this time, While Mr Simpson was in the Australia, Mrs Velma was informed that her application process for Australian citizenship had been successful and she was asked to be present at the Town Hall of the city of Melbourne to take the oath of allegiance to the Australian Government. Mrs. Velma did the same as what she was told and on **28th January** and formally became an Australian citizen. He informed the Indian High Commission and Embassy in the Australia of the same.
8. The Indian Embassy in the Australia asked Mrs. Velma to surrender his Indian passport and to obtain a Person of Indian Origin Card if she so desired.
9. Mrs. Velma realised that this would mean that she would not be able to go back to India immediately.
10. In the meantime, Ms Emily claimed that she did not want to give the custody of the child because she was emotionally attached to it. When she went to meet Mr Simpson and Mrs. Velma in order to see the child, Mr Simpson and Mrs. Velma did not allow her inside the house or to even see the baby. Mr Simpson and Mrs. Velma claimed that Ms. Emily has decided that she wanted to give the baby which was told by the surrogate agency to Ms. Emily and she had been at the time when she decided to carry the child. But Ms Emily was an illiterate woman.
11. Mr Simpson and Mrs. Velma threatened to Ms Emily that they would call the police and get her arrested and Mr Simpson and Mrs. Velma abused her in grubby language. Mr Simpson and Mrs. Velma called Ms. Emily a cheat and said that Ms. Emily was creating this act, only to exhort more money from the Mr. Simpson & Mrs. Velma. By



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hearing this, Ms Emily had forcefully returned the 1Lac Rs. to them which were given her at the time of the birth of the baby by Mr Simpson and Mrs. Velma.

12. Finally when Mrs. Velma obtained an Australian passport and was able to visit India, it was **March, 2013**. Mr Simpson and Mrs. Velma withdrew the earlier proceedings in view of the change of his citizenship, amended the same and filed a fresh proceeding under the **Guardians and Wards Act 1890**, in order to be declared the sole legal guardian of the child.
13. The surrogate mother i.e. Ms. Emily, who heard from her connections that such kind of proceeding has been pending before the Court under **Guardians and Wards Act**, then Ms. Emily filed a PIL challenging the proceedings before the **Delhi High Court** on the grounds that she was cheated and her rights has been violated. The High Court admitted the petition and stayed the guardianship proceedings which were pending.
14. On **15th April, 2014**, the High Court decided by a short order that the issues of fact has to be adjudicated and therefore the High court has directed the appropriate court under the **Guardians and Wards Act 1890**, to adjudicate the matter by making the biological mother as a party in the same.
15. The matter which was pending under the **Guardians and Wards Act 1890**, which has been decided **20th December 2015** and the court has given the judgement on the basis of the agreement which was made between Ms. Emily and Mr. Simpson & Mrs. Velma-:
 - a) That Mr. Simpson & Mrs. Velma shall be appointed as a natural guardian.
 - b) Ms. Emily has no right to meet with the baby because of distractions in care of the child and the status of Mr. Simpson & Mrs. Velma.
16. Impugned by this order Ms. Emily has reached to the apex court of India.

Note-:

1. All references, actual, deeming or fictional; are fictional.
2. Participants are advised to devise a “litigation strategy”. The issues can be argued in alternative/without prejudice, which can be divided into sub-issues, **and can be added to or amended upon**. It is permissible to concede issue(s) at the time of oral arguments subject, however, to appropriate explanation readily available on the query of the bench. However, the written submissions must address all the issues.



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3. Any citations, without actual para/page references, will invite negative marking. Unnecessary citations and *passim* references are to be avoided. In case of oral arguments, a primary reference for all case-laws being referred is **mandatory**.

4. The moot problem is the way it is, with full application of the principle of “*as is, there is...whatever where is*”. No queries or requests for clarifications will be entertained.

5. The moot problem is drafted by ***MOOT COURT COMMITTEE OF INDORE INSTITUTE OF LAW***. All participating teams are restrained from communicating with any member of Moot court committee and faculty of Indore Institute of Law relation to moot problem and violation of same will lead to immediate disqualification.

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