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Bargaining over children.

From presumptive practice to child-focused litigation

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A "rebuttable presumption" of 50/50 residency for the children of separation and divorce, being seriously considered by a parliamentary inquiry, cannot and should not succeed from either a legal or social perspective. At a purely pragmatic level, it would not survive an appeal process because, so long as we take seriously the interests of each child as a guiding principle, this cannot be pre-emptively tied to assumptions about family structure. We must begin with the child and work outwards and we need dispute resolution structures that support this. The problem at the heart of the inquiry is that notwithstanding the Family Court's obligation to begin with the best interests of the child, research demonstrates that judgements continue to privilege motherhood and relegate most men to a secondary role in the lives of their children. As an aspirational statement, a 50/50 presumption taps a desire by many children and adults for more meaningful child/parent engagement. This desire needs to be addressed via the adoption of child focused litigation practices that draw upon the experience of similar practices in more facilitative approaches such as mediation and conciliation.

Of what use is a child?

Michael Faraday's response when asked to
justify his discovery of electromagnetism

The proposed Government *Inquiry into child custody arrangements in the event of family separation*, “seeks to address community concerns about the operation of contact and child support arrangements for separated families and reflects the Government’s commitment to ensuring that, to the greatest extent possible, children have the benefit of the love and care of both their parents when a couple separates” (Williams & Anthony 2003). The broad objective is consistent with section 60B (1) of the Family Law Act, which aims to ensure that, “children receive adequate and proper parenting to help them achieve their full potential”, and that “parents fulfil their duties and responsibilities concerning the care, welfare and development of their children”.

The inquiry is concerned in the first instance with the factors that should be taken into account in deciding how much time each parent should spend with the children post separation. The more problematic part of this question is contained in the question, “whether there should be a presumption that children will spend equal time with each parent and, if so, in what circumstances such a presumption could be rebutted”. The inquiry is also concerned with the status of other persons significant to the child, and with the workings of the child support formula.

All these issues are important. In this submission, however, I focus mainly on the 50/50 residency starting point because, though it may *seem* a logical solution, the assumptions underlying this approach tell us a great deal about what is wrong with our general approach to this difficult issue.

Presumptive and non-presumptive decision-making processes in family law: a conundrum

A 50/50 residency starting point would represent a formal return to *presumptive* decision making over children. Presumptive decision-making principles over children have generally reflected broader cultural preoccupations at different times in history. The principles have at particular times focused on questions related to morality, biology, ownership and inheritance, particular social or psychological factors, or a reward for prior parenting services (Moloney 2002). It is not immediately clear where the idea of 50/50 residency sits on this spectrum of preoccupations, though from a political perspective, there appears to be a general consensus that dissatisfaction with post separation outcomes is an issue frequently raised by constituents.¹

The Family Court’s formal adherence to *non-presumptive* approaches to decision-making over children, have their origins in 1976 cases such as *Jurss v Jurss* and *Raby v Raby*. The High Court further endorsed this approach in *Gronow v Gronow* in 1979. Since that time, appeals against any presumptive principles that may have crept into decision-making in family law have generally succeeded. There is little reason to believe a presumption in favour of 50/50 residency would not meet a similar fate. Even if judges

¹ See for example Hull (2003); and comments by Larry Anthony MP, Minister for Children and Youth Affairs, “7.30 Report” July 24th 2003

initially claimed the support of amended legislation in making such decisions, the tension between this starting point and key principles enunciated in Article 3 (1) of the United Nations Convention on the Rights of the Child would lead inevitably to a challenge.

Non-presumptive approaches to decisions about family structure are consistent with the fact that the Family Court's formation was itself a response to changing perceptions about marriage. No longer seen as an institution of social control, marriage has continued to be increasingly regarded throughout the latter part of the twentieth century and into this century, as a vehicle for developing and nurturing close personal relationships (Edgar, 1997, Beck 2000). Consistent with this understanding, children's interests, which are the paramount consideration in post separation disputes (Chisholm 2000), are also described under section 68F (2) largely in terms of the maintenance of quality *relationships*, preferably with each parent and possibly with other significant carers.

Dickey (1997: 388-391) has summarised the Family Court's shift to non-presumptive principles in parenting cases as follows:

- Determination of the best interests or welfare of the child now depends on the particular facts and circumstances of each case;
- Consequently, no result in a particular case can act as a precedent for another case;
- No commonly recognised factors (such as status quo) can be elevated to a principle;
- No commonly recognised factors such as unusual religious beliefs can lead to a *prima facie* presumption of parental unfitness.

Post separation parenting. What you find reflects where you look and what questions you ask

Support for a return to presumptive decision-making principles and more specifically to a starting point of 50/50 residency does not come from a conventional analysis of what already exists. Fewer than three per cent of children who had a natural parent living elsewhere in 1997 were categorised by the Australian Bureau of Statistics (1998) as being in shared care arrangements. Similarly, the Child Support Agency (2003) listed fewer than four percent of parents registered with them in the shared care category.²

The definition of shared parenting by both the Australian Bureau of Statistics and the Child Support Agency is tied to the number of *nights* spent with each parent. Parkinson and Smyth (2003), however, found that the figures look different if sleepovers *as well as* "daytime only" contact are counted. In their study of 1024 cases, they found that on these expanded criteria, and after leaving out the one third of fathers who have little or no contact with their children after separation, "shared time" arrangements (defined in this case as in excess of 109 days *or* nights per year), occurred in 16% of the cases sampled. This translates to between 10% and 11% of all post-separation cases – more than might have been expected, but not enough, one might imagine, to justify consideration of an *a-priori* legal starting point of 50/50 parenting.

² I am grateful to Bruce Smyth for drawing my attention to these figures.

Perhaps figures relating to *single* mothering/fathering post separation arrangements provide a clue to reasons for the 50/50 rebuttable presumption part of the current inquiry. The Australian Bureau of Statistics (2000) reported that approximately 84% of single-parent households in Australia were headed at that time by women, and 16% by men. The figures are almost identical for the United States (US Census Bureau 1998), which reports that in the three-year period 1995-1998, the number of single mothers had remained more or less constant but the number of single fathers had increased by 25%. A trend towards increasing numbers of single father households in the United Kingdom has also been noted by Smart (2001). The Family Court's figures in its most recent annual report notes that the overall rate of residence orders in favour of fathers increased from 15.3% in the mid 1990s to 19.6% in 2000-01.

A number of Australian studies (e.g. Kaye & Tomlie 1998, Rhoades, Graycar & Harrison 2000) have been dismissive of men's claims that their parenting role is not taken sufficiently seriously by the Family Court. At the same time, studies using independent data sets across different time periods (Hasche 1989, Berns 1991, Bordow 1994 and Moloney 2001) have all come to the conclusion that Family Court judgements strongly endorse the traditional concept of the "always available self-sacrificing" mother, and effectively ignore claims concerning the nurturing role of the father.

At first glance, these findings do not appear to reconcile themselves with the fact that in fully litigated cases (not the same as the "all orders" figures noted above), men are "successful" in their applications between 31% and 40% of the time (Horwill and Bordow 1983, Bordow 1994, Moloney 2001). Figures such as these are not infrequently cited to "demonstrate" that the Family Court is not influenced by gender in its decision-making. However Moloney's research found that when fathers were "successful" in litigated cases, it was generally not because judges saw particular merit in their cases, but because their former partners were seen to be failing as traditionally defined mothers. Though Hasche (1989) had earlier come to a similar conclusion, her sample of judgements was small and the sampling method was unclear. Moloney's study, which was carefully sampled, found that even when awarding custody or residence to men, judges tended to remain skeptical and/or express reassurance if the father had female parenting assistance. Again, Hasche had come to a similar conclusion.

The continuing legacy of the motherhood principle

It is interesting to note that the declaration of gender neutrality came about in Australia, as it did in the United States, before the availability of formal evidence that men were capable of providing good quality parenting.³ As Weitzman (1985) points out, gender-neutral decision-making principles about children in the United States reflected adult

³ When Michael Lamb published his first edition of *The Role of the Father in Child Development* in 1976, he found that,

Social scientists in general and developmental psychologists in particular, doubted that fathers had a significant role to play in shaping the experiences and development of their children, especially their daughters (cited in Lamb 1997: 1)

oriented concerns that addressed adults' constitutional rights. Some feminists (e.g. Uviller 1978) also supported gender neutrality in children's cases in family law on ideological grounds that were, again, adult focused.

To my knowledge, the gender-neutral principles established in the early Family Court judgements in Australia were never challenged on the grounds of an absence of scientific evidence. From an adult perspective, men would have had no reason to challenge as it formally afforded them equal status with women. Women, on the other hand, have had little incentive to challenge gender-neutrality because, by and large, the principles have been honoured in the breach. As the research demonstrates, notwithstanding its formal espousal of such principles, the Court has continued to support a de-facto rebuttable presumption of a maternal sole parent/paternal visitor model of post separation parenting.

In addition, though contrary to the legal principles established in the 1976 and 1979 cases cited above, a de-facto maternal presumption has broadly been in conformity with public sentiment. For example De Vaus' (1997: 9-10) survey of a total of 8845 respondents across three samples⁴ found that

[a] large majority of respondents stressed that caring for young children should take priority over work for mothers and the majority supported the traditional breadwinner role of men and family role for women. They believed that a family suffers if a mother works full time.

It might be argued, therefore, that despite its formal stance of gender neutrality, the Court has been reflecting a dominant gendered set of public opinions about parenting.

In the same survey, however, De Vaus (1997:10) also found that

... the clearest and most consistent finding is that there is a marked generation gap in family values, with older people holding more traditional views than younger people

When this latter finding is linked to the more subtle findings on shared parenting and the small but significant increases in the percentage of father headed single parent households, difficult questions arise for a decision-making body such as the Family Court. The challenge to find ways to move from a de facto maternal preference regime to a truly non-presumptive starting point, becomes increasingly pressing.

Key systemic problems in maintaining a true non-presumptive stance

The Family Court suffers from a deep-seated systemic problem in maintaining a formal non-presumptive approach to decision making in parenting disputes. Non-presumptive approaches support unique outcomes, which in turn recognise the uniqueness of *each* child's needs in *each* family. Law, on the other hand, is a rule-making enterprise, which

⁴ The 1989-90 National Social Science Survey (4513 respondents); the 1993 National Social Sciences Survey (2203 respondents); the 1995 Australian Family Values Survey (2129 respondents)

abhors what the High Court (citing Alfred Lord Tennyson), has called, “The wilderness of the single instance”.⁵

This tension in modern family law leads to what Herring (1999) has called “strained reasoning,” which he believes is evident in family court parenting judgements. In pragmatic terms, the question is whether judges can be expected to fulfil their obligations under section 68F (2)⁶ in a manner that *truly* reflects the principles outlined above by Dickey (1997). Decision-making theory (e.g. Hogarth 1990, Connolly, Arkes & Hammond 2000) would suggest that except in cases in which one parent is judged to be dangerous or otherwise unacceptable, the requirements of this section are such that judges are almost certain to fall back on a limited number of (probably covert) principles. This indeed is what the qualitative research cited above suggests that judges do.

There is no doubt that family courts in Australia and elsewhere have struggled to find a comfortable middle ground between predictability and individual interpretations of the best interests of the child (Kelly, 1997, Herring 1999, Moloney 2002). The proposed rebuttable presumption would ease this tension. The core difficulty is that it would also overtly endorse a regime of positional bargaining over children.

Returning (again) to the voice of the child

From a child-focused perspective, a presumptive starting point of 50/50 residency formalises the commodification of children. By *beginning* our deliberations with a “fairness to parents” presumption and effectively seeing children as goods to be shared, we tackle the problem from the wrong end. We are supported in this by conventional litigation processes, which begin with depositions from *adult* litigants about mainly *adult* concerns and then struggle to find ways of incorporating the child.

Much has been written about the “voice of the child” in family law and considerable progress has been recently made in this regard in more actively incorporating children’s needs and children’s voices into facilitative processes such as mediation and conciliation.⁷ In terms of incorporating children’s voices into *litigation* processes, however, progress has been painfully slow. At the first National Conference on Children and Family Law, Broun (1985), a senior family law practitioner, demonstrated that from a legal perspective, the formal representation of children presents significant systemic problems within an adversarial system of litigation. Despite thoughtful analyses since that time (eg Chisholm 1999), despite the aspirations of the Family Law Reform Act and despite modest progress on the question of legal representation of children (Keogh 2000) those problems largely remain.

⁵ The term, cited by the High Court of Australia in *Mallet v Mallet*, is taken from Alfred Lord Tennyson’s “Alymer’s Field”.

⁶ This section invites judges to consider 13 broad areas in no particular order of merit.

⁷ See www.childreninfocus.org. A series of “products” emerged from this program including video material on child focused and child inclusive practice, and research-based articles on child oriented work, published in the Journal of Family Studies

A presumptive (albeit rebuttable) starting point with respect to where and with whom children *should* live after parental separation inevitably diminishes the dignity of each child. It would be an important missed opportunity if the present inquiry did not encourage movement in the direction of child focused and even child inclusive processes in litigation that would treat each child as an individual and also enhance post separation parenting practices. Most of the significant steps already taken in facilitative dispute resolution processes have had the active support of the Attorney General's Department⁸. The inquiry presents an opportunity to re-think *litigation* processes in ways that are also driven not by an adult (of either gender) sense of fairness, but by what we know children need at this time. If we were to take this opportunity, what would the starting principles be?

From a child's perspective, what constitutes good practice?

From a psycho-social perspective, there is unequivocal evidence that children do well after parental separation when conflict is kept under control (McIntosh 2003) and when opportunities are created for both former partners to exercise "authoritative parenting" (Amato & Gilbreth 1999). Authoritative parenting is primarily a *relationship* dimension whereby the parent simultaneously offers the child support *and* containment. This combination of support and containment has been identified as a key resource for child development across a range of family structures (Baumrind 1968; Maccoby & Martin 1983; Rollins & Thomas, 1979). It is a key aspect of what Katz & Gottman (1997) calls the provision of "parental scaffolding".

Authoritative parenting is best achieved within a regime of cooperative post-separation parenting. But it can also be satisfactorily managed in a "parallel parenting" arrangement (Maccoby & Mnookin 1992; Kelly & Moloney 2002), that is, in a regime in which ex partners focus on their parenting, but have little interaction with each other. Authoritative parenting begins to unravel when the conflict that frequently surrounds separation and divorce, escalates or develops into *entrenched* conflict. This is the group on which most resources are expended and the group within which most children are at risk. A critical issue with respect to this group is the extent to which *the decision-making process itself*, whether facilitative or litigious or something in between, either supports (or even inflames) the conflict, or actively attempts to counteract or reduce it.

From the child's perspective, dispute resolution *procedures* need to be such that at a minimum, they do not jeopardise future opportunities for authoritative parenting and the provision of parental scaffolding by *both* parents. How, then, can litigation procedures simultaneously arrive at responsible solutions and leave ex partners and their children with a sense of dignity? Leaving ex-partners with a sense of dignity is important not just because all processes should treat clients respectfully, but because ex-partners are also parents on whom the children will continue to depend. Responsible solutions are those

⁸ Examples include Magellan (Brown et al 2001), Columbus (Murphy, Kerin and Pike 2003), the "Contact Orders Program" (Dickinson 2003, Price 2003), "Therapeutic Mediation" (Jaffe 2003), "Roundtable Dispute Management" (Victoria Legal Aid 2003), "Changing the Face of Practice", (Kochanski 2003) "Children in Focus" (Moloney and Fisher 2003) and Child Inclusive Mediation (McIntosh 2000),

that, wherever possible, avoid sidelining a parent by reducing him (it is usually “him”) to the role of a visitor who has mere “contact” with his children.

Unlike good child focused facilitative procedures such as conciliation, which invite attention to parenting *processes* from the perspective of each child’s needs, traditional litigation *begins* or at least moves quickly to positional statements about time. Indeed the reference given to members of the Parliamentary Standing Committee charged with conducting the Inquiry speaks of factors that should be taken into account in deciding, “the respective time each parent should spend with their children post separation”.

Good parenting practice requires that adequate *time* be spent between parent and child. Generally speaking “every second weekend”⁹ orders or agreements reinforce visitor model of parenting, which makes the sort of authoritative parenting described above very difficult to achieve. On the other hand, the *amount* of time each child needs with each parent, will vary as developmental needs change and as activities beyond the immediate family increase. Children (and their parents) need structure and stability, more so at some stages of their lives than at others. Time-based arrangements need to be agreed upon or ordered so that at least a default position is clear. Variations on the default position¹⁰ will be a function of the level of cooperation between former partners and the increasing capacity of each child to negotiate his or her own arrangements. However from a developmental perspective, *processes* are more important than structure. What *happens* between parents and their children is more important than the time spent per se. But here we strike the obvious difficulty that the law’s only currency in parenting disputes is the allocation or withholding of amounts of time.

If we saw children as objects – if we did not view them as increasingly autonomous human beings, the law *could* simply require that they share their time equally or in some other pre-determined way, between post separation households. On the other hand, if we take seriously the United Nations Convention on the Rights of the Child, as the 1995 Reform Act attempted to do, we are forced to the conclusion that we must take children’s needs, perceptions and attachments firmly into account. And with increasing age and maturity, we must listen increasingly carefully to their own articulation of those requirements.

As Kelly has demonstrated¹¹, there are (and need to be) multiple solutions to the question of how to structure post separation parenting. Kelly notes that each solution has reasonably predictable global strengths and weaknesses for children of differing ages and developmental stages. Just as importantly, each solution will have strengths and weaknesses that are unique to each child within each family situation.

⁹ Kelly (2003b) has noted that “every second weekend” orders in California now represent no more than 15% of the total.

¹⁰ Maccoby & Mnookin’s (1992) research demonstrated that departures from ordered or agreed upon arrangements are very common.

¹¹ See Appendix 1

Though it presents a challenge, there is ultimately no reason why beginning with the child and working outwards, could not be achieved in litigation processes, in ways that parallel what happens in contemporary child *focused* facilitative practices (Kelly 2003, Webb and Moloney 2003) and child *inclusive* facilitative practices (McIntosh 2000). Current family law regulations that seek to reduce the impact of adversarial processes by, for example, limiting the amount of past material that can be incorporated into affidavits, are a gesture in the right direction, but do not go to the heart of the issue.

Child focused litigation. Making a start

For example, if practices based on child focused or child inclusive principles were adopted, it would be incumbent on parents to present to a judge or adjudicator, material that outlined a proposed structure for *each* child located firmly in the context of demonstrating how that structure was designed to meet each child's needs. The focus of such a presentation would be on plans around parent-child *interactions*. The structure itself (i.e. how the *time* is to be shared) would have relevance only with respect to how it links to a capacity to support good parenting processes.

In such a system, ambit positional claims by parents would be firmly discouraged. The key question to which the Court would be encouraged to return again and again, would be, "How to you plan to parent your child(ren) and how do you intend to link this plan with your former partner's plan to parent the child(ren)"? Thus the language of litigation would focus on proposed parenting arrangements rather than residence, primary care, contact, access or visitation - all of which serve win/lose ways of thinking that commodify children and inevitably diminish the status of one of the parents. In such a system, formal consideration along the lines noted by Chisholm (1999) would also be given to the appropriateness of input into the adjudication process from one or more of the children.

Procedures such as this contrast with current adult oriented adversarial practice in which structure is at the centre of the debate and processes evolve as best they can once structure is decided. They do not, of course, relieve the adjudicator of the obligation of making a decision if such processes do not lead to a resolution beforehand. In my view, however, *beginning* with statements that link each child's needs, perceptions and attachments to proposed structural arrangements, better satisfies the aims of the Family Law Reform Act and the aspirations of the United Nations Convention on the Rights of the Child. It is also more likely to result in arrangements in which parenting after separation is shared, not necessarily (probably not even normally) 50 /50, and not according to a pre-determined (albeit rebuttable) formula, but in ways that are satisfying to children and to both their parents.

In the Journal of Family Studies (Moloney in press), I expand on a number of the issues raised here. I also tease out some of the implications of adopting processes that begin with each child's needs, perceptions and attachments and work outwards from there, even when litigation is the only dispute resolution option. I elaborate further in that article on the Court's obligation:

- in the light of what we know about the impact of entrenched conflict on children, to oversee processes that do not make decisions at the expense of contributing to an escalation of conflict
- in the light of what we know about the importance of authoritative parenting and parental scaffolding, to take seriously the benefits to children of experiencing ongoing nurturing from *both* parents or significant carers and on this basis, to allocate sufficient time for this to happen
- in the light of what we know about the devastating impact of violence and abuse perpetrated against children and former partners, to earmark cases in which such allegations are made and adopt timely proactive investigative and related procedures along the lines suggested by Magellan (Brown et al 2001) and Columbus (Murphy et al 2003) with a view to early determination and recommendations for future action
- in the light of what we know about the impact of poverty and the costs associated with parenting children, to build in to time allocation orders, a realistic assessment of their financial impacts.

Conclusion.

There can never be simple or formulaic answers to a significant number of post-separation parenting disputes. Similarly, a submission of this length cannot hope to do the question justice. It is important nonetheless, to remain focused on what is being aimed for from the perspective of the interests of the child, and the processes by which those aims are reached. Though it *should* be clear, that aim is often lost sight of. Litigation processes will remain problematic for children whilst they continue to begin with adult oriented ambit claims about structure. Children need a systemic overhaul of litigation processes. Those who doubt this need look no further than the ambit claims that all too often feature in conventional litigation processes - from the very first solicitor's letter sent to the respondent or to the "opposing" solicitor, to the letter in reply, through to affidavits that detail a plethora of minor parental "misdemeanors" over the years of a marriage.

That having been said, it is also acknowledged that a percentage of cases will continue to require what Elster (1989) had called "Solomonic Judgements", that challenge the limits of legal knowledge and legal processes and that defy solutions that might be offered by research-based knowledge or conventional human wisdom. For example, what should a judge do when a case of altruistic surrogacy turns sour, as it did in *Re Evelyn*? Or how should a judge respond when a mother in a lesbian relationship suggests that the man she calls the "sperm doner" has no place in the child's life, as happened in the tragic case of *Re Patrick*?

There is a sense in which the final arbiters of a small group of near impossible cases must simply do the best they can. Though we can learn from such cases, we should not *assume* that they necessarily provide guidance and structural solutions for future action. They might. But perhaps the dictum that hard cases make bad law applies to post separation disputes more than to disputes in any other area of human conflict. Where children's relationships with parents and significant carers are concerned, law should not presume

from the outset, how those relationships are to be constrained. But neither should litigation be a licence for exaggeration or gratuitous criticism of a person likely to be loved by a child who is at the center of proceedings.

My hope is that the Inquiry might be willing to look beyond the superficial, to an understanding that the proposed 50/50 residence presumption is largely adult oriented, inappropriately focused on structure and for most separating families unrealistic. Perhaps the proposal was meant to be largely aspirational in its intention. If that is the case, and if it succeeds in focusing attention on the fact that too many children miss out on receiving what *both* parents or other significant carers can offer them after separation, then the inquiry will have been a worthwhile development.

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Appendix 1*

OPTIONS FOR PARENTING PLANS*

(Children of School Age)

Prepared by Joan B. Kelly, Ph.D.

1. EVERY OTHER WEEKEND (Fri. 6 pm to Sun. 6 pm) 4/28**
 - 12 days separation from nrp too long for many children
 - Nrp-child relationship diminishes in importance to child
 - Nrp less involved in school, homework, projects
 - Residential parent has little time off from parenting
 - May be beneficial when nrp has angry/rigid/inept parenting style

2. E. O. WEEKEND PLUS MIDWEEK VISIT 4/28
(Fri. to Sun. & every Wednesday 5 pm – 8 pm)
 - No more than 7 days separation between nrp and child
 - Transitions to/from rp residence permit conflict
 - Nrp describe short visit as too rushed – no time to settle in
 - Ncp has little time for help with/supervision of homework
 - May be only option when nrp has early work hours

3. E. O. EXTENDED WEEKEND 6/28
(Friday to Monday 8 am)
 - More expansive weekend for Nrp and child
 - Nrp picks up/drops off child at school or daycare
 - Opportunity for parent conflict reduced
 - One less transition for child
 - Not workable if nrp lives too far from child's school

* These schedules are not intended to be adopted as guidelines. They present options and examples for professionals and parents to consider which highlight developmental and divorce research findings and issues.

** Number of overnights for child with non-residential parent during four week cycle.

4. E. O. WEEKEND + MIDWEEK OVERNIGHT 8/28
(Friday to Sunday, Wednesday 5 pm to Thursday am)
- No separation from nrp greater than 6 days
 - Nrp involved in homework during midweek
 - Transition at school avoids Weds. evening conflict
 - Nrp has opportunity for bedtime and waking rituals
 - Rp has regular, weekly evening off-duty
 - Can add Monday evening visit after Rp weekends
 - Children with difficult temperaments may not tolerate overnight in mid-week
5. E. O. EXTENDED WEEKEND + MDWK OVERNIGHT 10/28
(Friday to Monday am, Wednesday 5 pm to Thursday am)
- Same pattern as #4 above except longer weekend
 - Additional overnights on weekends creates 36% timeshare
 - Nrp must assume more responsibility for schoolwork
 - Opportunities for face-to-face parent conflict in front of child eliminated if use school or day care pick ups and drop offs
Nrp has more time for child's activities, projects
6. E. O. WEEKEND WITH SPLIT MIDWEEKS 14/28
(Fri. to Mon. am, alternating weeks;
Monday after school to Weds. am with Parent A;
Weds. after school to Friday am. with Parent B)
- 2 - 2 - 5 - 5 pattern of contacts with each parent
 - All transitions at school or day care avoid conflict
 - Consistent location of midweek residence each week
 - Five days between contacts works for most at age 5 and up
 - Both parents fully involved in child's work and play
 - Child is fully set up at each residence (clothing/school)
 - Children generally more satisfied with shared arrangements
 - May not work for child with difficult temperament or learning disabilities, particularly if parenting styles are very different or inconsistent

7. EACH WEEKEND SPLIT AND MIDWEEK SPLIT 14/28
(Friday 5 pm to Saturday 5 pm or Sunday am;
Saturday 5 pm or Sunday am to Monday am;
Midweek split residence as above in #6)

- No separation from either parent is greater than 3 days
- More appropriate for preschool children than #6
- More often an interim schedule until child is 5 or 6
- More transitions

8. EVERY OTHER WEEK 14/28
(Friday after school to following Friday am)

- 7 day separations are difficult for children younger than 6 or 7 years
- Eliminates face-to-face parental conflict
- Minimum number of transitions per month
- Parent and child can “settle” into routines, activities
- Change in residence each week may complicate lessons, daycare arrangements
- Adolescents may desire two week or monthly blocks of time

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* The above was kindly sent by Dr Kelly, who noted in a personal communication, “I have always found that schema quite helpful in highly disputed custody matters, because it provides so many other options than 15% or 50/50, and often became the educational tool that enables parents to reach agreement somewhere between the two extremes.”