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MARRIAGE CONTRACTS FOR THE MENTALLY RETARDED

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The guideline, in one diocese, for decisions regarding an individual's ability to enter into a marriage contract is an index of immaturity which is generally accepted by psychologists. As quoted by a noted psychiatrist, the "index" states:

A child found to have an IQ of 30 and a mental age of five cannot be expected successfully to complete school work more difficult than that of kindergarten grade.

An IQ of 45 and a mental age of seven will permit one to complete the second grade of school.

An IQ of 50 and a mental age of eight are required for the completion of the third grade.

An IQ of 65 and a mental age of 10 are necessary for the completion of fourth grade.

An IQ of 80 and a mental age of 12 should enable one to complete the fifth or sixth grade.

Persons with an IQ between 80 and 90 can sometimes complete grade school. Those with an IQ between 90 and 110 can often complete high school; those between 110 and 120 can complete college, and those above 120 can successfully pursue specialized graduate or professional training.¹

Psychological test scores of intelligence are but one consideration in determining the degree of retardation; cultural, physical, and emotional considerations as well as academic, vocational, and social effectiveness should also be taken into consideration. Nevertheless, the IQ is recognized as a shortcut to describing the degree of deficiency. Those who are at the lowest level of retardation are unlikely to live outside a mental institution. They need nursing care, cannot profit from training in self-help, are incapable of self-maintenance, and as a result require complete care and supervision. At a slightly higher level of functioning, the retarded can talk or learn to communicate, can profit from systematic habit training, can develop self-protection skills in a controlled environment, and can, under

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¹ A. NOYES & L. KOLB, MODERN CLINICAL PSYCHIATRY 280 (5th ed. 1958).

complete supervision, contribute partially to their own support. Those at this level of retardation are termed "trainables."

At a somewhat higher level, the retarded can talk, but will show poor social awareness. They are capable of self-maintenance in unskilled or semiskilled occupations. If given special education, they can, by their late teens, approximate the academic level of the fourth grade. But, they will need supervision when put under mild social or economic stress.

Those at the highest level, the "educables," can, by their late teens, develop academic skills approximating the sixth grade level. With the proper training they are capable of holding down jobs, but frequently need supervision and guidance when encountering serious social or economic stress.²

DUTIES OF PARENTHOOD

Growth need not move evenly in all dimensions. It is not uncommon to find adult physical and sexual desires in retardates who mentally and socially might be considered children.³ One question to be answered, if marriage be the consideration, is: Are they capable of carrying out the responsibilities of the marriage contract including the duties of parenthood? In 1964, two psychologists, Peck and Stephens, investigated this question in a large sample of 125 retarded males. Twenty-five mentally retarded male youths were drawn from the graduates of each of four institutions for the retarded, and 25 male youths who had received no training for the mentally retarded were used as a control group.⁴ All these men were between the ages of 18 and 26, and their IQs, as determined by the revised Stanford-Binet test or the Wechsler Intelligence Scale for Children, ranged from 50 to 75. In pursuing their investigation, the authors interviewed the male retardate himself, his parents or the person with whom he lived, and the subject's job supervisor. The interviewers were psychologists with specialized training in the area of mental retardation.

It is noteworthy that only 16 out of the randomly selected sample of 125 adult male retardates were married, divorced, or separated. This statistic is suggestive of a lack of interest in or eligibility for marriage. Also significant with regard to marriage for male mental retardates is that only 5 of the 16 had fathered children. Of the 16, 9 were married at the time of the interview, 6 others were divorced, and 1 was separated. Of the five males who had children, three were married at the time of the interview, one was divorced, and one was separated.⁵ Four out of five of these men

² *Id.* at 280-81.

³ Doll, *A Total Program for the Mentally Retarded*, 60 TRAINING SCHOOL BULL. 13 (1963).

⁴ Peck & Stephens, *Marriage of Young Adult Male Retardates*, 69 AM. J. MENTAL DEFICIENCY 818 (1964) [hereinafter cited as Peck & Stephens].

⁵ *Id.* at 819-20.

were viewed as unsuccessful in the role of fatherhood.⁶ The investigation showed that the major responsibility for the progeny of young male retardates in most instances will fall upon someone other than the retarded father. The authors concluded: A mentally deficient person is not a suitable parent for either a normal or a subnormal child. A mentally deficient person, as defined in their study, was one with an IQ between 50 and 75.⁷

FREQUENCY OF MARRIAGE

A second question which might be asked is: How frequently is marriage attempted by retarded men and women? Peck and Stephens, in the study quoted above, found that less than 20 percent of the sample retardates who were graduated from institutions for the retarded or from a high school with special education courses for the retarded had attempted marriage.⁸ Although they had been in institutions for the retarded prior to the study, all were living outside the institution at the time of the investigation. Studies of prisons, medical hospitals, and mental institutions have found the average marriage and fertility rates to be below normal.⁹ Miller also studied noninstitutionalized subjects.¹⁰ His sample included both men and women with IQs below 70 who, in addition, had failed to do acceptable work in regular school classes.¹¹ The percentage of male and female subjects who remained single significantly exceeded that expected for their age group.¹²

Dinger's group of higher level "educable" retarded children was drawn from files of special education classes.¹³ Followed into adulthood, each person included in the study was interviewed in his home, and his employer was interviewed as well. Fifty-five percent had married, and the marriage was usually to someone with more intelligence and education than the subject had.¹⁴ Both men and women were included, and the IQs ranged between 50 and 85, slightly higher than in the two studies previously quoted. The average IQ was 70 for males and 69 for women.¹⁵

Phelps, like Dinger, drew the names for the subjects to be included in

⁶ *Id.* at 827.

⁷ *Id.*

⁸ *Id.* at 820.

⁹ Lane, *Biasing Factors Affecting Estimates of Fertility Rates of Schizophrenics*, 78 J. PSYCHOLOGY 49 (1971).

¹⁰ Miller, *Ability and Social Adjustment at Midlife of Persons Earlier Judged Mentally Deficient*, 72 GENETIC PSYCHOLOGY MONOGRAPHS 139 (1965) [hereinafter cited as Miller].

¹¹ *Id.* at 143.

¹² *Id.* at 171.

¹³ Dinger, *Post-School Adjustment of Former Educable Retarded Pupils*, 27 EXCEPTIONAL CHILDREN 353 (1961) [hereinafter cited as Dinger].

¹⁴ *Id.* at 355.

¹⁵ *Id.* at 354.

his study from classes for "slow learners," which in Ohio means an IQ between 50 and 75.¹⁶ The files in 19 cities in Ohio were examined to obtain 163 cases. Males in the sample outnumbered females 2 to 1, which ratio agrees with the composition of special classes in Ohio.¹⁷ About 22 percent of the subjects in Phelps' study were married, the number of married women being twice that of married men.¹⁸

The answer to the second question, how many retardates attempt marriage, will vary somewhat. If the subjects studied live in an institution, the number attempting marriage will be lower than if they are able to live and work outside an institution. If women and men are both included, the percentage may be higher because more retarded women marry than do retarded men.

Finally, if the IQ is fairly high, *e.g.*, 85, the likelihood of marriage is greater than if the IQ is lower, *e.g.*, around 50 or 60. In the studies quoted, the percentage of those who attempted marriage varied as follows: 18.9 percent (Miller); 20 percent (Peck and Stephens); 22 percent (Phelps); and, 55 percent (Dinger). In the 1950 census, 73.5 percent of the general population were married.

DIVORCE OR MARITAL BREAKUP

A third question of interest in connection with the issue of marriage of the retarded is: How frequent is divorce or marital breakup in these marriages? As previously indicated, Peck and Stephens studied 125 male retarded youths of whom only 15 had married, 6 divorced, and one had separated.¹⁹ In Dinger's study 55 percent had married and 3 percent had divorced.²⁰ According to Phelps' findings, 2 of the 36 who had married experienced marital difficulties.²¹ In an earlier study by Gosney and Popenoe, 59 percent of marriages among retarded were rated as happy, while 31 percent were rated as unhappy.²²

Baller, Charles, and Miller restudied at midlife a sample of retardates initially selected in 1934.²³ A comparison of the marriage and divorce rates in 1935, 1951, and again in 1962 indicated that "divorce [is] a pro-

¹⁶ Phelps, *Postschool Adjustment of Mentally Retarded Children in Selected Ohio Cities*, 23 *EXCEPTIONAL CHILDREN* 58 (1956) [hereinafter cited as Phelps].

¹⁷ *Id.* at 59.

¹⁸ *Id.* at 60.

¹⁹ Peck & Stephens, *supra* note 4, at 820.

²⁰ Dinger, *supra* note 13, at 355.

²¹ Phelps, *supra* note 16, at 60.

²² Bass, *Marriage, Parenthood, and Prevention of Pregnancy*, 68 *AM. J. MENTAL DEFICIENCY* 318 (1963).

²³ Baller, Charles & Miller, *Mid-Life Attainment of the Mentally Retarded: A Longitudinal Study*, 75 *GENETIC PSYCHOLOGY MONOGRAPHS* 235, 265 (1967) [hereinafter cited as Baller, Charles & Miller].

gressively serious problem."²⁴ According to Miller's findings, 21.6 percent of the retarded subjects' marriages ended in divorce as compared with 9.44 percent of the marriages of their control group.²⁵ Baller, Charles, and Miller said that the divorce rate in the retarded group was between two and ten times higher than the national average. The highest divorce rate, like the lowest marriage rate, occurred among the female retarded subjects who had the lowest level of intelligence.²⁶ Retarded females enter into marriage twice as often as retarded males, and the divorce rate is twice that of retarded males. Finally, marriages among the retarded reflect the same trends found in marriages of normal subjects, namely, an increasing rate of divorce in recent years.

FERTILITY RATES

A final question asked in this discussion of marriages of retarded subjects is: How likely is it that children will be born in these marriages, *i.e.* what is the fertility rate of the retarded? Several generalizations apply in the answer to this question. First, fertility, like marriage, is lower in institutional settings, namely, prisons, hospitals, and mental institutions. Second, the fertility rate will vary with the category of mental deficiency, and generally, fertility will be lowest at the lowest level of retardation and increase as the intelligence level among the retarded rises.²⁷

Fertility trends in some types of mental deficiency as, for instance, mongolism, or Down's syndrome, have been studied, but information about mental retardates generally is scanty and often is unreliable. Moreover, substantial gaps in our knowledge of the causes of mental deficiency prevent accurate interpretation of the fertility trends that are known. Mental deficiency is an umbrella term which includes a kind of human behavior that may have any number of causes. Some well-defined clinical entities, which are presumably hereditary, have been separated. PKU (phenylketonuria) is illustrative. Others, like mongolism, are well defined, but the causal process is obscure. The large mass of mental deficiency must be considered to lack diagnosis as to cause. The well-defined types of mental retardation are characterized by distinctive neurological signs, specific metabolic errors, or both. On the whole, the fertility of such afflicted individuals is very low or nonexistent. The intelligence level of these well-defined categories of mental deficiency is usually very low. The mortality rate is usually very high. Most often the retardates in these categories will have to be nursed in institutions for their entire lives, and hence, applications for marriage from subjects in these categories are very unlikely.

²⁴ Miller, *supra* note 10, at 171.

²⁵ *Id.* at 172.

²⁶ Baller, Charles & Miller, *supra* note 23, at 265.

²⁷ Book, *Fertility Trends in Some Types of Mental Deficiency*, 6 *EUGENICS Q.* 12,113 (1969).

In answering the previous questions, the retarded in the various studies generally were at a relatively high intellectual level and were able to live outside the institutions. They could hold jobs and were capable of social life if they received training and education. Supervision and guidance, however, frequently would be needed when serious social or economic stress was encountered. Peck and Stephens studied male retardates with IQs between 50 and 75, but noted that only 15 of the 125 subjects sampled had married. In their opinion, the five males who had begotten children were generally unsuccessful as fathers; the responsibility of raising the children had been passed along to parents or social institutions in four cases.²⁸ Miller investigated both male and female retardates with IQs ranging between 50 and 85. Seventy percent of the married retarded had begotten children as compared with 81.25 percent of the control group. The average number of children was about the same for both retarded marriages and marriages in the control group, but the percentage of marriages in which five children were born as well as the percentage of marriages in which no child was born were both higher in the marriages of retardates.²⁹ In Dinger's study, the average number of children in the retarded subjects' marriages was 1.5.³⁰

The fertility rate of male and female mongoloids has been the subject of extensive research. One reason for the voluminous literature is that sexual infantilism of varying degrees often occurs in the mongoloid syndrome. One study of the fertility rate of mongoloids was conducted with a small sample comprised of 21 male and 23 female mongoloid patients in an institution for the retarded.³¹ Their average IQ was 26. Of the 21 males, 16 were either sterile or unable to reach ejaculation.³² In all of the females, the onset of menstruation was delayed. Once established, however, the menstrual periods seemed normal in duration and regularity.³³ Stimson reported several cases where mongoloid women became pregnant, noting that half of the children born to these women were also mongoloid.³⁴

Huntington's chorea is a hereditary form of mental deficiency; the disease has been traced in families to a dominant Mendelian trait.³⁵ Strangely, the number of children born to persons affected by Huntington's chorea seemed to be higher than the number of children born to

²⁸ Peck & Stephens, *supra* note 4, at 827.

²⁹ Miller, *supra* note 10, at 172.

³⁰ Dinger, *supra* note 13, at 356.

³¹ Stearns, Droulard & Sahhar, *Studies Bearing on Fertility of Male and Female Mongoloids*, 65 AM. J. MENTAL DEFICIENCY 37 (1960-1961).

³² *Id.* at 39.

³³ *Id.* at 40.

³⁴ Stimson, *Understanding the Mongoloid Child*, 46 TODAY'S HEALTH, Nov. 1968, at 56, 58.

³⁵ Patterson, Bagchi & Test, *The Prediction of Huntington's Chorea*, 104 AM. J. PSYCHIATRY 786, 795 (1948).

marriages of unaffected brothers and sisters.³⁶ The conclusion that the dominant gene for Huntington's chorea increased the fecundity of affected persons as compared with unaffected siblings seemed plausible. Another factor noted was that those affected by the disease were in the lower socio-economic strata and had less education than those who were unaffected. Both of these conditions would favor the spread of the disease and are usually associated with larger families.³⁷ Huntington's chorea does not become evident until late in life after children have been born. Whether low socioeconomic levels increase the likelihood of Huntington's chorea or whether Huntington's chorea depresses mental ability, educational achievement, and socioeconomic status is not clear.

CONCLUSION

In the last two decades, research has shown that extra chromosomal tissue is present in those afflicted with Down's syndrome or mongolism, but the association is not complete. Some individuals with extra chromosomal tissue are normal in intelligence, and the relationship between the extra chromosomal tissue and the symptoms of Down's syndrome is not known. For many years it has been clear that children born late in marriage were more likely to be affected by this form of mental deficiency. Some form of ovarian or uterine deficiency or hormonal insufficiency was hypothesized. More recently, a theory was proposed that mongolism was due to a decline in coital frequency, which was also associated with the later years of marriage.³⁸ From this hypothesis, Welch conjectured that those practicing the rhythm method of birth control might be more likely to produce children with mongolism.³⁹ James has argued, however, that the facts do not bear out this hypothesis unless other assumptions, which are unlikely, also can be supported.⁴⁰

Finally, marriage for the "weakminded" is prohibited in some of the United States, including, for example, Iowa, Pennsylvania, and South Dakota.⁴¹ In a significant number of other states, depending on the interpretation given the statutes, marriage for the retarded person is probably illegal.⁴²

³⁶ Reed & Palm, *Social Fitness Versus Reproductive Fitness*, 113 SCIENCE 294, 295-96 (1951).

³⁷ *Id.* at 296.

³⁸ Welch, *Down's Syndrome and Human Behavior*, 219 NATURE 506 (1968).

³⁹ *Id.*

⁴⁰ James, *Mongolism, Delayed Fertilization and Sexual Behaviour*, 219 NATURE 279 (1968).

⁴¹ Bass, *Marriage, Parenthood, and Prevention of Pregnancy*, 68 AM. J. MENTAL DEFICIENCY 318, 319 (1963-1964); see IOWA CODE ANN. § 595.3 (Supp. 1975); PA. STAT. ANN. tit. 48, § 1-5 (Supp. 1975); S.D. COMPILED LAWS ANN. § 25-1-16 (Supp. 1975).

⁴² Bass, *Marriage, Parenthood, and Prevention of Pregnancy*, 68 AM. J. MENTAL DEFICIENCY 318, 319 (1963-1964); see DEL. CODE ANN. tit. 8, § 110 (1974); KAN. STAT. ANN. § 23-120 (1974); ME. REV. STAT. ANN. tit. 19, § 32 (1964); MINN. STAT. ANN. § 517.03 (Supp. 1975); MO. ANN.

Review of the literature on the retarded in connection with suitability for marriage generally supports the index of immaturity applied by one diocese as a guideline in decisions. Since studies often include retarded at different levels of intelligence, it is difficult to draw a conclusion covering all cases. The marriage rate among retardates, however, is lower than in the general population from which petitions for marriage usually come; divorce and marital breakup are more common; the fertility rate is lower; and, the chance that the children will be raised by their own parents is less.

STAT. § 451.020 (Vernon Supp. 1975); MONT. REV. CODES ANN. § 120 (1957); N.H. REV. STAT. ANN. § 457:10 (1955); N.J. STAT. ANN. § 2A: 124-2 (1969); N.C. GEN. STAT. § 51-3 (1966); N.D. CENT. CODE § 14-03-07 (1971); VT. STAT. ANN. tit. 18, § 5142 (Supp. 1975); VA. CODE ANN. § 20-46 (1950); WASH. REV. CODE ANN. § 26.04.030 (Supp. 1974); WIS. STAT. ANN. § 245.03 (Supp. 1975).