

MIDTERM EVALUATION

Family Law – Fall 2008

Directions: Please consider the problem below and take time to organize a thorough response to the question. Submit a written, essay-style response in *no more than one (1) blue book*. Do not submit your outline or organizational notes. **WRITE ONLY YOUR SOCIAL SECURITY NUMBER ON THE BLUE BOOK TO PRESERVE ANONYMITY OF GRADING.**

Problem:

CML → Richard George and Pia Girolamo fell in love soon after they met at a concert. On June 13, 2002, Richard G. married Pia G. in a religious ceremony in the State of Dale, where only ceremonial marriage is recognized as legal. They lived together as husband and wife in the State of Dale until just recently when Richard began suspecting that Pia was unfaithful to him. He had heard from a friend that Pia was spending a considerable amount of time at a restaurant in the nearby state of Butts. Two weeks ago, Richard went to Chili's for lunch, and took a table near the back of the restaurant. He saw Pia enter with an older man. They took a booth together and sat very close to one another. Pia looked enthralled with every word uttered by the older man. They laughed conspiratoriously and the man touched Pia's hand often during their encounter. When the couple left the restaurant, Richard also exited, a safe distance behind, and saw that each had departed in a different direction. The next day, Richard observed a similar meeting between his wife and the older man. Later that day Richard discovered an envelope in Pia's car, addressed to "Pia Josephs" at 52 Sugaridge Road in the town of O'Keefe in the State of Butts. It was postmarked September 22, 2008. Richard confronted Pia about this and she informed him that prior to her marriage to Richard, she had been living with a former boyfriend, Andrew Josephs, at that address in the state of Butts. Pia told Richard that she had recently heard from Andrew because he had received some correspondence for her at his address in Butts. Pia said that she met Andrew at Chili's and he had given it to her. Although Pia denied having an extramarital affair with Andrew, Richard felt betrayed. The very next day, a Richard's friend reported seeing Pia exiting a condominium unit on Sugaridge Road in O'Keefe. Since then, Richard has been sick at the thought that his wife may have been living a secret life and that there were important things that he did not know about Pia at time of their marriage. He has been unable to sleep or eat well since these events began.

AM delivery →
opportunity →
crime + UNS →
Richard moved out of the marital home on October 2, 2008. He moved in with his sister at 25 Cherry Blossom Drive in the town of Marjorie, in the State of Butts. Common law marriage is recognized in the State of Butts.

Richard comes to your office today with a request for legal advice. He wants to know his options. What are the legal issues confronting Richard and how would you advise him?

if she was prev. married could get annulment

procedural reqs

did he desert her?
defense - con. desert
just cause

When Richard comes to my office I would first discuss with him the goals he has in mind when he contacted me. I would ask him if he has tried counselling, and if not, if he would like to try counselling - I would ask him if there is any possibility of reconciliation. Assuming there is no possibility of reconciliation, I would then advise him of the issues he needs to be aware of in terms of his rights and liabilities.

good
role of
counsel

The first issue I would need to address is in what jurisdiction to bring the action for divorce. Richard and Pia were married in the state of Dale, but that is not controlling as to where to bring the divorce action. I would look to where the parties were domiciled. They lived together as husband and wife in the State of Dale until

of Dale. However, since Richard moved to his sister's house in the State of Butts, he may wish to file there.

The court must have subject matter jurisdiction in order ✓ to bring the action in that state. Subject matter jurisdiction is the power/authority of the court to ^{adjudicate the} hear the case. ^{controversy} Subject matter jurisdiction ^{for what - divorce?} will exist in the State of Butts if

Richard has met the residency requirements. So I would have to look at that state's statutes to determine what the residency requirement is. Generally,

residency requirements are from 6 months to one year.

Richard moved out of the marital home on October 2, 2008.

So unless the state has an extremely lenient ✓ residency requirement, he probably has not lived in the State of Butts long enough to file for divorce. In order to file in the State of Butts he

would have to wait the statutory period, The court would also have to find that Richard is now 'domiciled' in the State of Butts, which means he has moved there with the intent of living there permanently, and that he is not just there as a mere appearance in order to get a divorce. So Richard could file in Butts once he has met the residency requirements.

In order for the State of Butts to make determinations as to alimony and property division they also have to have personal jurisdiction over the defendant, Pia. This can be accomplished if she is served in the state, or has minimum contacts with the state, or if she has purposely availed herself to the benefits of the laws in that

✓ bind the defendant to ^{its} judgment. The court

can issue the divorce if they only have

subject matter jurisdiction, but they will not be

✓ able to determine alimony and property division

unless they have personal jurisdiction over the

defendant. Therefore, I would explain to

Richard that we need to file somewhere where

we can get personal jurisdiction over the defendant.

So if it is not inconvenient for ^{him} ~~he~~ ^{he} may

wish to file in the State of Del. (where the

wife is in the marital home).

The next issue I would discuss with

Richard would be the grounds for divorce.

Divorce may be obtained (depending on jurisdiction)

on fault grounds OR on no-fault grounds.

where the
cause of
action
arose
anyway.

Sorry!

Richard may have a fault based ground for ~~divorce~~. ~~Richard may be able to successfully assert that Pia has committed adultery.~~ Adultery is the act of voluntarily having sexual intercourse with ~~someone~~ other than your spouse. A ~~prima~~

for divorce. Richard may be able to successfully assert that Pia has committed adultery. Adultery is the act of engaging in sexual intercourse with someone other than your spouse. A prima facie case for ~~divorce~~ ~~on~~ adultery can be made by showing ~~these~~ facts and circumstances that would reasonably and necessarily lead to the conclusion that someone had committed adultery. Richard would have to show that Pia had both the inclination/disposition and the opportunity. ^{To commit adultery} He could testify to the fact

another man on various occasions. He could testify to the way she acted with this man: touching him, sitting close, flirting. This may all lead to the conclusion that she had the inclination/disposition to commit adultery. Also Richard could have the friend justify to the fact that he/she saw Pia exiting a condo unit on Sugaridge Road in O'Keefe. Richard could have an investigator find out whether this condo was the same one the Pia and the other man used to live in together. If it is then this visit to the condo would be evidence of her opportunity to commit adultery. Adultery is proved by circumstantial evidence so it may be enough to show that ① Pia told Richard

Richard found a letter^{addressed to Pia} with a 'Sugaridge Road' address, ③ that she met with the man to get

some mail he received at his house for her, ④ she was then seen at Sugaridge Road Condo. This all

seems to lead to the conclusion that she was at that man's condo, which would give her

opportunity to cheat. If Richard can

prove disposition/inclination and opportunity to

commit adultery then he may have a fault-ground base for divorce.

This next issue is whether Pia has any

defenses to this action. It is a stretch but

she may be able to say that Richard

condoned the ~~action~~^{misconduct}, because he remained

in the marriage. For this defense to be

facts to
apply to
rule
of law

successful Pia would have to prove (1) that Richard forgave the known marital fault and (2) that he carried on in the marriage in all its aspects.

would ask Richard if he had been intimate with Pia

since these incidents. If he has this may be evidence that he forgave her, but if he merely stayed

with her out of necessity while he found another place,

then it will not be seen as condonation. IF this is a defence what will be the effect of asserting the defence?

Richard may have another fault-based ground

~~for divorce - cruel and unusual treatment~~
for divorce → cruel and unusual treatment.

maybe in some jurisdictions

Richard may claim that Pia's actions of

seeing this other man has caused him injury.

For a court to find cruel + unusual

treatment there must be a course of conduct

incomplete def'n of cruelty

the general fault ground is "cruelty" - especially - may call it something restrictive

which he/she knew or should have known would harm the T. The harm or injury must be of such a nature as to cause injury or ~~impair~~ ^{impair} the T's ^{life} ~~life~~ ^{limbs or} ~~limbs~~ ^{members.} ~~limbs~~ ^{members.} be physical or mental. But it is easier to ~~life~~ ^{limbs or} ~~limbs~~ ^{members.}

prove if there is some physical affect. In this

case the harm was mental, but Richard is

experiencing physical injuries as a result. He

has been unable to eat or sleep well & I would

ask him also if he lost weight, or had to go

on medications, Also the actions must be

intentional. And Richard will have to show that

he is an innocent party. Right \Rightarrow must be innocent + injured,

Richard may have a difficult time

proving cruel and unusual treatment, because

he will have trouble showing an intentional course

of conduct or a pattern of behavior leading to

the injury that is severe in nature so as to

give rise to injury / or threat of injury to life, limb,

good,
you give
the
conclusion

or health. I would not advise Richard to pursue this ground for divorce.

Also once again Pia may claim as a defense condonation or even ^{???} connivance. She may argue 'you knew I was meeting this man and you did nothing about it.' ^{⇒ connivance implies participation} However, Richard did ^{on} ~~bring~~ ^{about the marital misde} not facilitate or set-up the wife's action, and as soon as he confirmed it, he went and spoke to her about it.

The next issue is whether Richard should seek to obtain a no-fault divorce. Every jurisdiction allows no-fault divorces. In these types of divorces misconduct is irrelevant.

I would advise Richard that I recommend

have to wait 6 months to file. I would also check with the statutes in the jurisdiction to see if there is a waiting period, or if the jurisdiction requires them to live apart for a certain amount of time.

In order to get a divorce on no-fault grounds Richard would still have to show that there is a legally cognizable ^{reason?} ~~ground~~ for divorce. In some jurisdictions he would have to show irreconcilable differences, in others, irretrievable breakdown. This ~~is~~ means he must show In all jurisdictions no would have to show that there is no reasonable likelihood of reconciliation. I

some require voluntary separation for a specified period, I would advise Richard that it is in his best interests to go with the no-fault

grounds for divorce.

Pia may argue as a counterclaim ~~that~~ to the ~~fact based divorce~~ divorce that Richard

✓ "deserted" her when he left the marital home.

In order for her counterclaim to be successful she would have to show (1) that Richard left the

✓ marital home with the intention not to return (2) that

✓ he did not have consent of spouse (3) that he

did not have justifiable cause (4) and that he

✓ stayed away for the statutory period. Her

counterclaim will fail because Richard will

likely be able to prove that he had ✓ "justifiable

cause" to leave. Adultery and cruel treatment

are justifiable causes to leave. Any breach of

Also Richard could claim 'constructive desertion' as an ~~affirmative~~ affirmative defense to her counterclaim. ~~Since she was~~

meaning:
he was justified in leaving.

The next issue I would discuss with

Richard is the possibility of an annulment.

If he divorces Pia he ~~to~~ may have to

✓ pay her alimony (it does not matter if she engaged in misconduct). Annulment is the

Judicial declaration that the marriage is

void because of the existence of some

✓ defects or impediment that existed at the

time of marriage. If Richard is the

'breadwinner' he may wish to seek an

annulment (if possible) in order to avoid

✓ paying alimony.

In this case there is evidence that Pia may have been previously married to that other man. His name was 'Andrew Joseph's'. She

✓ received mail at his residence addressed to Pia Joseph's. This may indicate that they were married. If they were legally married then

her second marriage to Richard would be

✓ void because polygamy is a substantial

~~impediment~~ impediment to marriage. Even if she was not legally married to Andrew, ^{in a legal ceremonial m.} they may

have had a common law marriage. They lived together in the State of Butts. Common law marriage

is recognized in the State of Butts. To have a common law marriage the parties ~~must~~ must

Contract; (2) mutually agree + consent to enter marriage contract; (3) cohabit continuously for statutory period; and (4) hold themselves out to public as married.

I would suggest to Richard that we

investigate into Pia's relationship with Andrew

to see if they had either been legally married

or had established a common law marriage.

Common law marriage can only be dissolved by

divorce. If Pia had been married then

her marriage to Richard is void. Although

the second marriage may be 'presumed' valid,

Richard can overcome this presumption by

showing that Pia was not 'legally capable'

of marrying him, because she was already

married.

What about fraud as a potential ground for annulment?

Also there may be some procedural impediments to this marriage. To be valid a legal/ceremonial marriage: (1) the parties must be ^{legally} capable of entering into the marriage contract; (2) they must mutually consent and agree to enter the marriage contract; and (3) they must actually enter the marriage contract in a manner prescribed by the laws of the jurisdiction.

In some jurisdictions that requires solemnization and a license. I would look into the laws in the jurisdiction to see what the procedural requirements are. Richard and Pia may have only had a religious ceremony. If they did not get a license that is a procedural impediment. At most courts will not annul a marriage based on procedural defects. Also Pia may claim as a defense

annulment based on fraud or procedural defect, estoppel or laches, because so much time has passed.

They were married in June of 2002. It has been six years.

↓ But he has just become aware of the potential impediments & since he has acted immediately to leave the