FAMILY LAW - FINAL EXAM
Fall 2010
On-Line and 6:30 Mondays - Condurelli

Directions: Please write your exam number on your blue book and on your exam. Then, read the following problem carefully. Take the time to organize your answer. Finally, respond in essay form, using only one (1) blue book.

Please write legibly and double space your writing.

Problem 1 (Approx. 2½ hours) 75% - (limit: one double-spaced blue book)

Michael (Husband) and Kate (Wife) marry after meeting in law school. They both obtained employment at high profile law firms after graduating. After two years of marriage Kate became pregnant with the parties' first child, Doreen. Kate took maternity leave and returned to her position after four months. When their second child, Elisia, was born, four years later, Michael decided to take paternity leave to stay at home and care for the children. While the children were in pre-school, he took on regular volunteer work at a local public interest firm. This developed into a part-time, paid position once both children became enrolled in a full day school program. Kate's legal prowess has earned her the status of partner at the law firm where she is employed. She now earns $250,000 per year. Michael has been earning $30,000 and has recently received an offer from his public interest firm for full time employment at double the salary. While Michael believes that he could earn more at a firm in the city, he has become accustomed to having time to attend the school meetings and extracurricular activities of his daughters. Also, he enjoys the work he does at the small, local firm, part-time.

After seventeen years of marriage the parties have separated. The children are 15 and 11. Elisia attends a special program for children with behavioral problems. She is defiant and oppositional and was suspended from school twice for assaulting another child. Doreen attends a private high school in the suburbs and says that she wants to live with her mother, although her belongings remain in the marital home where Michael has remained.

Over the last few years of their relationship, Kate has become increasingly irritated with Michael's lack of interest in professional advancement. Recently, she has developed a social relationship with a co-worker which precipitated feelings of dissatisfaction with her marriage to Michael. In turn, Michael has felt inadequate and unappreciated and has developed a relationship with a neighbor who has a child Elisia's age and who is often home in the afternoons. Last week, prior to separation, the parties confronted one another about these sentiments. Kate informed Michael that she would be away on business with her co-worker on an upcoming weekend. Michael accused her of being self-absorbed, shallow and tramp-like after he noticed the seductive looking clothing that she had selected for this “business” trip. Her retort came in the form of a firm and
stinging slap to Michael’s face. He then informed his wife that if she left, she should not return. She has not.

Michael has since reviewed the prenuptial agreement the parties signed the day before their wedding. The agreement provided that in the event of the divorce of the parties, Kate would receive custody of the two minor children, and that she would receive alimony from Michael in the amount of $500 per month, along with a car and their marital home (which was purchased with a down payment of $5,000, provided by Kate’s parents.) The marital home is currently worth $700,000 and is subject to an outstanding mortgage of $175,000. The agreement further provided that Michael would be entitled to keep his stock in Verizon, which he had acquired from his mother, prior to the marriage. It was worth $5000 at the time he received it, and now, it is worth $20,000. At the time that the agreement was signed, neither party had a lawyer. Kate drafted the agreement using a legal form book. During the marriage the parties also acquired a lakeside cottage as a vacation home.

Michael comes to you for advice about his rights, responsibilities and options. Please advise.

Problem 2 (Short Answers- Approx. 30 min.) 25%
Directions: Please read the text below then refer to the instructions following the text.

Husband & Wife were married in State A and resided in State A for four years when they began to experience marital discord. One child was born during the marriage: Susan, age three. Months before Susan’s birth Husband discovered that Wife had an ongoing affair with another man. Unbeknownst to Husband, this man was Wife’s former husband, from whom she obtained a divorce in the Dominican Republic. The divorce was obtained after Wife signed divorce papers in State A before a notary public. The papers were in Spanish, a language Wife does not speak. Wife never went to the Dominican Republic. After this discovery Husband asked Wife to leave the marital home. She did so taking Susan with her to live in State B where Wife has family. Husband and Wife had hired a nanny for Susan in State A, which nanny lived in the parties’ in-law apartment. Wife declined to take Nanny with her to State B to live. Nanny misses Susan and wants to continue to spend time with her.

After seven months of separation, Husband has lost all hope for reconciliation. He wishes to legally sever his relationship with Wife.

Define the following terms and explain their application, if any, to the fact pattern above:
(Please write your answers in the spaces provided on the next pages.)
1. Annulment:

2. Desertion:

3. Doctrine of Comity:

4. Presumption of Paternity:
5. Condonation:

6. Domicile:

7. De Facto Parent:
8. Subject Matter Jurisdiction:

9. Personal Jurisdiction:

10. Uniform Child Custody Jurisdiction Act:

Have a happy holiday!
Students: Read the following carefully. Take the time to organize your answer. Then respond in essay form, within the page limitations indicated.

PLEASE WRITE LEGIBLY.

Problem 1 (Approx. 2½ hours) 75%  (No more than one blue book, double spaced.)

Carolan Ricks and Andrew Ricks married in 1990 in the State of Alfonso and separated in November of 2004. Two children were born of the marriage, Daniel, born in 1991 and Jill, born in 1999. Both husband and wife are in their early 40’s and are well-educated. Andrew is an entrepreneur. Carolan was an administrative assistant at the start of the marriage, but she has not worked in that field since Danny’s birth. Both parties were born of wealth and privilege. Carolan is in generally good health but has a history of hypertension. Andrew has struggled with compulsive gambling, depression and anger management issues. Both parties have participated in raising Danny, now 13 years of age and attending a boarding school in the State of Alfonso. Jill has a nanny and attends private kindergarten. Carolan attends all of Danny’s and Jill’s school activities and she has been responsible for doctor’s visits and teacher’s meetings. Carolan and Andrew have shared household chores, but Carolan was largely responsible for the maintenance and the operation of the marital home throughout the marriage.

Each spouse had acquired assets prior to the marriage. Carolan owned a home in Alfonso in which the parties lived when they were first married. After residing there for two years, the wife paid off the mortgage there and together, the parties financed the construction of a new, eight bedroom, eight bathroom home where they moved in the nearby State of Aberdeely. Andrew owned stock which he received as a gift prior to the marriage, now valued at about $275,000.

After marriage, Andrew acquired a Boston restaurant which is now worth $675,000. Carolan is the beneficiary of a family trust from which she receives income of $10,000 per month. Andrew has earned $500,000 in each of the last three years. Both husband and wife have their own retirement accounts and they have separate funds in their own individual checking and savings accounts. They also have joint accounts with approximately $300,000 on deposit. The parties have enjoyed an upper class lifestyle together.
Liza has many issues to sort out and the first thing I would advise her to do is to step back and think about her needs, wants, and desires with respect to her marriage and her children. And I would fill her in on her legal options and the potential arguments she will be up against from Don.

The first issue I would discuss with Lisa would be the validity of her marriage with Don so that any possibility of annulment may be dealt with right off the bat. Assuming the marriage was a legal union entered between the two at Tom voluntarily and that they both agreed to marry, I would likely advise Lisa that annulment of her marriage was not an option. There is no evidence of incest, adultery, or bigamy, which could void the marriage, nor is
There is evidence of fraud, duress or moral license to be conveyed at the marriage to render it voidable, and being in the marriage for 11 years, mail fact to save otherwise impossible

Therefore, I would then discuss divorce with Lisa.

To obtain a divorce, there is a presumption to valid and there is no reason to terminate it must be found. I would first tell Lisa that it will be up to a court to issue a divorce decree (i.e. we and she just can't agree on divorce; it requires action by the state).

Depending on how Lisa wants to proceed, I would tell her of the basic rules for a no-fault divorce as well as a divorce for alleged fault grounds. Lisa should know that fault grounds will take more time, effort and money to prove, but she may see a

Rather quickly with this type of divorce as opposed to
A no fault divorce. To obtain a no fault divorce, the
allegation must be that the marriage has irretrievably
broken down and that the parties are no longer
living together. Depending on the state, a no fault
lisa may file either jointly with dan or unilaterally by
file herself. If the state is like Massachusetts, for exam-
one would go with a (S) Divorce, in which the end
Dan would file an affidavit with the court and the man
has irretrievably broken down continuing to date and file
a notarized separation agreement spelling out all relevant terms
and conduct's whereby the court will grant a hearing in
30 days and issue a decree (D) which would become
final in 90 days. As lisa needs (D) agreement and
they have a fully legal estate with children involved th
The equivalent of a Massachusetts 'no-fault' divorce, whereby the husband files for divorce citing irreconcilable breakdown. A complaint filed, hearing scheduled in 6 months. However, as indicated, may be the way to go if she can't get Dan to agree to settlement. Lisa may wish a file for Division on fault ground, which typically include cruelty, adultery, desertion, misconduct.

A gross and confirmed report of indecency with a minor, and non-support of these grounds Lisa could apply as cruelty. Cruelty is the physical or non-physical abuse of a spouse that generally is seen as a pattern of behaviour, but can be one particularly shocking incident, in which the spouse uses or intended to does no physical harm to another spouse. While Lisa has not given any indication of a pattern of abuse or incident, it is pending.
and taking him out to the house while his special needs son stayed crying inside could constitute as a stressful incident.

Because of it, however, Don could use recrimination as a defense, that Lisa was incredibly guilty of everything she did and that provided him to do what he did by punching him while Peter was in the house. Again, jurisdiction will determine if there is a valid defense as recrimination is not available everywhere (and not in Massachusetts), Lisa should be protected that Don also could use cruelty as a ground for divorce if he desires to divorce first and he could even to some extent alleging her punching him was the cruel treatment. Don would

Then have the burden to prove a health manifestation due to the contact + Lisa could defend many recriminations.
Proceedings and allege facts pursuant to adultery with
Dr. McDermott. Adultery is a sexual relation with a per-
eon person. To prove this, one would have to:
(proven by circumstantial evidence) that Lisa had the oppor-
and occasion to commit adultery (and with State of
and statutes similar to Massachusetts). The 3rd party to the
Adultery would have to be named and summoned to the
Proceedings.)orem the facts given, there doesn't seem like
There is much evidence of adultery, but there should be some of
the possibility of Lisa assisting in a miscarriage.

Don could also try to allege that Lisa cheated the
monkeys have when she left to have other he called her

And Desertion is the voluntary abandonment of the home
without spouse consent not justification with no intent

At various for a statutory period of time or not it would be
Unfortunately, Ron would likely not succeed on this case as (see) should have not voluntarily; Ron locked her out of the home. Only time was no intent to remain away. To have no Lisa returned. The rest day was Ron makes key.

Lisa should own be sure that Ron who could defend the arson of desertion with constructive abandonment, in that her case was justified (he locked her out), but it probably was even then that Ron. Lisa should be sure that Ron could also defend any cruelty against with conduct (figure) on Lisa's part. She begged him to rest. Probably, however, their defense may not be necessary at the cruelty against Ron.
division may lose her. Property division is jurisdictinally dependent, but there are three main theories: The Separate Property Theory which states all property owned separately by the parties remains their separate property. The Equitable Division Theory which says that all property acquired during a marriage is subject to division in a fair equitable manner as determined by recent. This would exclude necessarily gifted or inherited property. The last theory is the Community Property Theory which says that all property acquired during the marriage would be split 50-50. This property owned individually staying with that individual.

In State A, it has a jurisdictional statute like Massachusetts, the equitable property theory would also apply. This means that the property gift
Undivided equally with Dan. Regardless of the fact that it is in [illegible] name in her own bank account. However, the court may order that the funds from her grandmother would remain with [illegible]. If the court considers the source home and the [illegible] items would also be subject to the equitable division as well as Dan's partnership in his business at the jurisdiction of state. A moral (illegible) are required down the manage. Dan's [illegible] inheritance, however, would remain with him. To problem with this property division. So there is no set amount that can be for told to live on. The court will divide the assets in a manner it feels is equitable in light of the contribution each made to the marriage as well as the debts and liabilities. There is no set order. In turn did the
In the event of a divorce, the jurisdictional requirements must be met. These are generally determined by the laws of the state where the marriage took place. In a case where a husband and wife enter into a prenuptial agreement, the terms of the agreement are typically enforced. If the agreement is not honored, either party may seek legal recourse. The court may then intervene to ensure fair division of assets and maintenance. If one party is found to be at fault, they may be required to pay alimony or spousal support. In the case of a public figure, additional considerations may apply. The court may order the public figure to reveal certain information or pay for legal expenses. The decision is made based on the evidence presented, including character, actions, and intent of both parties.
Combination basis. Fault basis would award alimony to punish for wrongdoing in the marriage (i.e., to punish ship for cruelty or (innanet) need). Award alimony based on the spouse's need and would serve much assistance to keep the spouse from going on public welfare. State has is determined on a certain lifestyle obtained during the marriage should be continued after the dissolution.

The rehabilitative basis is alimony awarded for a period of time for the recurrance spouse to rehabilitate another self thru education or job training. It seeks and when rehabilitation achieved. Contribution basis is the return of a spouse based on the contribution cash spouse had made doing the marriage either monetary.
Lists or Den's award of alimony would follow.

Whatever State A follows as far as a theory.

Each jurisdiction, however, will take certain
factors into consideration for all these theories
such as: length of the marriage, age, health and
status of the parties, emoluments, contributory
earning (present and potentially). In Case A,
one could argue that she and Den have
had an 11 year marriage whereby he earns
quite a bit more money than she does and that
this has provided her with a certain lifestyle
(cook, maid and other things). Den could
say this business may be earning a bit of money
but was more unstable due to the economy and
...
Nurse at a high salary. Both parties and
contributed towards living expenses equally. It was
best for them to decide how each party's contributions
would be divided. It could be up to
do so on their own. It would be up to
the court to decide how each party's contributions
would be divided. It could be up to
The court may have found that an
11-year marriage may not have yielded much.

Lisa should be aware of that. Lisa should also
be aware that she could ask for support during a
vacation. She does not have to be officially
awarded. We would have to see if that is what
we want this.
but this would also play a large role in property division and alimony. If there is no one in existence, the court would act to see what such an approach could deemed fair (usually unconscionably) with full fair disclosure of assets and property and fair at the time it was ordered into. If state it applied to

Massachusetts second look (second) the court could also look to see if the pension was in set

No time for dissolution of the marriage.

Lion should be sure that any support

☑️ does迠 and cease by the court would be modifiable

not merged with the dissolution judgment.

This would require a material change in circumstances no specific change in
To separate them for judgement, he or she would have to prove this as a cause-type action and usually it would have principles in a proper court (not probate).

Lisa would also be very interested in how the custody of her children would be ascertained.

The first thing she would have to look at is whether she is a Caregiver. She should get custody if she is and this was the statement that the Defendant Lisa would have to prove that she is, in fact, the primary Caregiver to her children.

Lisa's case is strong here. We also win on the assumption that the responding for all the childcare tasks, chores, appointments, school meetings, curricula, activities and housework help. It is also clear.
Don will of course allege that Lisa is not only ends, but also involved with Dr. McDermott to show that Lisa may not be fit at present. The Court will likely take that into consideration, but those elements would not be dispositive (and most likely of primary concern in any consideration.) Lisa could also rebut Don's allegation with the fact that Don is rarely home for the children (returning at 10:00 pm on weekends, and works weekends)

Don would have to be aware that there is also a tender years doctrine which sets forth a presumption that a child of tender years belongs with me in this matter. The case of in re Child (tender years) comes by

(Handwritten note: It is likely that Debicelle)
would fall into that category. Amended, as. I would likely be old enough to voice what she desired to live with and the courts may be able to rule that into consideration as well.

The overall standard used is what is in the best interests of the Child. Courts in all jurisdictions use this standard and noted things like if the role of each Child, their attachment to each parent, which parent is the primary caregiver, and their physical, emotional, and sexual environment. For example, no case is {

are we worried for Pete's special need requirements and

when Peter was 5, ten may years his parent may lose via

in custody, the other may twice and we still have

decided from the children. This may mean loss for

custody. lesson: would there be any unit, lesson her

no court on the right of the environment or that like
may consult with Dr. McDougal upon divorce and the
may not be the best environment for the children. Again
the Court will consider all of these things and render a
decision in the children's best interests. (If Brown's
unfitness must be clear + convincing evidence). There is
also no question of his custody will be determined)
between Lisa and Dan. There is physical custody

✓ where the parent has responsibility for the day to day

decisions of the child there was joint custody where the parent
makes all the life decisions for the child. Viewing claim

✓ respondent to be noncustodial parent and cannot be
determined unless there is evidence. It is normal for

child. Lisa should be awarded joint custody.

Always maintain hiscust was expressed a wish to m
Income will have a negative effect on the child. Even though income may be high, if a child suffers emotional trauma due to a lack of support, the child may not be able to develop properly. This can lead to long-term psychological issues. Support is crucial for the child's development.

A family's emotional well-being is also important. If a family is emotionally unstable, it can negatively impact the children. Support is needed to ensure a healthy family environment.

And no family will ever fully recover from this type of trauma. The children will also need support and guidance to help them through this difficult time.
set aside for their own needs, rem child support
will be taken from remaining income, based on
need. Lisa should be sure that child support
is never always modifiable. It will be determined by
the court based on need. Lisa may want to inquire
into the court going of Anna's private school and
Robin's special needs and give evidence of needs to
continue both of these.

Lisa should also be aware of some jurisdictional
issues with respect to divorce. A marriage citing
several causes to the couple and if she were to
obtain a divorce in State A, there would be no
problem as she and Ron were married in State A
and lived there most of the time,

However, Lisa has researched a divorce in State A
while for divorce there. A. Divorce matter in a probate
court must satisfy jurisdictional test of subject matter
jurisdiction (power of the court to hear the case) and
personal jurisdiction (is there have sufficient ties to
the forum state). In order to sue by domicile, one must
be domiciled in the state he/she is suing in.
Domicile is the intent to set up a home—and
this was expressed a desire to stay in state a tiny
and temporarily. Therefore she likely will not satisfy
the domicile requirements in state b—she could not
demonstrate a true tie. If she wished to stay in
state b permanently, she would have to check her
studies to see what the residency requirements
would be.
Well to see if Don believes in being happy in act

At home. Constructed abuse through a sense of 

Protective order. She should also be sure that 

Don could do the same, so protective orders could 

family relationships. This can be sketch but justfig 

let her to show about 

To conclude Lia should weigh all the 

others carefully, particularly his female 

standards with unchallenged 

standards with the built being his best option, 

and to be prepared to defend any allegation 

I fully believe in Don. She should do 

An sole legal custody of the children and 

An written given to Don as he understands the 

real situation. East to come to State 1. She sha
In need of welfare support for children. She should be removed to properly utilize obstacles and care who in our likelihood could not meet domicile requirements for a change in State A.

**Problem 2**

The court should rule for the grandparents to continue as guardians as it would be in the best interest of Wendy.

A guardianship must be created by consent by natural parents upon a showing by clear and convincing evidence that the natural parents are unfit. This guardianship is terminable upon a Court order. — Judgment.

The board passed the count as to rules authored...
The parental preference doctrine
have, care, and custody of his/her own child.
(As opposed to a 3rd party)
However, this can be rebutted by a clear
showing of parental unfitness.

Parental unfitness has a pretty clear lead.

With respect to Janine, in the 2016 case
do the facts establish this?

Claimed on bureau and she contested (along with
Joe) to her parent's guardianship. 

It is not clear whether the case or will be in the
picture with respect to Wendy.

Does selection as a bit murky?

Contended to the guardianship of Wendy by

Janine's parents and that she as be deemed

Himself unable to properly care for
Wendy. However, he could so a Court
can have that guardianship terminated. 

Janine.
Have he actually spent morphine in his corner, he is a useless father. A Court, however, may show and what the International Child Law is that he is an unfit parent.

Joe is very young 23 and he married young and became a father young. He left his wife. After 3 years of marriage for undetermined reasons.

He only sporadically visited weekly and took no part in the abuse investigation. If Joe were an involved parent, it would seem he would want to be involved in any investigation.

His indifference comes off as uncaring.

Joe concurred to Wendy's Guardianship, significantly
<table>
<thead>
<tr>
<th>Country</th>
<th>Problem Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Afghanistan</td>
<td>Difficulty in accessing education and social services for Afghan refugees</td>
</tr>
<tr>
<td>Bangladesh</td>
<td>Limited access to healthcare and basic necessities for low-income populations</td>
</tr>
<tr>
<td>Cambodia</td>
<td>Poor infrastructure and lack of access to clean water and sanitation</td>
</tr>
<tr>
<td>Nepal</td>
<td>High rates of child marriage and limited opportunities for women's education</td>
</tr>
<tr>
<td>Pakistan</td>
<td>Gender-based violence and lack of rights for women and girls</td>
</tr>
<tr>
<td>Sri Lanka</td>
<td>Difficulty in accessing mental health services and support for disaster victims</td>
</tr>
</tbody>
</table>

*Note: The text appears to be partially legible and may require further clarification or transcription.*
It is unclear to point out their role. Against him, a 6 months in OSS custody would not 4 weeks of custody and yet this life in another do again. The worse is the longer point is in that custody. To the see a 3 to 4 week in OSS custody with the arrangement. She likely would not have been placed in OSS custody and
Trend custody of her for 2 months. Though a 4½ year old child can bond with caregivers in that span of time, so that bond sufficient that she could be reunited with these people and taken to another state? The grandparent could also have to show a substantial benefit for the child to move her out of state, and show she would be financially, emotionally, and emotionally benefited by this action. They probably could make a good showing at the latter requirement as you have been wonderful Care of her and have attended to her every need.

The fact that custody was placed with...
To investigate the abuse allegation and then could recommend that steps so into guardianship
judicially to the grandparents assuming our purpose set the proper judicial role and opportunity
be heard. This is nuanced because both Joe and Jennie consented to the guardianship.

It is thus prudent to point out that she is petitioning to remove the grandparents as guardians, and that her parents' rights
had not been terminated (several all legal ties) by the guardianship—he too
unanimously consented with the fact that the grandparents have legal guardianship of
Wendy and they are taking care of her

If Wendy does legally need to be

because it also indicated by his consent to the guardianship that he could no longer do so and maintain 30
wonder's best interest.

The Court, for the foregoing reasons, the Court should rule that the guardianship be
wonder's should remain intact as it is in her best interest. This will not
secure (terminate) all if Joe's parental
rights and Joe is not in the position
to care for Wendy at this time. Joe
doesn't have his life in order either
to adequately care for a 4 1/2 year old

girl whom he never had a
storm relationship with. If we
But it is important that he had been a
relationship when
First, let's consider the fact that the original record was not kept properly. One of the factors is the lack of proper recording. Another factor is the lack of proper data collection. Therefore, it is essential to have a robust system in place to ensure accurate and complete records. This will not only benefit the patient but also the healthcare providers.

Furthermore, the state of the child's health is crucial. The family also

will actively benefit him and the health

system.

Firstly, identify the specific needs of the child and the family. This is essential to ensure that the child receives the best possible care. Secondly, establish a clear communication plan between the family and the healthcare providers. This will help to ensure that everyone is on the same page and that the child receives the best possible care.

Finally, the child's health is the priority. It is important to ensure that the child receives the best possible care in a safe and supportive environment.
One of the best answers submitted on the question.
Student could have packed a majorie punch in his/her
today by beginning with the main issue to be resolved:
Under what circumstances may a guardianship be terminated
when the guardians are successful caregivers, and the natural
parents assented to the establishment of the guardianship?
- What must be proven?
- Who bears the burden of proof?
- Does student remember any cases (not necessarily by name)
which have particular application here? What were the
circumstances? Results/Rulings? Reasoning?

(Simpson
Youmans v. Ramos — Natural father successfully 
terminated guardianship of maternal aunt, who had had
custody of his 11 yr. old daughter,
(with his consent) since the child
was a baby — He was in the service in
overseas, married + started another
family before he petitioned to terminate
the guardianship. Court ordered
wardship w/aunt, at Dad's expense,
W/o request from aunt — B/c this
was deemed in child's best
interests.)
FAMILY LAW - FINAL EXAM
SPRING 2004
4:30 Tuesday/Thursday - Conturelli

Students: Read the following carefully. Take the time to organize your answer. Then respond in essay form, within the page limitations indicated.

PLEASE WRITE LEGIBLY.

Problem 1 (Approx. 2 ½ hours) 75% (No more than one blue book, double spaced..)

Martin and Amy Barelle married in 1984. Two children were born of the marriage: Florence, born in 1987 and Robert, born in 1990. Martin and Amy are in good general physical health, except that Martin suffers from asthma. He also has a severe attention deficit disorder. Amy has a history of mental illness, having been diagnosed with a bipolar disorder. Robert, their son, has serious learning disabilities for which he requires special educational services and therapy. The parties separated during the summer of 2003.

While together, the parties enjoyed a comfortable lifestyle. They resided in an ocean-front, twelve (12) room residence in the state of Hebert. Martin earns 500K per year as the CEO of Barelle Industries, a closely-held family business founded by his father 50 years ago. Amy worked for Barelle industries at the beginning of the marriage, but since Florence’s birth, she has not been employed outside of the home. Nonetheless, Amy has skills as a graphic designer and she is a talented painter.

Martin inherited the marital residence, which is now worth 1.2 million dollars. He also inherited stocks and bonds which he has managed himself and which he has kept separate from other assets acquired during the marriage. The parties both have pension plans, and they jointly own a ski condo, and two luxury automobiles. Other assets acquired during the marriage total another half a million dollars. The Barelles have been able to provide their children with tutors and enrichment programs to meet their needs. Florence has attended private schools.

Martin has been supportive of Amy during the marriage, preparing her lunch and dinner and assisting as a homemaker and with childcare. Amy was not as supportive to her husband and his work and time commitments during the marriage. She often insisted that he return home from work mid-day to do some household errand for her. Martin did all of the food shopping, made dinner for the family after returning from work, did the dinner clean-up and helped the children with their homework. He was also responsible for the heavy cleaning chores and the yard maintenance. Amy would not assist with these matters, and she would not accept hired help. Amy, who was not employed outside of the home, was responsible for family laundry and running the dishwasher. However, she neglected most other household tasks, so the home was
frequently untidy and cluttered. Martin was too embarrassed by the appearance of the home to invite friends or business associates.

While Amy did most of the child care tasks when Florence and Robert were babies, as they became older, Martin assumed more of the responsibility for child care. He was instrumental in getting the services that Robert needed from various professionals and educators. On the other hand, Amy has alienated many of these professionals and school personnel.

On June 10, 2003 Amy woke the children at 2:00 A.M. and told them that their father was going to kill them. She insisted that they dress and leave the house with her for their ski condo. They remained there for 3 days, while Martin searched for them, worried sick. The children did not report to school during those three days. On June 14, 2003, Robert called Martin on his cell phone. He sounded very upset and tearful. He pleaded with his father to come and get him because "Mommy is acting funny." When Martin arrived at the condo, the children let him in because they were watching for him from the window. He found Amy on the bedroom floor, in a corner, crouched down and holding a knife. She warned him to stay away or she would kill him. Martin directed that the children go to his car and wait for him. Then he called for emergency assistance. Amy was hospitalized for psychiatric treatment. When she was discharged on June 24, 2003, the parties agreed that Amy would go and stay with her sister, Susan, in the nearby State of Kim. Amy and Martin have not resided together since, although they keep in touch and Martin takes the children to see Amy.

Three weeks ago Florence left school and did not return home to Martin. Amy called Martin and told him that Florence had arrived at Susan’s house. Florence indicated that she wants to stay with her mother and she refuses to return home to Martin.

Martin calls your office and makes an appointment to discuss this matter with you. He wants a divorce. After listening to his predicament, and considering all of the issues concerned, advise him of his rights and possible exposures and/or options.

Problem 2 (Short Answer Essay- Approx. 30 min.) 25%  (Please write your answers in the spaces provided below.)

Carolyn and John married in the State of Guy in the U.S. They resided there for about 4 months when Carolyn decided to visit abroad. After about 6 months in Chad, Carolyn filed for divorce there. She sent John an e-mail stating that she was divorcing him. John also received a copy of the divorce complaint by registered mail. However, it arrived after the date of the divorce hearing. He never appeared, objected or participated in the proceeding in any way. John maintained the hope that Carolyn would come back to him eventually. Three years later, while
on a cruise, John became infatuated with a young woman named, Maura, also from his home state of Guy. Although John knew that she had been with many other suitors, he married her when they returned home to Guy.

Despite the fact that it seemed like love at first sight, John’s marriage to Maura was not destined for a lifetime of happiness. In the two months that John and Maura have been married, Maura bit and bruised John many times with many objects. Then John received word from Carolyn’s family, that Carolyn died in a plane crash. Carolyn had a sizeable estate. John, himself, was financially comfortable. John had just recently realized that he never really loved Maura and he really missed Carolyn. Maura has filed for divorce. She wants the house that they live in, which is titled in John’s name, and she refuses to leave. Also, Maura is pregnant.

John defends against the divorce case that Maura filed, but he wants her out of his house. He claims that Maura is not entitled to divorce, because he was never validly married to Maura. John believes that the divorce Carolyn obtained in Chad was not valid here in the U.S. If he is successful with this defense, he would be seen as Carolyn’s widower, a status which he wishes to have for emotional and financial reasons.

Define the following terms and explain their application, if any, to the fact pattern above:

Doctrine of Comity

Personal Jurisdiction

Estoppel
Laches

Equitable Division of Marital Assets

Annulment
Spousal Support

Abuse

Order to Vacate

Presumption of Paternity

Have a great summer!
For a period of time from October 2002 until November 2004, Carolan and Andrew had marital difficulties stemming from Andrew’s unexplained absences from the home. He would pack his things and leave the family for several days at a time without explanation. Recently, when Carolan received the joint MasterCard bill, she saw charges to the account incurred in Las Vegas, Nevada. One of the charges she discovered was a $15,000 expenditure to Tiffany Jewelers. She became very upset at this because Andrew had never presented her with a gift from Tiffany’s. When Carolan confronted Andrew about his expenditures, he told her to leave him “the hell alone” and to be grateful that he kept her in his home at all.

When Andrew left on a “business” trip on November 19, 2004, Carolan left the Aberdeely residence with Jill. She had the moving company take the contents of six rooms to the home in Alfonso. She left a note for Andrew on the refrigerator that read: “Gone to start a new life with someone who will love me.”

When Andrew returned to the marital home for Thanksgiving he found the note and he found the house partially vacant. He was livid. He called his wife on her cell phone and left a message stating that he’d break every bone in her disgusting body when he found her. He demanded that she return Jill and the household furnishings immediately. He’d be waiting. Carolan is concerned about these threats because several years ago Andrew’s temper sent her to the hospital.

Carolan intends to stay in the Alfonsso home until June when Danny is through with school. Then, she plans to travel abroad for the summer with Danny and Jill.

If Carolan comes to your office seeking information and advice about divorce and her domestic situation, what will you tell her about the issues confronting her?

Problem 2 (Short Answer Essay- Approx. 30 min.) 25% (Please write your answers in the spaces provided below.)

In 1990, Sylvan was divorced from Viola in the Dominican Republic. Viola did not appear in the Dominican Republic for this divorce and she was not served with notice of the divorce proceeding. At the time, Sylvan and she were residing in Andover, MA.

Subsequently, Sylvan met Alina at a party. They married in 1992. The couple has one minor child, Insup, who is nine (9) years of age. One year after Insup’s birth, Viola died. Sylvan
and Alina now live in the State of Gentile.

About seven months ago Insup disclosed to a teacher that both Sylvan and Alina have been entertaining strangers in their home at all hours of the night and day. These strangers bring small packages or money to the house, disappear into the bedroom with one of his parents, then the strangers leave. Insup related seeing drug paraphernalia in the home. He also described incidents where his mother was too listless or incoherent to make his meals. The child sometimes has had to cook for himself and get himself off to school. Insup also told the teacher that on some occasions his father would hit his mother and make her cry. Insup had learned that his mother was pregnant. He was worried about how they will take care of the new baby. The teacher filed a report of suspected neglect or abuse with the appropriate state agency.

Following an investigation by state authorities and, with the consent of his parents, Insup went to live with his paternal grandmother, Kasia, in the State of Holland. Soon after Insup’s placement with her, grandmother requested and obtained guardianship of Insup in the State of Gentile. Afterwards, she registered Insup for school in Holland where she is hoping he will remain indefinitely.

Alina will give birth to her child in about one month. She has been feeling well and attending to her prenatal care. She has asked Kasia to relinquish custody of Insup to her. Since Kasia has refused, Alina has filed an action in the State of Gentile to vacate the guardianship.

**Define the following terms and explain their application, if any, to the fact pattern above:**

**Doctrine of Comity**

**Presumption of Paternity**
Protection from Abuse Restraining Order

Parental Fitness

Domicile

Subject Matter Jurisdiction

Have a great holiday break!
FAMILY LAW
FINAL EXAMINATION

FALL 2001
Tuesday & Thursday Evening Class
Atty. Jeanne E. Condurrelli
Your Social Security No.____________________

Directions:

Use your social security number on the exam and blue book. Write legibly and coherently.

You will be graded on your knowledge of the law, and on your ability to analyze and treat the issues presented.

Good luck.

Question 1. Short Answer Essay (25 pts.)

Ms. P. is a widow and mother of two children: a daughter, age 6, and a son, age 4. In February of 2001, her daughter, Alyssa, went to school and told her kindergarten teacher that her younger brother, Justin, was home alone. The teacher reported suspected neglect of the child to the local Department of Social Services office. In her report, she added that on many days, Alyssa had reported to school without a coat or hat and wearing dirty clothes. Upon investigation, the family service worker visited the home and indeed, found Justin home alone. Both children were immediately placed in foster care with the H. family, where they have remained continuously ever since February 2001. The children are well cared for by the H. family. They are flourishing in both their school/preschool and home settings. The foster parents are very interested in keeping the children permanently.

Ms. P. has not decided what she should do. She loves her children. Also, she does visit Alyssa and Justin regularly, but in a supervised setting.

You have been appointed to represent the children’s biological mother. Explain the possible options to Ms. P., addressing, particularly, the concepts of consent and notice to adoption, adoption and involuntary termination of parental rights, and the legal ramifications of each, given her situation.

Question 2. (75 pts.)

Kurt Palermo and Amanda White Palermo were married in Boston, MA on June 30, 1996. On July 4, 1997, Laura Palermo was born. A year later, in June of 1998, the couple welcomed a son, Jeffrey Palermo. Now the marriage is headed for dissolution and Mr. Palermo has retained you.

Kurt Palermo is 52 years of age; Amanda is 24. Kurt is a chemical engineer with an engineering degree from the University of Pennsylvania and a masters degree in Chemistry from
MIT. He is employed by Borden Chemical Co., earning $210K per year. Amanda is a "stay-at-home mom", who, prior to marriage, obtained her license as a cosmetologist. She has not worked outside of the home since Laura's birth. She has a high school diploma, but no college degree. The parties own a home worth $500K. The husband travels frequently out of state to his employer's main office. He is often gone from two to three weeks at a time, leaving Mrs. Palermo to care for the children and manage the household alone. The children attend preschool, but they are not in daycare.

On November 30, 2001, Mr. Palermo returned home early from a business trip. He was supposed to be arriving home on December 1st. At 9:30 A.M., on his way home, he stopped for flowers to surprise his wife. He knew that the children would be at preschool at this time. When he arrived at home, he found the house in total disarray. There were empty bottles of liquor in every room downstairs. The house smelled of liquor and garbage. The cushions to the couches were strewn about and there were cigarette butts on the floors. Garbage overflowed from the wastepaper baskets in the kitchen and bathrooms. There were dishes piled high in the sink. The counters were covered with half empty glasses and platters and Chinese food containers. Also, on a coffee table in the family room, there was a small plate with a white powdery substance on it and a small straw beside it. Disgusted, and in disbelief, he climbed the stairs to his bedroom to decide what to do while he waited for his wife. His bedroom door was closed. Hesitantly, he opened the door, only to find a young man in his bed. He woke the man by pulling him up by his hair and beating him onto the floor. While the stranger pulled on his pants, a very angry Mr. Palermo kicked him again and again toward the stairwell. Not soon enough, the young man ran out the front door, still dressing himself.

Upon Mrs. Palermo's return at about 10:30 A.M., still in a rage, he confronted his wife. He grabbed her and pushed her down onto her hands and knees, demanding that she clean up her mess. He slapped her repeatedly, demanding that she get her things and get out of the house. Mrs. Palermo refused, stating that she would not leave without the children. She pleaded for a chance to explain. Then left the house to pick the children up at preschool. He brought them to his mother's house thereafter.

On December 10, 2001, Mr. Palermo came to your office to confer with you, seeking information about divorce. What do you advise Stephen Palermo as to his possible rights, responsibilities and liabilities after he tells you his story?

Social Security No.______________________________.
Students: Read the following carefully. Take the time to organize your answer. Then respond in essay form.

Problem I (Approx. 2 ½ hours)

Annette Lambert and Michael Lambert were married in State A in 1992. Annette was an attorney in private practice in State A at the time. Michael was an architectural designer. This was the second marriage for both of the parties. Annette had one (1) child from a prior marriage, whom she successfully reared. That child is in college at the present time. Two (2) children were born of Annette and Michael's second marriage. Theresa was born in 1994 and William was born in 1997. After the birth of the children both parents continued to work outside of the home in their respective capacities with the assistance of a nanny and a housekeeper. Both were contributing to and sharing in the household duties and expenditures. Both were arriving home from work at about 6:00pm to take up their household and parental duties.

In 2000 Michael's architectural business fell into some financial trouble. Both spouses agreed that they should relocate and start afresh. Annette moved with the children to State B while Michael remained behind for another four (4) months to secure the families possessions and to sell the martial home. During this time Annette took the State Bar examination in State B and located employment. The children were cared for by a nanny during the day (when not in school) and by Annette when she returned home from work.

When Michael arrived in State B he took State B's contractor's exam but made no farther effort to find any job in State B. Instead, he began to travel to visit relatives and friends for extended periods. He spent about fourteen (14) months away from his family in these endeavors. When last Michael returned to his family he found that Annette had landed a $300,000 per year job at a top law firm in State B. Yet, because of the huge debt resulting from Michael's failed business and resulting from his travel expenditures, Annette had to fire their nanny. On a daily basis, Annette had taken over many of the nanny's functions, such as awakening the children, dressing them and serving them breakfast and dinner. She spent weekend activities with Theresa and William. When they were ill, they looked to Annette for comfort and reassurance.

About one month after Michael's "return" to his family, Annette and he engaged in some very
heated arguments. Annette was frustrated by Michael’s lack of effort in finding gainful employment to discharge his debts. During these arguments Michael became very angry, threw household items and broke things. Some of these outbursts took place in front of the children. About two (2) months ago, Annette found a card that had fallen out of Michael’s blazer. It was from a business associate in State A. The tone of the card was amorous. In it, the associate wrote: "It’s painful to be so far from you, my love. I just can’t wait to be with you again. Hurry back!" Annette threw the card back into the closet floor for Michael to find, but never confronted him with her knowledge of this liaison. However, about one (1) month later, after another argument concerning finances, Annette announced that she wanted a divorce.

Following that declaration, Michael began to spend less time away from his family and more time involved with the activities of his two children, now aged 5 and 8. He spends every day with them from 3-6:00pm when they are home from school. He picks the children up from school and brings them to afternoon appointments and to extracurricular activities. When Annette comes home from work he makes himself scarce.

At this point Michael has not worked outside the home for almost two (2) years.

Michael comes into your office to consult you. He does not want to be divorced. Moreover, he does not wish to lose custody of his children. After listening to his predicament, and considering all of the issues concerned, advise him of his rights and possible exposures.

Problem 2 (Short Answer Essay- Approx. 30 min.)

W & H are married, without children, and residing in the Commonwealth of Bernard. They have been married for 15 years. H is having an extramarital affair with his accountant. Recently, this accountant has informed H that she is pregnant. H wishes to marry her quickly and feels that he cannot wait the statutory time period for a divorce in the Commonwealth of Bernard. He has read some literature on the internet about the “do-it-yourself” Haitian divorce. He merely needs to collect his marriage the paperwork evidencing that he is married to W, and to sign a few proxy documents. From, there a Haitian agent will be assigned to present the necessary papers to a tribunal and to procure the necessary Haitian divorce decree. This can all be done for $2000. W is so upset with H that she can’t get him out of her life quickly enough. She signs proxy documents and gives H half the money for the divorce. Two months later, after H marries the accountant, H is killed in a car accident. There are survivor benefits at issue. W claims that she is H’s widow; Accountant claims that she is H’s widow.

Define and discuss the doctrine of comity and the doctrine of estoppel, applying it to this situation.

......Then...have a great summer!
RESPONSE OUTLINE
Family Law Final Spring 2002 Final Exam

issues presented in any matter which concerns divorce (with children):

I. Merits

II. Custody

III. Visitation

IV. Child Support

V. Alimony

VI. Property Division

I Merit Issues

A. W. wants Div., II. does not, does it matter?
B. What are likely grounds for divorce?
   1. Fault grounds:
      a. Adultery?
         i. May be proven by circumstantial evidence, but must prove opportunity and inclination
      b. Cruelty? (Mental)
         i. Must prove plaintiff suffers physical symptoms, etc.?
         ii. Is husband’s violent temper and throwing of objects sufficient to constitute cruelty?

   2. No fault ground:
      a. Are there Irreconcilable differences or irretrievable breakdown?
         i. Must prove that the marriage is over
         ii. May be proven by something that may constitute a fault ground, but not quite rise to that level

   C. Are there any defenses to the grounds for divorce?
      1. Would condonation apply to prevent W. from winning a divorce case on adultery grounds?
      2. Would W. be estopped from asserting fault grounds for any reason?
      3. Can H. allege that there is no irretrievable breakdown because they still live together?

   D. Is there jurisdiction in State B for divorce?
      1. W. moved there less than two years ago.
2. Until 2 or 3 months ago, H. has not been consistently living in State B. He has been mostly out of state. Does that deprive state of subject matter jurisdiction, or personal jurisdiction?
   
a. W. & children reside in State B since 2000. Courts have been allowed to impose a residency requirement, but not a requirement of 2 years residence.
   
b. H. has intent to be domiciled in State B, evidenced by his arranging all things to leave State A & come to State B. He considers this his marital residence

II. Custody Issues

A. Best Interests of the child are the dominating principle
   1. Factors considered in determining best interests
      a. Which parent is the emotional parent?
      b. Over a continuum of time, which parent has the dominant influence?
      c. Which parent is the primary caregiver?
         i. Is there any effect to H.'s having now stayed out of work and available to children.
         ii. Any effect of H’s having shirked parental responsibilities for almost 14 months?
      
d. Tender years doctrine
      i. Gender bias issues at work?
   
e. Tendency to violence
      i. Does H. have inability to control anger in front of children?
   
f. Financial factors
      i. Which parent is more economically stable?
      ii. Which has the proclivity to remain steadfastly employed?
   
g. Wishes and needs of the children
      i. What weight should be accorded to the wishes of a 5yr old or an 8 yr old?.
      ii. Would a guardian ad litem be helpful?
         iii. Would an expert, such as a therapist or a psychologist need to be obtained to address this?

B. What are the possible custody arrangements?
   1. Joint legal custody
   2. Sole custody (physical and legal)
   3. Physical custody
   4. Split custody
      
      And how would each of these options play out for H.?
III Visitation Issues

A. Is visitation with either parent in best interests of children? 
   1. Would children suffer any harm by being in contact with either parent? 
      a. Need expert/guardian ad litem on this? 
   2. What is extent of present time spent with each parent (pre-divorce)? 
Should court allocate that time to come to a reasonable custody/visitation arrangement?

IV. Support Issues

A. Both parents have a duty to provide support to the minor child.
   
   1. H. does not work. Will that matter? (Attribution of income?) W. has superior earning capacity, will that control?
   2. What effect will custody decision have on the determination of support?

V. Alimony

A. Alimony is determined by considering the needs of the recipient spouse, and the ability of the paying spouse to pay, in order to maintain a lifestyle or standard of living.

1. Does either party likely have a claim for alimony.
   a. Does H. have a need for alimony? Long or short term? (rehabilitative?)
   b. Does W. have ability to pay alimony? W is superior wage earner.
   c. H is not working, but H. is employable and has equal earning capacity.
   d. What role does H’s financial conduct play in this? His business went under and his travel expenditures hurt the family finances.

2. Is alimony a gender neutral form of relief? Orr Would he get alimony if he were the mother instead of the father?

VI. Property Division

A. In a divorce, a court will determine how to equitably divide the property that the parties have owned or acquired during the marriage.
   1. In order to do so equitably the court will consider many factors. The most significant factors in this case are:
      a. H. & W. have similar education and are in parity as to their potential ability to provide for their family, and as to their acquisition of assets prior to the move to State B.
      b. Both H & W. contributed equally to family support and expenses, prior to H.’s business failure and the move to State B.
      c. W. did not agree to have H. stay home and become house husband at present
      d. Since business failure H. has made no effort to contribute to family
support, or to the maintenance of the family’s assets.
e. H.’s conduct has caused financial damage to the family as evidenced by
the firing of the nanny and the housekeeper, and as evidenced by fact that
family is now in debt.

2. What are the most likely results of the above in respect of dividing family assets?
   Should H. be entitled to 50% of the marital assets?

B. If the parties work out a settlement agreement for their divorce, the court will review it and
decide if it is fair and reasonable. The advantage to this is the parties do not place their fate in the
hands of the judge, but instead have some input into and control over the outcome.

VII. Conclusion

The fact that H. does not want a divorce will mean nothing. If W. begins divorce
proceedings, she can proceed with the same to final judgment, despite the fact that H. wishes to
remain married. W. will more than likely sue for the divorce on the no-fault grounds of
irretrievable breakdown of the marriage, or irreconcilable differences, depending on the term
applicable in State B. She can prove that her marriage was broken down by husband’s absences
from the home, willful lack of financial support to the family, his extramarital dalliance, and by
his unpredictable and intolerable outburst of anger. H. probably will not prevail in any attempt to
assert an affirmative defense to this claim. He will also not prevail in any attempt to show that
State B does not have jurisdiction over this divorce. W. and children have been residing and
working in the state for in excess of one year, and the marital breakdown occurred or at least
continued after the parties relocated to State B. Even though H. was not continuously in State B
during this time, all of the indicia of domicile are present. He intended to take up permanent
residence with his family in State B. He moved their belongings there, he took the contractor’s
exam there and he always returned there after travel.

H. will probably not win the physical custody of his children, although he will most likely
be awarded joint legal custody of them, or rather, H. & W. will share legal custody of the
children, meaning he will have the opportunity to participate in all major life decisions for the
children. W. has functioned as the primary child care giver to the children while H. pursued his
escapades. W. has functioned as the emotional parent to the children over a continuum of time.
W. has remained reliable and steadfastly employed, giving her the edge of financial stability.
H. will probably get reasonable and liberal visitation with the children, as he has a beneficial
relationship with them and is now spending a significant amount of time involved in their lives.
H. will probably have to pay support for these children whether he is employed or not. Courts
are able to attribute income to a parent who can provide for their families because they are skilled
and employable, but who simply refuse to remain gainfully employed.

H.’s claim for alimony will probably fall on deaf ears because of his failure to seek
employment, despite his capabilities, and because it is his conduct, which now causes the family
to be in debt. Therefore, he probably will not demonstrate need, despite W.’s big salary. Also,
the home may have to be sold at some point and the parties' other assets will need to be valued and distributed equitably. H.'s financial conduct, lack of financial contribution during the last 2 years and his amassed debt will weigh against him. Most likely, he will come out of it with less than 50% of all that the parties have. H. should not argue gender bias because it is his own conduct which would bring about the results discussed above.
FAMILY LAW - FINAL EXAM
FALL 2003
Online and Tuesday/Thursday 1:00 - Condurelli

Students: Read the following carefully. Take the time to organize your answer. Then respond in essay form using no more than (2) two blue exam booklets. Please, double space your answers.

Problem 1 (Approx. 2 ½ hours) 75%

Lisa and Don White married in State A in 1992. They have two children, Peter and Amanda, ages six (6) and fourteen (14), respectively. At the beginning of the marriage Lisa had 25K saved in her own bank account, which she accumulated through employment earnings and through gifts from her grandmother. In 1999, Don inherited 200K from his grandfather. Don is the part owner of a retail clothing business worth approximately four (4) million dollars. Lisa is a nurse that works for a local hospital on a per diem. Her average annual income for her employment is about 40K. Don derives income of about 120K per year from the business. The parties have pooled their income to pay for their joint living expenses. They own their residence, a house worth 400K, located in State A. They also jointly own two late model luxury automobiles. They have little debt, apart from the outstanding mortgage on the marital home.

Lisa is no longer in love with Don. She met Dr. McDonough at the hospital where she works, and he has urged Lisa to leave the marriage. Lisa is strongly attracted to Dr. McDonough and wants to be free to start a new life with him.

Don works many hours in his clothing shop. He typically returns from work at 8:00 PM (just in time to say “goodnight” to Peter) and he often works on Saturdays and Sundays. Lisa assumes responsibility for all childcare tasks, including doctors appointments, school meetings, sports activities and homework help. Six (6) year-old Peter has special needs. Lisa arranged for special services for him through the local school department. Amanda has enjoyed private school. When Lisa is working, her mother stays with the children.

Two weeks ago, Lisa informed Don that she does not love him anymore and that she wants a divorce. Don demanded that Lisa leave the marital home immediately. He stormed into the bedroom and dumped out the contents of her dresser drawers and emptied the closet. Systematically, he carried Lisa’s clothes to the front door and threw the items onto the porch. In the meantime, Lisa begged him to act reasonably. Peter was playing downstairs in the finished basement. Amanda was at a friend’s house. After chasing Don back and forth to the front porch many times, Lisa finally threw herself at Don and began punching him. In response, Don carried Lisa to the front porch and deposited her on the ground. Then, he turned and locked the doors. Lisa tried to regain entry to the house but, hearing Peter crying inside, decided it would be better to just walk to a neighbor’s home to call her sister.
Lisa's sister recommended that Lisa contact you for legal representation. When Lisa arrives at your office, she relates this story to you, along with the following information:

She used her mother’s key to gain access to the marital home the day after the above described incident, at a time when Don was not at home. She left a note for him, stating that she planned to file for divorce, gain custody of the children (whom she picked up at school that day) and temporarily move in with her mother, five (5) miles away in State B.

After listening to Lisa and considering all of the issues concerned, how would you advise her of her rights and possible exposures and or options?

**Problem 2 (Short Answer Essay- Approx. 30 min.) 25%**

Janine and Joe were married in the State of Rogers in April of 1998, when they were both (eighteen) 18 years of age. In February of 1999, Janine and Joe welcomed a daughter, Wendy. They resided at Janine’s parents’ house in the State of Rogers until Joe moved out in January of 2003. Joe left Wendy with Janine and her parents and Joe moved in with his family, also in the State of Rogers. He continued to visit Wendy, although sporadically. In April of 2003 the Dept. Of Family and Child Welfare Services in the State of Rogers received a report of abuse, naming Janine as the perpetrator. After an investigation in which Joe did not participate, the Department recommended that Janine’s parents obtain legal guardianship of Wendy.

In August of 2003, with Janine and Joe’s assent, Janine’s parents were awarded guardianship of Wendy. They have been taking excellent care of Wendy, and they have satisfied Wendy’s every need. Last month, Janine’s father was presented with a job opportunity which would require him to relocate to the State of Tucson. Under pressure from his family, Joe has filed a petition to remove the grandparents as guardians, and he is requesting custody of Wendy. Joe has no job but is attending community college. He is still living with his parents.

How should the court rule and why?
Spring 2003  
MIDTERM EVALUATION  

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  

Tony and Robin married in a Catholic ceremony in 1978 in Lantelme but they failed to obtain a marriage license. In the last two years, Robin has been spending a lot of time with the parish priest. When Tony questioned Robin about her frequent trips to rectory, Robin explained that she was engaged in Bible Study groups. However, Tony has become more and more concerned about Robin. She has been frequently forgetful and unfocussed. Last week she forgot to pick up the parties’ youngest son at the High School track. He called Tony at work to come and get him after waiting for Robin for one hour. When Tony and his son arrived home, Robin was not home but there was a message on the answering service that Robin’s prescription is ready. Tony was unaware that Robin was being treated for anything. Robin did not return to prepare dinner for the family. In fact she did not return until 11:00PM. At that time, Tony confronted Robin with his concerns. Of course, he was angry at her when she arrived singing and whistling. He had been sick with worry wondering where she could have been or what could have happened to her. The following day, while Tony was seeing a client in a nearby town, he noticed Robin’s car at a nearby motel. Because he was with a business associate, he does not leave the meeting to investigate, but later saw Robin get into the car and depart.  

Two days ago, Tony confronted Robin with his knowledge about Robin’s motel visit. Robin declared that Tony was an “insufferably boring man” and that she was sick of being married to him and has been for years. She picked up a potted plant and threw it at him. After 25 years of marriage and two children she declared that she has “had enough”. Yesterday, Tony woke to find Robin gone and their prenuptial agreement torn to shreds and thrown on their bed. Her closet was empty. Tony was unable to sleep and eat last night.  

Today, Tony visits your office for legal advice. What do you tell Tony about the domestic issues that he has presented for your consideration?
Family Law
Midterm Evaluation
Sample Response
Spring 2003

In order to provide legal advice to Tony, I would need to know Tony's objectives in this matter. Since Tony has come to my office, I can assume that he is aware that he is involved in a domestic dilemma with potential legal consequences. I would need to ascertain whether Tony has a desire to seek to terminate, or void (if possible), his marriage to Robin. He may not. I would also need a clear idea of what Tony fears may happen. Since he knows Robin better than anyone else, his instincts about how Robin will proceed and react will be valuable in planning strategy in this case. As a preliminary step, I would conduct a thorough interview and then advise Tony as to the issues his problem presents. I would then recommend the most viable of his legal options, remembering however, that my role as counsel for Tony, will be to zealously pursue the legitimate objectives of my client.

The first issue presented is whether the lack of a marriage license renders Tony's marriage to Robin void. As a general rule of law, a legal ceremonial marriage requires that two people, who are legally qualified to marry, agree and undertake to do so, in a ceremony of some sort, conducted by an individual authorized to solemnize marriages. There is also a requirement that the parties obtain a license, and or have some type of certificate of marriage recorded in accordance with local state statute. In Tony and Robin's case, they failed to comply with the requirement of licensure. One might argue that the marriage is invalid because of this failure. However, this failure is a procedural defect. It is not a substantive one which would defeat one of the party's legal qualifications to marry, such as that he/she is underage or already married, or related by blood. Courts have held that such a procedural defect/failure to obtain a marriage license will not invalidate the marriage. The policy reasons for this would be to uphold marriages, where possible, especially in situations like this one, when the parties or at least one of them, in good faith believed themselves to be validly married and conducted themselves in this manner. Here Tony and Robin have lived in the marriage for 25 years and have reared two children together. No good would come of declaring the marriage void now. Even if the marriage were void when they entered into it, because of the failure to obtain a license, the fact that Tony and Robin have lived in the marriage for the last 25 years would have the effect of ratifying the marriage. Also, in this vein, Robin would be able to assert laches as a defense. Annulment actions should be brought in a timely manner. A claimant should request an annulment as soon as possible after learning of the supposed impediment to the marriage. Otherwise, the parties may be deemed to have waited too long to assert their rights to have the marriage declared void, ratifying the marriage in the meantime. Therefore, I would tell Tony, that in all likelihood, his marriage to Robin is valid. He would not, in my opinion, be successful in requesting an annulment of the marriage.
The marriage could also be deemed valid if Lantelme were a jurisdiction which recognizes common law marriage. Since common law marriages do not generally involve a ceremony or a license, if this is a common law marriage jurisdiction, the parties' failure to obtain a license would be of no consequence. As a general rule of law, a common law marriage results when two people who are legally qualified to marry, intend and agree to be married immediately, continuously cohabitate as husband and wife, and openly and notoriously hold themselves out to the general public as married. In Tony's case, he and Robin took part in a Catholic marriage ceremony, evidencing that they agreed to be married immediately. They cohabitated as husband and wife for 25 years, and they believed themselves to be married, having executed an antenuptial agreement. (also, Robin says that she is sick of being married to Tony). Tony and Robin also held themselves out as married to everyone, including their children. Therefore, I would tell Tony that if Lantelme is a jurisdiction which recognizes common law marriages, his marriage to Robin is valid, and that if he wants out of the marriage, divorce is the road to go, not annulment.

If Tony is considering divorce, he has some choices regarding how to proceed. He may proceed on fault grounds, if the facts warrant that, or he may proceed on no-fault grounds. The difference will be that proving marital fault often entails more in corroboration and evidence. Thus, a divorce on fault grounds may be more time consuming and more expensive. On the other hand, many jurisdictions require a period of separation, or other waiting period, before parties are eligible to have their "no-fault" divorce heard in court. Therefore, he may not be able to proceed to an immediate divorce hearing. Another consideration is whether the prenuptial agreement specified a grounds choice, in the event that one of the parties were to seek to terminate the marriage. If it did, and if the agreement is valid and enforceable, then Tony may be limited to filing for divorce on the grounds specified in the prenup.

Assuming that Tony is free to file for divorce on any grounds which appear fitting the next issue is whether Tony has grounds for a divorce on the grounds of adultery. Robin has spent an inordinate amount of time with the parish priest, supposedly in Bible studies. Based on the fact that Tony asked Robin about the amount of time she was spending at church, I could infer that Tony was suspicious about Robin's behavior. However, he does not indicate that he has ever seen Robin in a compromising position with the priest. Adultery is defined as having voluntary sexual intercourse with a person not your spouse. As applied to Tony & Robin, it would mean that Tony would have to allege that Robin had voluntary sexual intercourse with a person other than him. Jurisdictions differ as how broadly they define adultery. In many jurisdictions, other sexual acts may be considered adultery, but all require some form of physical contact. It may be problematic that Tony has never seen Robin with the parish priest. To prove adultery he would not have to catch them in the actual act of adultery. Circumstantial evidence would suffice. However, the circumstantial evidence must establish the opportunity for Robin to commit adultery, and Robin's inclination or disposition to commit adultery. The circumstantial evidence must be of such a quality as to lead fairly and necessarily to the conclusion that adultery has been committed. In Tony's case, Tony could proffer testimony of his seeing Robin's car at the motel, combined with her absence from the home until late one evening, tending to show that Robin had the opportunity to commit adultery. He could also argue that Robin had an adulterous disposition, because she called him "an insufferable bore" and said that "she was sick
of being married to him and had been for years.” However, if Tony intends to allege that Robin is guilty of adultery with the parish priest, he cannot even say that he saw them standing a little too close; or staring at one another a little too long. He failed to investigate the motel incident, and observed nothing more than Robin getting into her car there. There are no reports from friends or other witnesses to corroborate an allegation of adultery. Hence, I would find these facts somewhat weak for an adultery case. Based on this, I would advise Tony that if he wished to terminate the marriage, he would not recommend filing for divorce on adultery grounds.

The next issue is whether Tony has grounds for divorce based on cruelty. In order to make out a case for cruelty, Tony must show that Robin’s conduct has caused or has created a danger of injury to his life, limb or health. Robin’s conduct in not returning home for dinner and in not picking up her son was the cause of extreme worry. Her conduct in telling Tony that he was an “insufferable bore” and in throwing a potted plant, may have caused him extreme emotional upset, to the extent that he was unable to eat or sleep. As a general rule, a party does not have to prove that he/she has been beaten or physically assaulted in order to bring an action for divorce on the grounds of cruelty. Mental cruelty is actionable. However, most jurisdictions require that there be some physical harm or effect as a result of the defendant’s conduct. Also, a single incident of cruelty may suffice to support a successful claim for divorce on those grounds, but that incident must be of an extreme or shocking nature. Here, Tony and Robin really only had one big confrontation, wherein Robin threw a plant which did not hit Tony. This was not an incident of a sufficiently extreme nature. Tony has not expressed fear for his safety. His physical harm would be limited to sleeplessness and appetite, which have lasted for one day, so far. While I would agree with Tony that Robin has not treated him respectfully, I would have difficulty, at this stage, recommending that Tony consider a divorce on cruelty grounds. If in the future, other incidents arise, then perhaps a pattern of abuse or a cruel course of conduct may emerge which can substantiate a claim that Robin is creating a danger to Tony’s life, limb or health. I would add that Tony may at any point, if he is fearful for his personal safety because of Robin’s conduct or threats, seek a restraining order prohibiting Robin from abusing him. This he can do whether he wishes to terminate the marriage or not.

The next issue is whether Tony has grounds for divorce based on desertion. In a general rule, desertion exists as a fault ground for divorce when one spouse leaves the other without that spouse’s consent, without justification and with the intent not to return, for a certain period of time. In order to prove that Robin deserted Tony, Tony must show that Robin left without his consent, without justification and without the intent to return, for whatever period of time is applicable in Lantelme. Since Tony & Robin live in Lantelme, I would have to research how long Robin must remain away from Tony before he can bring his claim of desertion to the courts. Robin and Tony argued, but Tony never indicated that he wished for Robin to leave. Based on what Tony says, he has not done anything to provoke or justify Robin’s departure. Further, Robin’s intent not to return can be discerned by her taking all of her clothes and ripping up the prenuptial agreement. Therefore, the first three elements of desertion are satisfied. The only problem is the duration of Robin’s departure. Robin has only been gone one day. Who knows? She is acting so erratically, she may be back to stay tomorrow. However, I would consider whether or not Tony might have a case for constructive desertion, if Lantelme permits this as a ground for divorce. If Robin can be said to have “left” the marriage 2 years ago by spending so
much time away from the home with the parish priest that she was no longer fulfilling her marital duties at all. The fact that Robin moved out only a day ago, may be of little consequence. She may be deemed as having “constructively deserted” Tony long ago. The problem with this is that Tony acted shocked that Robin did not pick up their son, and that she did not come home for dinner that evening. Both of these facts indicate that she was performing her duties as his wife on some level. However, further inquiry on this issue may be warranted to assess the viability of a claim of desertion. Alternatively, if Robin remains away from the home/marriage for a longer period of time, as required by Lantelme’s desertion statute, then Tony may be able to bring his claim for divorce on the grounds of desertion.

The next issue is whether Robin would have any defenses to Tony’s action for divorce, should he proceed on adultery, cruelty or desertion grounds. Tony may consider that if he brings a complaint for divorce based on adultery, or even constructive desertion grounds, that Robin may allege that he condoned her misconduct, by forgiving her behavior and continuing in the marital relation, as before. He did confront her about her absences and his suspicions, but he chose to continue on as if nothing was wrong. The weakness in this defense is that in order for Robin to successfully use the defense of condonation, Tony must be aware of the particular marital misconduct and forgive her for it anyway. He did not know that (or if) Robin was involved in an adulterous relationship with the parish priest. He was also not aware that she deserted him (constructively), because he expected her to continue to perform her marital duties to the family, right up until the time she left, and he has not forgiven her for leaving.

Robin may also allege that she is not guilty of adultery, cruelty or desertion because she is insane. In jurisdictions which recognize insanity as a divorce defense, the general rule of law is that insanity is a defense to divorce on fault grounds, but the mental infirmity must relate to the person’s ability to know right from wrong, and the marital misconduct must be the result of the mental illness. Tony has related that Robin has been unfocused and forgetful. He is just discovering that she is being treated with prescription medications. If these meds are part of psychopharmacological treatment, Robin may have a viable defense. However, Robin must prove that her marital misconduct was the result of her mental infirmity, and that as a result of this mental illness, she was unable to discern right from wrong. Therefore, I would advise Tony, if he can, to investigate the medications that may be around the house, so that we may determine the nature of Robin’s treatment and presumed illness. If it turns out that Robin is mentally ill, other germane questions would be how long has she been so ill. While I would assume that the illness is concurrent with the current events. I would want to know if the illness dates back to Robin’s first obsession with the church or parish priest. If so, she may more successfully assert the defense of insanity, should Tony elect to claim that she is guilty of adultery, constructive desertion, or even cruel and abusive treatment. Robin would need corroboration of her illness, from medical records, expert witnesses or in the form of the testimony of her physician. She also needs to prove a relation between her conduct and her illness through these means. In conclusion however, I would tell Tony that he would have to consider the unlikelihood that Robin would assert any defense to divorce at this time, since it was she who left the marriage and who indicated that she could no longer tolerate being married to Tony.

This leads to the issue of whether Robin will be the first to file for divorce or annulment.
and whether, if Tony wishes to stay married, Tony has any defenses to divorce. Beginning with the assumption that Robin wants a way out of the marriage, I would have to ask Tony to draw upon his familiarity with Robin to speculate as to what she would be likely to allege as a fault ground against Tony. Also, I would have to ask whether Tony thinks there is any reason to believe that Robin has been mentally ill from the time of the marriage.

If Robin has been mentally ill from the time of the marriage, we would need to consider the issue of whether Robin has grounds for annulment, claiming that she was not of sufficient mental capacity to understand the nature and extent of her marital relationship and responsibilities. The fact that Tony only notes Robin’s odd conduct for the last two years, and that Robin has performed functionally in the marriage otherwise, leads me to believe that it is unlikely that Robin could be successful in any attempt to void or terminate (if Lantelme makes insanity a ground for divorce) the marriage on the grounds of insanity.

Next, I would turn to considering any of the other popular fault grounds such as adultery, cruelty, desertion, term of imprisonment, impotence, non-support, and gross and confirmed habits of intoxication. There is no suggestion that Robin has accused Tony of an extramarital dalliance, nor that he has abused alcohol or other substances. He apparently has been supporting Robin and his children financially through his employment. He has not left the marriage or the home. I would need to ask some personal questions relative to his sexual functioning in order to rule out the possibility that Robin would file for divorce on the ground of impotence. Beyond that, the most likely allegation that Robin might assert against Tony is that he is guilty of mental cruelty. To wit: he is an “insufferable bore.” She may claim that Tony has caused her to be so unhappy in the marriage that she is sick of being married to him and has been for years. She may even attempt to use the fact that she is being treated medically for some ailment caused by the stress of an intolerable marriage. However, in order to be successful, she needs not only to show that she is suffering some harm to her health, she must allege some affirmative conduct on Tony’s part that he knew or should have known would create a danger to Robin’s health. Here, there is no such conduct on Tony’s part. He has been going along working, caring for his family, and worried sick about Robin. Therefore, I would advise Tony, that even if Robin were to elect to file for divorce on the grounds of cruelty (mental), it is unlikely that she could prevail at a hearing. (That is, unless, Tony is not relating all of the facts.)

There is still the possibility that Robin would elect to use the failure of procurement of a marriage license in order to invalidate (or annul) her marriage to Tony. However, as heretofore discussed, that would not be likely to meet with success. Tony would have the defense of laches, as he would on just any ground that Robin could allege for annulment. Further, he could use the doctrine of estoppel in his defense, stating that for 25 years Robin has enjoyed the benefits of marriage to Tony, including his financial, emotional and conjugal support. She should not be heard now to attack the marriage that she remained in and even ratified, to her benefit, for 25 years. Besides, Robin would have little to gain by instituting proceedings to annul the marriage. Since annulment declares that the marriage was void, leaving the parties to carry on as if they were never married, doing this would injure Robin’s ability to obtain certain financial benefits of the marriage. This might include rights to alimony, equitable division of marital assets and perhaps employment or government benefits. She may need these financial
resources, particularly if she is, in fact, ill. Therefore, I would advise Tony that it is unlikely that Robin will attempt to annul, or be successful in annulling the marriage.

This leaves Robin or Tony, again, with divorce as the only way out of the marriage. If Tony wishes to leave the marriage, I will advise him that proceeding on "no-fault" grounds may be the best option. If Robin files for divorce first, it is most likely, given the facts, that she will allege that the parties have irreconcilable differences, or that the marriage is irretrievably broken down, whichever the statutory language may be for a "no-fault" divorce in Lantelme. In order to prevail on these grounds, the complainant must show that the parties are no longer enjoying that state of matrimony which they once shared, perhaps they can agree on nothing or they no longer enjoy each other's company in any way, or, they have other social, religious, emotional or conjugal differences which cannot be reconciled. There must be proof that the marriage is at an end and that there is no way to retrieve the marital relationship which once existed. Some jurisdictions require a period of separation, either under one roof, or under separate roofs, with no continuance of the marital relation during this period. Here, Tony could allege that Robin's absence from the home to concentrate on spiritual matters, instead of family ones has led to the breakdown of the marriage. In addition, he could allege that he suspected, as a result of her unexplained absences and the motel incident, that she was engaged in another relationship, a fact which has irreparably injured the parties ability to remain committed to the marriage. Further, he could allege that Robin's conduct in throwing a plant at him, and stating that she could not stand being married to him anymore, is further proof of the severity of the differences that have arisen between them. Tony could also assert that Robin's tearing of the prenuptial agreement and leaving the marital home is proof that the marriage has reached an end. The only factor which would remain is whether Robin's actual separation from Tony will meet Lantelme's durational requirements, if there are any. If there are, I would advise Tony that his case for breakdown may have to wait to ripen before entering a complaint, or requesting a hearing. Otherwise, I would tell Tony that if he has decided upon divorce as a remedy for what ails his domestic situation, he should strongly consider filing for divorce on "no-fault" grounds, such as irreconcilable differences or irretrievable breakdown of the marriage. Doing so will eliminate the need and burden of proving marital fault (such as adultery, cruelty or desertion), and it may even help to de-escalate marital tensions between him and Robin. This would allow them to better focus their resources on matters of custody and financial settlement. If he is able to obtain Robin's agreement with regard to those matters, the "no-fault" process will be even quicker and easier.

With regard to matters of custody and financial settlement, the prevalent issue will be the validity and enforceability of Tony and Robin's antenuptial agreement. As a general rule, antenuptial agreements are considered valid and enforceable, if they meet the requirements of substantive fairness and procedural fairness. The fact that Robin tore up the agreement does not destroy the validity of the agreement. Tony should be advised to find his signed copy of the agreement, piece together Robin's, or procure a copy from the attorney who drafted it (25 years ago?!!!), so that I might review it and advise him. The law in most jurisdictions is that the agreement must be substantively fair as well as procedurally fair. Substantive fairness relates to the fairness of the provisions of the agreement itself. Jurisdictions vary in applying a standard of substantive fairness. In some jurisdictions, antenuptial agreements must be fair and reasonable at
the time of the execution of the agreement, and also at the time of enforcement (in this case 25 years later.) Whether it is fair at the time of enforcement will depend on whether the provisions are unconscionable in that the agreement, if enforced, would leave one of the parties without means to effectively support his or herself, meaning that there would be countervailing equities involved in the enforcement of such an agreement. In other jurisdictions, the terms of the prenup do not need to be fair and reasonable, but they must not be unconscionable, as is the rule in basic contract law. Further, the agreement’s provisions must not unnecessarily encourage divorce, or it may be declared void as against public policy. In general, however, jurisdictions do not view antenuptial contracts in the same light as they do regular business contracts. This is because of the interest that a state has in upholding marriage and in protecting the welfare of its citizens. The parties to an antenuptial agreement enjoy a different relationship than usually exists in a business contract context. They trust one another, and usually there is a disparity in the parties’ bargaining power, leading to a greater chance of overreaching, and therefore, a greater likelihood of an unfair result. Anyway, if the agreement is found to be unfair or unconscionable substantively, then a court having jurisdiction over divorce matters may vary or modify the terms as it deems appropriate, or it can ignore the terms altogether in issuing a divorce decree. Additionally, terms that relate to child custody or to the needs of a minor child will remain modifiable by the court, no matter whether the agreement is found to be otherwise enforceable, as the court has the power to decide on all issues which relate to the best interests of the children. In Tony & Robin’s case, the question will be whether the provisions of an antenuptial agreement executed 25 years ago can possibly be seen as “fair” 25 years later. Whoever benefits the most under the terms of the agreement will most likely argue that a deal is a deal, and that the terms were not unconscionable or were reasonable when the agreement was executed. Assuming that the financial provisions do not leave one party or another without adequate means to support himself, one would argue that there are no circumstances which amount to countervailing equities which should restrain the enforcement of the agreement upon divorce. I would tell Tony however, that if Robin is ill, her needs in recent times and in the foreseeable future, may affect a court’s decision about whether the agreement may be fair and enforceable at this time. Depending on what the agreement says when I review it, I will advise Tony as to strategy on this point.

With respect to procedural fairness, I also need to review with Tony the facts surrounding the execution of the prenuptial agreement, to determine whether there were factors of misrepresentation, fraud or duress. Further, it must be clear that there was full and fair disclosure of each other’s financial position prior to signing the agreement. There must also be an indication that both parties signed the agreement with full knowledge and understanding of its terms, voluntarily. It would, of course, be helpful to know whether each of the parties had counsel review the agreement and whether counsel presumably advised them on the meaning of the terms of the prenup, prior to their signing it. If they both did retain counsel, this would counter any argument by either party that they did not understand they agreement or knowingly waive any marital rights that they otherwise would have had, had they not signed the prenup. While knowing whether the parties had the assistance of counsel would be helpful to determine whether the agreement is procedurally fair, there would be no absolute requirement that the parties obtain counsel prior to signing the prenup. Parties generally have the freedom to accept or reject the advice of counsel in executing contracts, and antenuptial contracts are no exception.
in this regard. So, even if Tony or Robin did not have the advice of counsel prior to signing the prenup, this will not be determinative on the question of whether there was procedural fairness in the execution of the agreement. Hence, unless Tony has information that would indicate that one of the parties did not give a full and fair disclosure of his/her financial position at the time of execution, or that there was some fraud, misrepresentation or duress involved, the prenup would most likely be found to be procedurally fair.

The only remaining concern on the issue of the procedural fairness of the antenuptial agreement would be based on what Tony may learn about Robin’s mental capacity. If Robin were, as a result of mental illness, unable to understand or appreciate the terms of the agreement at the time of the signing, this may be a problem. Then a court might not wish to favor enforcement of the agreement. As previously stated however, Tony notes only Robin’s odd behavior in the last two years, and prior to that there seems no indication that she was suffering from any illness, mental or other, that could affect her ability to understand or make informed decisions. So Robin would be unlikely to prevail with this strategy. Besides, if Robin alleges that there really were any such illness existing 25 years ago, there may be grounds upon which Tony could argue that the marriage was invalid ab initio, because Robin lacked the mental capacity to understand the marital relation and its responsibilities. Thus, if successful in using Robin’s own claim, he might have a way to avoid divorce and a court ordered divorce settlement, altogether. In conclusion however, it would appear that unless there is evidence of substantive or procedural unfairness, Tony must be advised that the prenuptial agreement that he and Robin signed may be enforced at the time of divorce.

To sum up all of the issues for Tony, I would tell Tony that if he is interested in exiting his marriage to Robin, divorce and not annulment is the appropriate avenue, because in my opinion, he is validly married to Robin. He can consider filing for divorce on the fault grounds of adultery, desertion or cruelty. However, there are weaknesses in the case on all three grounds. Additionally, Tony needs to be concerned that Robin may be suffering from a mental illness which has caused her marital misconduct, and if she can prove that, he will remain married to Robin, even if he wishes to end the marriage by alleging that she is guilty of adultery, desertion or cruelty. If Tony wishes to go the path of least resistance in ending his marriage to Robin, he should consider a “no-fault” divorce, based on irretrievable breakdown of the marriage or, based on irreconcilable differences as his most viable option. He may have to wait to be separated either physically or constructively from Robin for a certain statutary period, as required by the “no-fault” statute in the state of Lantelme, before he can file a complaint or request a hearing for divorce. In all events, though, divorce will settle issues relative to the parties custody of the minor child, child support, visitation, alimony, and property division. However, if Tony and Robin’s prenuptial agreement meets the requirements of substantive and procedural fairness, he may be bound by the terms of the prenup on matters of alimony (or spousal support) and property division, unless the court finds it “unconscionable” or against the equities to enforce the terms of the agreement 25 years after the agreement’s execution. Most importantly, I would tell Tony to take some time to mull over the discussion we have had, and to decide what exactly he wants to do about his relationship with Robin. Despite her conduct, Robin has been Tony’s wife for 25 years and he may have deep feelings for her which may prevent him from deciding to divorce her.
one day after she leaves him. He may wish to pursue reconciliation, and if he does, it would be my job to support that objective. In closing, I would give Tony my card and tell him to come back to see me if and when he has decided upon taking legal action against Robin by filing a complaint for divorce. Alternatively, he may come again if he needs to engage my services to defend a complaint for divorce or separate support filed by Robin. I would also be available to make a referral to a qualified marriage or family counselor should Tony find that helpful. I would wish Tony good luck and advise him to take good care of his son in the meantime.
Family Law Midterm Evaluation
Spring 2005

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:

Anita and Philip Ratone were married in the State of Geehan in February of 2004, when Philip was 24 years of age and Anita was 23. The two met at the house party of a mutual friend. Philip is the sole beneficiary of a family trust administered through a local bank. He receives an annual income from the trust of $75,000. Anita is a second grade teacher. When Philip is 26 years of age, the principal of the trust will be distributed to him for his own uses, free of all trusts. The couple still resides in the State of Geehan.

Unbeknownst to Anita, when Philip was 19 years of age he was diagnosed with paranoid schizophrenia. Before the age of 20, he had been committed to two psychiatric hospitals in the State of Wayne. During the second hospitalization he fell in love with a nurse. Upon discharge, he took up residence with her in the State of Wayne. Philip and the nurse pooled their income to pay bills and the rent. The nurse referred to herself as “Mrs. Ratone” for the entire year that they resided together. Philip never objected to her using his name. However, one day Philip left the residence that they shared and never returned. Since his discharge from the last hospitalization, Philip has taken anti-psychotic medication which has controlled his symptoms quite well.

Prior to his marriage to Anita, on his attorney’s advice, Philip insisted that Anita sign a prenuptial agreement. It was signed one day before the wedding. The wedding was a simple civil ceremony at city hall, with just Anita’s parents and two witnesses in attendance. The prenuptial agreement provided, among other things, that in the event of divorce, Anita would be entitled to a the sum of $2000.00 per month in alimony, payable during her lifetime, a late model automobile and, if the parties were married longer than five years, the sum of $25,000.00. Anita was provided with a statement of Philip’s financial position but she declined to consult with an attorney prior to signing this prenuptial agreement.

As of late, Anita noticed that Philip has been moody and distant. Sometimes he talks to himself and does not make sense when he talks. She has become frightened by his behavior and has moved in with her mother. Anita still goes to the marital residence frequently, and she checks on Philip. Sometimes she stays to make him dinner and she cleans the house, which is often a horrible mess. Anita has urged Philip to allow her to take him to see a physician, but he has refused. Recently, Anita intercepted mail intended for Philip from the nurse, and she has learned all about Philip’s condition and his relationship with the nurse.

When Anita arrives at your law office, how will you advise her as to her rights, obligations and exposures?
Family Law Midterm - Spring 2005
Inventory of Issues
Sample Response Outline

I. Preliminary/Role of Counsel
   A. Discussion re: goals and interests of the client

   B. Introduction of client's options - annulment, divorce, separation

II. Annulment (define)
   A. Is the marriage valid
      1. Define valid marriage
      2. Determine what are the impediments to a valid marriage

   B. Prior marriage still in effect? (Bigamy?)
      1. Depends on whether there is clm between P & N.
         a. Is clm recognized in Wayne?
            If so will it by recognized in Geewan by full faith and credit?
         b. Give definition and elements of valid clm
         c. Identify facts which tend to indicate there is/is not clm, if recognized
            in the jurisdiction
         d. Conclude

      2. If clm does exits then, is there another theory on which to recognize P's m to
         A?
         a. Discuss saving statute in the jurisdiction, putative spouse doctrine,
            presumption of validity of 2nd or later marriage
         b. Explain application and effect on m between A & P

      3. If no clm in the jurisdiction or, if N & P do not have clm, then are A & P m'd?

   C. Other reasons for why m. may not be valid, or other possible grounds for annulment

      1. Fraud (define, give elements, apply facts and conclude)

      2. Mental incapacity (define, explain what needs to be proven to show lack of
         mental capacity, apply facts and conclude)

   D. If any reason for annulment exists, discuss defenses to annulment, applicability of
      ratification, laches or estoppel.

   E. Conclude
      1. As to likelihood that A's m to P can be annulled
      2. As to desirability of annulment, notwithstanding annulment possibilities

II. Divorce as a possible option if A's m to P is valid, and A wants to end m by divorce
A. Possible Grounds for Divorce

1. Adultery (define, give elements of proof/rule of law, apply facts and conclude as to the viability of this ground.)

2. Constructive desertion (define, give elements of proof/rule of law, apply facts and conclude as to the viability of this ground.)

3. Cruelty (define, give elements of proof/rule of law, apply facts and conclude as to the viability of this ground.)

4. Insanity (if a ground for divorce and not only a defense in the State of Gehen) (define, give elements of proof/rule of law, apply facts and conclude as to the viability of this ground.)

5. No fault
   a. What must be proven to succeed on no-fault grounds
   b. Explain jurisdictional differences (e.g. some jurisdictions require a period of voluntary separation - separate roofs/separate lives
   c. . apply facts and conclude as to the viability of this ground.

B. Would P. have any defenses to fault ground divorce?

1. Condonation (define, apply facts and conclude as to the applicability of this defense)

2. Insanity (define, rule of law/test to be applied to prove the defense, apply facts and conclude as to the likelihood of success if P uses this defense)

C. Conclude as to best course to pursue if A wants divorce (fault grounds choice or no-fault ground choice and why) and what A can expect as a result of divorce

D. If divorce is pursued by A. will pre-nup be enforceable?

1. Discuss different jurisdictional standards for enforceability

2. Discuss possible problems w/enforceability
   a. Lack of counsel, raising issue of whether A made a knowing, informed waiver of rights (apply facts, conclude)
   b. Agreement presented one day before wedding raising issue of duress at time of signing (define duress & rule of law, apply facts, conclude)

3. Discuss what effect a possible challenge to prenup would have on A’s overall interests
   a. Does she benefit from terms of prenup?
B. If she challenges successfully, will her benefits be likely greater if a court determines what would be due each party at divorce.

IV. Separation

A. Does State of Geehan have provisions for a separate support proceeding or divorce from bed and board?
   1. What would be required to prove to succeed in such an action? (living apart, justifiable cause for living apart?)
   2. What remedies might be available in such an action? (e.g. spousal support?)
   3. What would be the impact of a separation on Anita in comparison to divorce or annulment (This leaves parties still married and is this what she wants?)

V. Conclude as to A’s options and advise as to the best course of action, considering the relative benefits of each option from A’s perspective.
Spring 2003
MIDTERM EVALUATION

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

Tony and Robin married in a Catholic ceremony in 1978 in Lantelme but they failed to obtain a marriage license. In the last two years, Robin has been spending a lot of time with the parish priest. When Tony questioned Robin about her frequent trips to rectory, Robin explained that she was engaged in Bible Study groups. However, Tony has become more and more concerned about Robin. She has been frequently forgetful and unfocused. Last week she forgot to pick up the parties’ youngest son at the High School track. He called Tony at work to come and get him after waiting for Robin for one hour. When Tony and his son arrived home, Robin was not home but there was a message on the answering service that Robin’s prescription is ready. Tony was unaware that Robin was being treated for anything. Robin did not return to prepare dinner for the family. In fact she did not return until 11:00PM. At that time, Tony confronted Robin with his concerns. Of course, he was angry at her when she arrived singing and whistling. He had been sick with worry wondering where she could have been or what could have happened to her. The following day, while Tony was seeing a client in a nearby town, he noticed Robin’s car at a nearby motel. Because he was with a business associate, he does not leave the meeting to investigate, but later saw Robin get into the car and depart.

Two days ago, Tony confronted Robin with his knowledge about Robin’s motel visit. Robin declared that Tony was an “insufferably boring man” and that she was sick of being married to him and has been for years. She picked up a potted plant and threw it at him. After 25 years of marriage and two children she declared that she has “had enough”. Yesterday, Tony woke to find Robin gone and their prenuptial agreement torn to shreds and thrown on their bed. Her closet was empty. Tony was unable to sleep and eat last night.

Today, Tony visits your office for legal advice. What do you tell Tony about the domestic issues that he has presented for your consideration?
In order to provide legal advice to Tony, I would need to know Tony's objectives in this matter. Since Tony has come to my office, I can assume that he appreciates that he is involved in a domestic dilemma with potential legal consequences. I would need to ascertain whether Tony has a desire to seek to terminate, or void (if possible), his marriage to Robin. He may not. I would also need a clear idea of what Tony fears may happen. Since he knows Robin better than anyone else, his instincts about how Robin will proceed and react will be valuable in planning strategy in this case. As a preliminary step, I would conduct a thorough interview and then advise Tony as to the issues his problem presents. I would then recommend the most viable of his legal options, remembering however, that my role as counsel for Tony, will be to zealously pursue the legitimate objectives of my client.

The first issue presented is whether the lack of a marriage license renders Tony's marriage to Robin void. As a general rule of law, a legal ceremonial marriage requires that two people, who are legally qualified to marry, agree and undertake to do so, in a ceremony of some sort, conducted by an individual authorized to solemnize marriages. There is also a requirement that the parties obtain a license, and/or have some type of certificate of marriage recorded in accordance with local state statute. In Tony and Robin’s case, they failed to comply with the requirement of licensure. One might argue that the marriage is invalid because of this failure. However, this failure is a procedural defect. It is not a substantive one which would defeat one of the party’s legal qualifications to marry, such as that he/she is underage or already married, or related by blood. Courts have held that such a procedural defect(failure to obtain a marriage license) will not invalidate the marriage. The policy reasons for this would be to uphold marriages, where possible, especially in situations like this one, when the parties(or at least one of them) in good faith believed themselves to be validly married and conducted themselves in this manner. Here Tony and Robin have lived in the marriage for 25 years and have reared two children together. No good would come of declaring the marriage void now. Even if the marriage were void when they entered into it, because of the failure to obtain a license, the fact that Tony and Robin have lived in the marriage for the last 25 years would have the effect of ratifying the marriage. Also, in this vein, Robin would be able to assert laches as a defense. Annulment actions should be brought in a timely manner. A claimant should request an annulment as soon as possible after learning of the supposed impediment to the marriage. Otherwise, the parties may be deemed to have waited too long to assert their rights to have the marriage declared void, ratifying the marriage in the meantime. Therefore, I would tell Tony, that in all likelihood, his marriage to Robin is valid. He would not, in my opinion, be successful in requesting an annulment of the marriage.
The marriage could also be deemed valid if Lantelme were a jurisdiction which recognizes common law marriage. Since common law marriages do not generally involve a ceremony or a license, if this is a common law marriage jurisdiction, the parties’ failure to obtain a license would be of no consequence. As a general rule of law, a common law marriage results when two people who are legally qualified to marry, intend and agree to be married immediately, continuously cohabitate as husband and wife, and openly and notoriously hold themselves out to the general public as married. In Tony’s case, he and Robin took part in a Catholic marriage ceremony, evidencing that they agreed to be married immediately. They cohabitated as husband and wife for 25 years, and they believed themselves to be married, (having executed an antenuptial agreement). (also, Robin says that she is sick of being married to Tony). Tony and Robin also held themselves out as married to everyone, including their children. Therefore, I would tell Tony that if Lantelme is a jurisdiction which recognizes common law marriages, his marriage to Robin is valid, and that if he wants out of the marriage, divorce the road to go, not annulment.

If Tony is considering divorce, he has some choices regarding how to proceed. He may proceed on fault grounds, if the facts warrant that, or he may proceed on no-fault grounds. The difference will be that proving marital fault often entails more in corroboration and evidence. Thus, a divorce on fault grounds may be more time consuming and more expensive. On the other hand, many jurisdictions require a period of separation, or other waiting period, before parties are eligible to have their “no-fault” divorce heard in court. Therefore, he may not be able to proceed to an immediate divorce hearing. Another consideration is whether the prenuptial agreement specified a grounds choice, in the event that one of the parties were to seek to terminate the marriage. If it did, and if the agreement is valid and enforceable, then Tony may be limited to filing for divorce on the grounds specified in the prenup.

Assuming that Tony is free to file for divorce on any grounds which appear fitting, the next issue is whether Tony has grounds for a divorce on the grounds of adultery. Robin has spent an inordinate amount of time with the parish priest, supposedly in Bible studies. Based on the fact that Tony asked Robin about the amount of time she was spending at church, I could infer that Tony was suspicious about Robin’s behavior. However, he does not indicate that he has ever seen Robin in a compromising position with the priest. Adultery is defined as having voluntary sexual intercourse with a person not your spouse. As applied to Tony & Robin, it would mean that Tony would have to allege that Robin had voluntary sexual intercourse with a person other than him. Jurisdictions differ as how broadly they define adultery. In many jurisdictions, other sexual acts may be considered adultery, but all require some form of physical contact. It may be problematic that Tony has never seen Robin with the parish priest. To prove adultery he would not have to catch them in the actual act of adultery. Circumstantial evidence would suffice. However, the circumstantial evidence must establish the opportunity for Robin to commit adultery, and Robin’s inclination or disposition to commit adultery. The circumstantial evidence must be of such a quality as to lead fairly and necessarily to the conclusion that adultery has been committed. (Arnault case) Tony could proffer testimony of his seeing Robin’s car at the motel, combined with her absence from the home until late one evening, tending to show that Robin had the opportunity to commit adultery. He could also argue that Robin had an adulterous disposition, because she called him “an insufferable bore” and said that “she was sick
of being married to him and had been for years.” However, if Tony intends to allege that Robin is guilty of adultery with the parish priest, he cannot even say that he saw them standing a little too close, or staring at one another a little too long. He failed to investigate the motel incident, and observed nothing more than Robin getting into her car there. There are no reports from friends or other witnesses to corroborate an allegation of adultery. Hence, I would find these facts somewhat weak for an adultery case. Based on this, I would advise Tony that if he wished to terminate the marriage, I would not recommend filing for divorce on adultery grounds.

The next issue is whether Tony has grounds for divorce based on cruelty. In order to make out a case for cruelty, Tony must show that Robin’s conduct has caused or has created a danger of injury to his life, limb or health. Robin’s conduct in not returning home for dinner and in not picking up her son was the cause of extreme worry. Her conduct in telling Tony that he was an “insufferable bore” and in throwing a potted plant, may have caused him extreme emotional upset, to the extent that he was unable to eat or sleep. As a general rule, a party does not have to prove that he/she has been beaten or physically assaulted in order to bring an action for divorce on the grounds of cruelty. Mental cruelty is actionable. However, most jurisdictions require that there be some physical harm or effect as a result of the defendant’s conduct. Also, a single incident of cruelty may suffice to support a successful claim for divorce on those grounds, but that incident must be of an extreme or shocking nature. Here, Tony and Robin really only had one big confrontation, wherein Robin threw a plant which did not hit Tony. This was not an incident of a sufficiently extreme nature. Tony has not expressed fear for his safety. His physical harm would be limited to sleeplessness and appetite, which have lasted for one day, so far. While I would agree with Tony that Robin has not treated him respectfully, I would have difficulty, at this stage, recommending that Tony consider a divorce on cruelty grounds. If in the future, other incidents arise, then perhaps a pattern of abuse or a cruel course of conduct may emerge which can substantiate a claim that Robin is creating a danger to Tony’s life, limb or health. I would add that Tony may at any point, if he is fearful for his personal safety because of Robin’s conduct or threats, seek a restraining order prohibiting Robin from abusing him. This he can do whether he wishes to terminate the marriage or not.

The next issue is whether Tony has grounds for divorce based on desertion. As a general rule, desertion exists as a fault ground for divorce when one spouse leaves the other without that spouse’s consent, without justification and with the intent not to return, for a certain period of time. In order to prove that Robin deserted Tony, Tony must show that Robin left without his consent, without justification and without the intent to return, for whatever period of time is applicable in Lantelme. Since Tony & Robin live in Lantelme, I would have to research how long Robin must remain away from Tony before he can bring his claim of desertion to the courts. Robin and Tony argued, but Tony never indicated that he wished for Robin to leave. Based on what Tony says, he has not done anything to provoke or justify Robin’s departure. Further, Robin’s intent not to return can be discerned by her taking all of her clothes and ripping up the prenuptial agreement. Therefore, the first three elements of desertion are satisfied. The only problem is the duration of Robin’s departure. Robin has only been gone one day. Who knows? She is acting so erratically, she may be back to stay tomorrow. However, I would consider whether or not Tony might have a case for constructive desertion, if Lantelme permits this as a ground for divorce. If Robin can be said to have “left” the marriage 2 years ago by spending so
much time away from the home with the parish priest that she was no longer fulfilling her marital
duties at all, the fact that Robin moved out only a day ago, may be of little consequence. She
may be deemed as having "constructively deserted" Tony long ago. The problem with this is that
Tony acted shocked that Robin did not pick up their son, and that she did not come home for
dinner that evening. Both of these facts indicate that she was performing her duties as his wife on
some level. However, further inquiry on this issue may be warranted to assess the viability of a
claim of desertion. Alternatively, if Robin remains away from the home/marriage for a longer
period of time, as required by Lantelme's desertion statute, then Tony may be able to bring his
claim for divorce on the grounds of desertion.

The next issue is whether Robin would have any defenses to Tony's action for divorce,
should he proceed on adultery, cruelty or desertion grounds. Tony may consider that if he brings
a complaint for divorce based on adultery, or even constructive desertion grounds, that Robin
may allege that he condoned her misconduct, by forgiving her behavior and continuing in the
marital relation, as before. He did confront her about her absences and his suspicions, but he
chose to continue on as if nothing was wrong. The weakness in this defense is that in order for
Robin to successfully use the defense of condonation, Tony must be aware of the particular
marital misconduct and forgive her for it anyway. He did not know that (or if) Robin was
involved in an adulterous relationship with the parish priest. He was also not aware that she
deserted him (constructively), because he expected her to continue to perform her marital duties
to the family, right up until the time she left, and he has not forgiven her for leaving.

Robin may also allege that she is not guilty of adultery, cruelty or desertion because she is
insane. In jurisdictions which recognize insanity as a divorce defense, the general rule of law is
that insanity is a defense to divorce on fault grounds, but the mental infirmity must relate to the
person's ability to know right from wrong, and the marital misconduct must be the result of the
mental illness. Tony has related that Robin has been unfocused and forgetful. He is just
discovering that she is being treated with prescription medications. If these meds are part of
psychopharmacological treatment, Robin may have a viable defense. However, Robin must
prove that her marital misconduct was the result of her mental infirmity, and that as a result of
this mental illness, she was unable to discern right from wrong. Therefore, I would advise Tony,
if he can, to investigate the medications that may be around the house, so that we may determine
the nature of Robin's treatment and presumed illness. If it turns out that Robin is mentally ill,
other germane questions would be how long has she been so ill. While I would assume that the
illness is concurrent with the current events. I would want to know if the illness dating back to
Robin's first obsession with the church or parish priest. If so, she may more successfully assert
the defense of insanity, should Tony elect to claim that she is guilty of adultery, constructive
desertion, or even cruel and abusive treatment. Robin would need corroboration of her illness,
from medical records, expert witnesses or in the form of the testimony of her physician. She also
needs to prove a relation between her conduct and her illness through these means. In
conclusion however, I would tell Tony that he would have to consider the unlikelihood that
Robin would assert any defense to divorce at this time, since it was she who left the marriage and
who indicated that she could no longer tolerate being married to Tony.

This leads to the issue of whether Robin will be the first to file for divorce or annulment.
and whether, if Tony wishes to stay married, Tony has any defenses to divorce. Beginning with the assumption that Robin wants a way out of the marriage, I would have to ask Tony to draw upon his familiarity with Robin to speculate as to what she would be likely to allege as a fault ground against Tony. Also, I would have to ask whether Tony thinks there is any reason to believe that Robin has been mentally ill from the time of the marriage.

If Robin has been mentally ill from the time of the marriage, we would need to consider the issue of whether Robin has grounds for annulment, claiming that she was not of sufficient mental capacity to understand the nature and extent of her marital relationship and responsibilities. The fact that Tony only notes Robin’s odd conduct for the last two years, and that Robin has performed functionally in the marriage otherwise, leads me to believe that it is unlikely that Robin could be successful in any attempt to void or terminate (if Lantelme makes insanity a ground for divorce) the marriage on the grounds of insanity.

Next, I would turn to considering any of the other popular fault grounds such as adultery, cruelty, desertion, term of imprisonment, impotence, non-support, and gross and confirmed habits of intoxication. There is no suggestion that Robin has accused Tony of an extramarital dalliance, nor that he has abused alcohol or other substances. He apparently has been supporting Robin and his children financially through his employment. He has not left the marriage or the home. I would need to ask some personal questions relative to his sexual functioning in order to rule out the possibility that Robin would file for divorce on the ground of impotence. Beyond that, the most likely allegation that Robin might assert against Tony is that he is guilty of mental cruelty, to wit: he is an “insufferable bore”. She may claim that Tony has caused her to be so unhappy in the marriage that she is sick of being married to him and has been for years. She may even attempt to use the fact that she is being treated medically for some ailment caused by the stress of an intolerable marriage. However, in order to be successful, she needs not only to show that she is suffering some harm to her health, she must allege some affirmative conduct on Tony’s part that he knew or should have known would create a danger to Robin’s health. Here, there is no such conduct on Tony’s part. He has been going along working, caring for his family, and worried sick about Robin. Therefore, I would advise Tony, that even if Robin were to elect to file for divorce on the grounds of cruelty (mental), it is unlikely that she could prevail at a hearing. (That is, unless, Tony is not relating all of the facts.)

There is still the possibility that Robin would elect to use the failure of procurement of a marriage license in order to invalidate (or annul) her marriage to Tony. However, as heretofore discussed, that would not be likely to meet with success. Tony would have the defense of laches, as he would on just any ground that Robin could allege for annulment. Further, he could use the doctrine of estoppel in his defense, stating that for 25 years Robin has enjoyed the benefits of marriage to Tony, including his financial, emotional and conjugal support. She should not be heard now to attack the marriage that she remained in and even ratified, to her benefit, for 25 years. Besides, Robin would have little to gain by instituting proceedings to annul the marriage. Since annulment declares that the marriage was void, leaving the parties to carry on as if they were never married, doing this would injure Robin’s ability to obtain certain financial benefits of the marriage. This might include rights to alimony, equitable division of marital assets and perhaps employment or government benefits. She may need these financial
resources, particularly if she is, in fact, ill. Therefore, I would advise Tony that it is unlikely that Robin will attempt to annul, or be successful in annulling the marriage.

This leaves Robin or Tony, again, with divorce as the only way out of the marriage. If Tony wishes to leave the marriage, I will advise him that proceeding on “no-fault” grounds may be the best option. If Robin files for divorce first, it is most likely, given the facts, that she will allege that the parties have irreconcilable differences, or that the marriage is irretrievably broken down, whichever the statutory language may be for a “no fault” divorce in Lantelme. In order to prevail on these grounds, the complainer must show that the parties are no longer enjoying that state of matrimony which they once shared, perhaps they can agree on nothing or they no longer enjoy each other’s company in any way, or, they have other social, religious, emotional or conjugal differences which cannot be reconciled. There must be proof that the marriage is at an end and that there is no way to retrieve the marital relationship which once existed. Some jurisdictions require a period of separation, either under one roof, or under separate roofs, with no continuance of the marital relation during this period. Here, Tony could allege that Robin’s absence from the home to concentrate on spiritual matters, instead of family ones have led to the breakdown of the marriage. In addition, he could allege that he suspected, as a result of her unexplained absences and the motel incident, that she was engaged in another relationship, a fact which has irreparably injured the parties ability to remain committed to the marriage. Further, he could allege that Robin’s conduct in throwing a plant at him, and stating that she could not stand being married to him anymore, is further proof of the severity of the differences that have arisen between them. Tony could also assert that Robin’s tearing of the prenuptial agreement and leaving the marital home is proof that the marriage has reached an end. The only factor which would remain is whether Robin’s actual separation from Tony will meet Lantelme’s durational requirements, if there are any. If there are, I would advise Tony that his case for breakdown may have to wait to ripen before entering a complaint, or requesting a hearing. Otherwise, I would tell Tony that if he has decided upon divorce as a remedy for what ails his domestic situation, he should strongly consider filing for divorce on “no-fault” grounds, such as irreconcilable differences or irretrievable breakdown of the marriage. Doing so will eliminate the need and burden of proving marital fault (such as adultery, cruelty or desertion), and it may even help to de-escalate marital tensions between him and Robin. This would allow them to better focus their resources on matters of custody and financial settlement. If he is able to obtain Robin’s agreement with regard to those matters, the “no-fault” process will be even quicker and easier.

With regard to matters of custody and financial settlement, the prevalent issue will be the validity and enforceability of Tony and Robin’s antenuptial agreement. As a general rule, antenuptial agreements are considered valid and enforceable, if they meet the requirements of substantive fairness and procedural fairness. The fact that Robin tore up the agreement does not destroy the validity of the agreement. Tony should be advised to find his signed copy of the agreement, piece together Robin’s, or procure a copy from the attorney who drafted it (25 years ago?!?!), so that I might review it and advise him. The law in most all jurisdictions is that the agreement must be substantively fair as well as procedurally fair. Substantive fairness relates to the fairness of the provisions of the agreement itself. Jurisdictions vary in applying a standard of substantive fairness. In many jurisdictions, antenuptial agreements must be fair and reasonable at
the time of the execution of the agreement, and also at the time of enforcement (in this case 25 years later.) Whether it is fair at the time of enforcement will depend on whether the provisions are unconscionable in that the agreement, if enforced, would leave one of the parties without means to effectively support his or herself, meaning that there would be countervailing equities involved in the enforcement of such an agreement. In other jurisdictions, the terms of the prenup do not need to be fair and reasonable, but they must not be unconscionable, as is the rule in basic contract law. Further, the agreement’s provisions must not unnecessarily encourage divorce, or it may be declared void as against public policy. In general, however, jurisdictions do not view antenuptial contracts in the same light as they do regular business contracts. This is because of the interest that a state has in upholding marriage and in protecting the welfare of its citizens. The parties to an antenuptial agreement enjoy a different relationship than usually exists in a business contract context. They trust one another, and usually there is a disparity in the parties’ bargaining power, leading to a greater chance of overreaching, and therefore, a greater likelihood of unfair result. Anyway, if the agreement is found to be unfair or unconscionable substantively, then a court having jurisdiction over divorce matters may vary or modify the terms as it deems appropriate, or it can ignore the terms altogether in issuing a divorce decree. Additionally, terms that relate to child custody or to the needs of a minor child will remain modifiable by the court, no matter whether the agreement is found to be otherwise enforceable, as the court has the power to decide on all issues which relate to the best interests of the child/ren. In Tony & Robin’s case, the question will be whether the provisions of an antenuptial agreement executed 25 years ago can possibly be seen as “fair” 25 years later. Whoever benefits the most under the terms of the agreement will most likely argue that a deal is a deal, and that the terms were not unconscionable or were reasonable when the agreement was executed. Assuming that the financial provisions do not leave one party or another without adequate means to support his/herself, one would argue that there are no circumstances which amount to countervailing equities which should restrain the enforcement of the agreement upon divorce. I would tell Tony however, that if Robin is ill, her needs in recent times and in the foreseeable future, may affect a court’s decision about whether the agreement may be fair and enforceable at this time. Depending on what the agreement says when I review it, I will advise Tony as to strategy on this point.

With respect to procedural fairness. I also need to review with Tony the facts surrounding the execution of the prenuptial agreement, to determine whether there were factors of misrepresentation, fraud or duress. Further, it must be clear that there was full and fair disclosure of each other’s financial position prior to signing the agreement. There must also be an indication that both parties signed the agreement with full knowledge and understanding of its terms voluntarily. It would, of course, be helpful to know whether each of the parties had counsel review the agreement and whether counsel presumably advised them on the meaning of the terms of the prenup, prior to their signing it. If they both did retain counsel, this would counter any argument by either party that they did not understand they agreement or knowingly waive any marital rights that they otherwise would have had, had they not signed the prenup. While knowing whether the parties had the assistance of counsel would be helpful to determine whether the agreement is procedurally fair, there would be no absolute requirement that the parties obtain counsel prior to signing the prenup. Parties generally have the freedom to accept or reject the advice of counsel in executing contracts, and antenuptial contracts are no exception
in this regard. So, even if Tony or Robin did not have the advice of counsel prior to signing the prenup, this will not be determinative on the question of whether there was procedural fairness in the execution of the agreement. Hence, unless Tony has information that would indicate that one of the parties did not give a full and fair disclosure of his/her financial position at the time of execution, or that there was some fraud, misrepresentation or duress involved, the prenup would most likely be found to be procedurally fair.

The only remaining concern on the issue of the procedural fairness of the antenuptial agreement would be based on what Tony may learn about Robin’s mental capacity. If Robin were, as a result of mental illness, unable to understand or appreciate the terms of the agreement at the time of the signing, this may be a problem. Then a court might not wish to favor enforcement of the agreement. As previously stated however, Tony notes only Robin’s odd behavior in the last two years, and prior to that there seems no indication that she was suffering from any illness, mental or other, that could affect her ability to understand or make informed decisions. So Robin would be unlikely to prevail with this strategy. Besides, if Robin alleges that there really were any such illness existing 25 years ago, there may be grounds upon which Tony could argue that the marriage was invalid ab initio, because Robin lacked the mental capacity to understand the marital relation and its responsibilities. Thus, if successful in using Robin’s own claim, he might have a way to avoid divorce and a court ordered divorce settlement, altogether. In conclusion however, it would appear that unless there is evidence of substantive or procedural unfairness, Tony must be advised that the antenuptial agreement that he and Robin signed may be enforced at the time of divorce.

To sum up all of the issues for Tony, I would tell Tony that if he is interested in exiting his marriage to Robin, divorce and not annulment is the appropriate avenue, because in my opinion, he is validly married to Robin. He can consider filing for divorce on the fault grounds of adultery, desertion or cruelty. However, there are weaknesses in the case on all three grounds. Additionally, Tony needs to be concerned that Robin may be suffering from a mental illness which has caused her marital misconduct, and if she can prove that, he will remain married to Robin, even if he wishes to end the marriage by alleging that she is guilty of adultery, desertion or cruelty. If Tony wishes to go the path of least resistance in ending his marriage to Robin, he should consider a “no-fault” divorce, based on irretrievable breakdown of the marriage or, based on irreconcilable differences as his most viable option. He may have to wait to be separated either physically or constructively from Robin for a certain statutory period, as required by the “no-fault” statute in the state of Lantelme, before he can file a complaint or request a hearing for divorce. In all events, though, divorce will settle issues relative to the parties custody of the minor child, child support, visitation, alimony and property division. However, if Tony and Robin’s prenuptial agreement meets the requirements of substantive and procedural fairness, he may be bound by the terms of the prenup on matters of alimony (or spousal support) and property division, unless the court finds it “unconscionable” or against the equities to enforce the terms of the agreement 25 years after the agreement’s execution. Most importantly, I would tell Tony to take some time to mull over the discussion we have had, and to decide what exactly he wants to do about his relationship with Robin. Despite her conduct, Robin has been Tony’s wife for 25 years and he may have deep feelings for her which may prevent him from deciding to divorce her.
one day after she leaves him. He may wish to pursue reconciliation, and if he does, it would be my job to support that objective. In closing, I would give Tony my card, and tell him to come back to see me if and when he has decided upon taking legal action against Robin by filing a complaint for divorce. Alternatively, he may come again if he needs to engage my services to defend a complaint for divorce or separate support, filed by Robin. I would also be available to make a referral to a qualified marriage or family counselor should Tony find that helpful. I would wish Tony good luck and advise him to take good care of his son in the meantime.
FAMILY LAW - FINAL EXAM  
Fall 2006  
On-Line and 1:00 Tuesday/Thursday - Condurelli

Directions: Write your social security number on your blue book and on your exam. Then, read the following problem carefully. Take the time to organize your answer. Finally, respond in essay form, using only one (1) blue book.

PLEASE WRITE LEGIBLY AND DOUBLE SPACE YOUR RESPONSE.

Problem 1 (Approx. 2 2 hours) 75% - (limit: one double-spaced blue book)

Tom is married to Karen. They were married in the State of McEvoy four years ago. However, they have been residing in the State of Howie since January of 2006.

Tom is a physician with a lucrative medical practice. Karen is a nurse’s aid. The parties jointly own the marital residence in Howie, which is worth approximately 700K, acquired mainly from the sale of the parties’ former, jointly-owned home in McEvoy. That former home, in McEvoy, home was purchased in 2004 primarily with savings funded by Tom’s income. The parties also enjoy a lakefront cottage in Howie which Tom inherited from his grandfather prior to the parties’ marriage. Title to this home is in Tom’s sole name.

Prior to the parties’ marriage, Tom and Karen signed an ante-nuptial agreement which provided that in the event the parties were to divorce, Tom would be entitled to the lakefront home and the marital home. Karen would be given 75K and custody of any children born of the marriage. Prior to signing the agreement, both parties consulted with counsel and they exchanged tax returns from the prior year.

In February of 2006, the Tom and Karen welcomed a baby daughter, Angelina.

Tom fathered a son during a non-marital affair a few years before the marriage. From the beginning of the marriage, Tom continued to see the woman with whom he had the affair, much to Karen’s dismay. Her name is Cherie. On Tuesdays, Tom has dinner with Cherie. They usually go to Vincenzo’s Restaurant. Some nights Tom returns from his dinners with Cherie very late at night. Karen has asked Tom to stop seeing Cherie, but Tom has refused. He has told Karen that Cherie is his child’s mother and he and Cherie need to discuss the child's progress and well-being.

As a result of Tom’s continuing relationship with Cherie, Karen has taken to abusing drugs. Since this past summer, Karen’s drug use has cost $200 per week. Karen also has missed 20 days of work since August 2006 because she could not get up and out to work.
or bring baby Angelina to day care.

About 2 months ago, Tom informed Karen that he wants his seven (7) year-old child, Russ, to move with him and Karen. Karen objected to this, but Russ moved in with Tom and Karen anyway. Over the course of the next few months, Tom began to exclude Karen from weekend outings with Russ. He began to prepare food at suppertime for just him and Russ. One night, while Karen was slicing carrots, she cut her finger, partially severing it. She asked Tom for a ride to the hospital, because she was feeling faint from the bleeding. He refused and instead took Russ bowling.

Karen has now recovered from the finger incident and her doctor has referred her for counseling and drug treatment. Today she arrives at your office for a consultation. Discuss your advice to her concerning her rights, options, responsibilities and responsibilities.

Problem 2 (Short Answers- Approx. 30 min.) 25%
Directions: Please read the problem below then refer to the instructions following the text.

Husband & Wife were married in and resided in the State of Ford for 15 years. They had one child of the marriage, Christa, age 8. During the marriage, Wife was frequently terrorized by Husband. At one point he choked her to the point of unconsciousness. On March 3, 2005, W came home from work to find a note from H that he had joined the military. When H left home, W allowed 8 year-old Christa to move in with her brother, Jason, so that W could work and support herself. Wife formalized this arrangement by assenting to Jason’s legal guardianship of Christa. Wife visited with Christa and gave money to Jason for Christa’s care. In August of 2006, W commenced divorce proceedings against H in the State of Ford. Meanwhile, in September of 2006, while W’s divorce was still pending, but not decreed in Ford, H obtained a divorce from W in Afghanistan. W was aware of H’s attempts to obtain a divorce abroad and had signed papers to indicate her consent thereto. Last month H died. There are benefits to be provided to Husband’s surviving spouse. Wife wants to obtain those benefits and she wants to take Christa back to live with her. Jason objects to this and feels this would not be in Christa’s best interests. W files to terminate Jason’s guardianship and to obtain benefits, she will argue that the Afghan divorce is invalid.

Define the following terms and explain their application, if any, to the fact pattern above:
(Please write your answers in the spaces provided on the next pages.)

1. Desertion:
2. Abuse:

3. Doctrine of Comity:

4. Estoppel:

5. Condonation:

6. Ex-Parte Divorce:
7. Parental Preference Doctrine:

8. Domicile:

9. De Facto Parent:

10. Jurisdiction:
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:

In October of 2005, Jill Swenson and Spencer Gill met on a blind date and shortly thereafter began living together in the State of Linnehan, which recognizes common law marriage. Unbeknownst to Spencer, Jill had been previously married to Cesar Swenson in the State of Zook, at St. Jerome's Church. Cesar instituted divorce proceedings against Jill, six months ago in Zook, when Jill was arrested for illegal drug possession.

According to the divorce decree issued in Zook, the divorce will become final in thirty days. Jill has also concealed the drug charges from Spencer.

Jill has begun using “Gill” as her surname. She and Spencer share all living expenses and Jill has bought a life insurance policy on Spencer's life. The mailbox outside of their apartment lists only the name “Gill”. Spencer's parents visited unexpectedly about a month ago and Spencer introduced Jill as his fiancée. Although he considers himself to be in a committed relationship with Jill, Spencer knew his parents would have expected him to have a religious ceremony with family if he were to marry. He also knew that they would object to his living with a woman casually. Jill is pregnant and due to give birth in July, but this fact was not noticeable to Spencer’s parents.

Recently, Spencer inadvertently intercepted an e-mail message to Jill from Cesar warning her not to return to Zook just yet because he learned that she was implicated, with him, in a credit card “skimming” scheme. Instead, Cesar advised Jill to flee since the drug charges are still pending, as well. Spencer felt ill and vomited after reading this message.

Although Spencer is really in love with Jill, he is now very suspicious and actually fearful of Jill. Over the last two months, he has noticed that Jill has been home very infrequently and her whereabouts have been unknown to him. When she has been at home he has noted that she is unable to control her temper. Last week he witnessed Jill kick their housecat when she thought she was alone in the home. Last night a neighbor told Spencer that Jill had been seen leaving a nightclub with a drunken man in a taxi.

Spencer has consulted you on what to do about Jill. Please advise Spencer as to his rights, obligations and exposures.
First thing that I could do is sit, square down and discuss with him the possible avenues available. I could try to ascertain whether or not he wanted to continue his marriage or seek a divorce or even a possible annulment. The first stop is to determine Spencer's marital status at this point.

Till and Spencer may be married by common law. A common law marriage is an informal marriage without a ceremony. Like any marriage, it requires that both parties have legal capacity to marry. A present agreement to be married continuous cohabitation (sometimes for a long period) and public declaration to be married by held together.
According to the facts, had not a present interest to be married, they lived together and perhaps have done so long enough to satisfy the statutory period, and by using one last name on their mail box, it could be shown as if a public declaration or holding out as husband and wife.

How do these facts show prerequisite to agreement to be made? Jill also lived using Spencer's surname, they shared living expenses and drew out a life insurance policy. Almost all elements are satisfied. However, marriage is a contract between two persons or husband to wife, and has 3 major elements: (1) legal capacity, (2) present agreement, (3) a contract. Here, Jill was previously divorced, but final divorce will not be official until 30 days. That makes their subsequent
impediment to marriage. Polygamy is the act of giving

married where one at least one spouse has already married, and previous marriage has not been dissolved by death or divorce. Because Jill's divorce is not final yet, the question is whether the failure to wait 30 days following the divorce will invalidate the marriage, or is this a substantive defect — or merely a procedural one? Common law marriage is invalid. At this point he could marry for an annulment, which is a judicial decision that a marriage was not valid.

Also, there are specific reasons outside the impediment that could be argued to say no common-law marriage existed. First, when Jenner's parents showed up, he introduced Jill as his fiancée, which negates the present intent to be married as of yet. But this fact also shows that the only reason they did that was for parents sake. This looks at all first and foremost.
Next Springer could argue that he was fooled by Jill and that her fraud constituted any consent he could give to being married. Fraud can be a basis for an annulment if Jill made a material misrepresentation that Springer relied upon that misrepresentation and that the fraud goes to the very essence of the marriage.

Typical misrepresentations about wealth, previous life, temperament, idiosyncrasies, etc. will not be considered to go to the 'essence' of the marriage. Also, passive concealment will not typically rise to level of fraud. Here Jill did not tell Springer about her marriages to Supreme or about her criminal history, or about her temper. This will probably fail to establish requisite fraud to get an annulment.
Jill and horror, Susanne could move for an annulment for lack of consent to marry. But if what Judge

means is an impediment, then he needs to act quickly because, once that impediment is removed, the continuous

of living together will satisfy the void of the marriage.

It valid, because of latches and estoppel as AFF.

DEFENDANT. If defence is not timely, requires an

AFFIRMATIVE ACT TO SHOW INTENT TO BE MARRIED FULL

Removal of the impediment.

If Susanne moves for an annulment, then she will

not be obligated to pay alimony or maintenance for

could wind up the child support for child that is

on the way.

Primarily, Susanne does not want an annulment.
was to get an announcement, it would be a

Putative Father [with no legal regard to the

child. In fact, since Jill's divorce is not yet

final with CSR, the law will presume that CSR

is the child's legal father. The law presumes that any

child born within a marriage, or shortly after

dissolution of the marriage or before the father

of that marriage, this presumption is rebuttable if

it is shown that father was not around, not at

or a biological fact, if child is presumed to be

CSR's child since Jill and CSR could all

have to sign an affidavit saying otherwise. However,

that would be an admission of adultery on Jill's

part, but [RC] Jill and CSR are already married.
A putative marriage is not a valid one and it cannot become so.

CONFLICT LAW MARRIAGE UNDER THE PUTATIVE SPONSORSHIP DOCTRINE

Where a couple claim to be spouses and in good faith believe themselves to be married and without knowledge of existing impotency, if the court finds substantial marriage between Jill and

SPENCER IS VALID THEN THE PRESUMPTION WILL BE THAT

We are not sure that the application of the formalist doctrine would give rise to a presumption

THIS CHILD IS SPENCER'S MAKES HIM LEGALLY ENGAGED TO MAKE DECISIONS CONCERNING CHILD'S WELFARE.

AT THIS POINT IF SPENCER WOULD LIKE TO OBTAIN

A DIVORCE FROM JILL, HE MAY BE SUCCESSFUL

Also, I'd like to quickly mention that

SPENCER COULD ALSO TRY TO CHALLENGE VALIDITY OF JILL'S PREVIOUS MARRIAGE THE FACT THAT W

AND SPENCER'S MARRIAGE WAS PERFORMED IN A RELIGIOUS

CONGRESS. HOWEVER, THIS MADE CONDUCT ANY.
Marriage ceremony must be conducted by law of that jurisdiction to be valid. Also, there is no reference to marriage license. There are no facts that indicate that the ceremony was insufficient. If you must be married to get a divorce, so it is probable that previous marriage was valid.

If it is found that 2nd marriage is invalid, may divorce with cause is first. The birth of a child to JCC will also leave SWSR in a tough position, legally as far as his rights to custody and visitation. In that case, SWSR can file a complaint for paternity and have a legal and indicated complaint for rights, or the court file a voluntary acknowledgment of paternity.
It is probably important for someone to consider Jill's pending legal troubles and the state's position.

Remove the child, typically a state position that is upheld since Stanley v. Illinois.

An unwed father is unable to resist a child, so if a father with legal rights requests could probably get a competent doing what Jill does to the big house.

Let's say Jill and Jill's marriage is valid. Now, she could move for a divorce, which is a judicial dissolution of a valid marriage. First ground for divorce, subject could look at is for cruel and abusive treatment, cruel and abusive in the deliberate course of conduct by the state's known or should have known and should have reasonable grounds to know the fact.

Abusive treatment occur with one spouse physically abusing another spouse or another person of whom they are not a spouse.
The parties claim to be married and yet constitute a habitual act by them, indeed. Traditionally it must be proved by evidence found in the public domain.

And recent part? Here, since has been alleged of Jill and seen her use the car. However, the court looks for continuous pattern of behavior and single incident, nearest spousal care to Jill will not show such a pattern and Yet you know no evidence or Spencer's fear or stress. What about her deliberate concealment of her marriage? 

A ground would be for adultery.

Adultery is the voluntary act of sex with another Black's still defines it as extramarital sexual intercourse. Period that is not the person's spouse. Adultery is often based on circumstantial evidence, and if facts and circumstances fairly lied and proved conclusively of adultery the court may find guilty. Other...
infer that there is opportunity. Some jurisdictions don't even require écrit acts to bind anyone.

The Jill is that's court to society's first stage. He said she leaves a club with her arm around one guy. While this is good,

sight, I believe the evidence to be dubious. What more would be needed?

This writing is insincere.

Science could argue that there has been extensive distribution while they still live together but she no longer feels the marital obligations.

Therefore differences to the divorce claim.

First, she is condoned, which is the forgiveness, failure or implied of marital offenses with exception that it won't happen.
FAMILY LAW
Fall 2008 - FINAL EXAM
Mondays and On-Line - Condurelli

Students: Read the following carefully. Take the time to organize your answer. Then respond in essay form, within the page limitations indicated.

PLEASE WRITE LEGIBLY.

Problem 1 (Approx. 2 hours) 75% (No more than one blue book, double spaced.)

Linda Lindsay (wife) and Larry Lindsay (husband), were married in 1988 in State A. This was the first marriage for both parties. During the marriage they had three children: Evelyn, born March 16, 1991; Timothy, born October 5, 1994; and Lucy, born September 4, 2000.

Larry is a tenured, full professor at the Massachusetts Institute of Technology (MIT). His total wages from MIT were $179,000 last year. Larry’s health is also excellent. Linda worked part-time as a teacher’s aide earning $8,000 in 2007. Although her physical health is fine, her mental health is "fragile." In August, 2004, she was committed for a time to a psychiatric hospital because of a suicide attempt and severe depression. Her physician still prescribes two kinds of antidepressants for her treatment.

Larry’s brilliance and diligence has made the family financially secure. He purchased a home in Brookway, in State A prior to the marriage, using a down payment given to him by his grandmother. The purchase price of the home was $100,000 in 1983. There is currently $500,000 in equity in this home, which is in his sole name. Linda lived in the Brookway home with Larry and the children continuously during the marriage. Larry also has a retirement/pension through his current employer, worth approximately $180,000, which has been accruing since his employment with MIT began in 1992. Linda has her own bank account with $100,000 currently on deposit. These funds originated from an inheritance from her grandfather two years ago. There is $60,000 in joint funds in Enterprise Bank. Larry also has a collection of antique guns.

During the marriage, Linda’s commitment to child rearing and home making permitted the Larry to pursue his profession which involved long hours at the University. However, the last several years of the marriage were characterized by marital discord.

In June of 2007, Linda and Larry locked into a dispute over Linda’s use of joint funds for $15,000 in purchases on E-bay. Larry insisted that Linda restore the funds to the joint
account from her inheritance. Linda maintained that Larry had permitted himself to use his earnings, which she characterized as joint funds, for any purchases he pleased throughout the marriage. The argument escalated to physical proportions in the presence of Lucy, the parties’ youngest child, wherein Linda found herself on the floor after she threw a book at Larry.

In July of 2008, Larry asked Linda to move out of “his house” and told her to send someone for her belongings. He reminded Linda that she had signed an antenuptial agreement waiving any interest she had in the Brookway home and waiving her rights to any pension funds he acquired during the marriage. Linda left the marital home with eight year-old Lucy to move in with her mother in State B. Despite the fact that Larry works such long hours, Evelyn and Timothy both asked to remain in the marital home. It is Evelyn’s senior year in high school and she didn’t want to leave her friends and school. The seventeen year-old has agreed to accept some babysitting responsibilities for her younger brother so that he may remain with his father. Linda tore up the pre-nuptial agreement prior to her departure. On her way out the door, she told Larry, "I’ll see you in court and I’m going to make your life miserable.”

Linda has needed to increase her appointments with her psychiatrist since the separation.

If Linda comes to your office seeking information and advice about divorce and her domestic situation, what will you tell her about the issues confronting her?

Problem 2 (Short Answer Essay- Approx. 1 hour) 25%  (Please write your answers in the spaces provided below.)

Toni married Andrew in the State of Gordon (G) in December of 2005. Andrew was a wealthy stockbroker, while Toni was a beautician. At the time of the marriage, Toni was pregnant. In June of 2006, Maura was born. Unbeknownst to Andrew, Toni had an ongoing extra-marital affair with James from September of 2005 until April of 2006. In February of 2008, Toni left the marital home in (G) and rekindled her relationship with James. Shortly thereafter, she moved in with James in the State of Marge (M). Andrew was surprised by his wife’s departure, but in some respects, he was relieved because the marriage was troubled from the start. Toni told Andrew that she wanted an immediate divorce, since she was pregnant again. To get a quick divorce, Toni rented an apartment in the State of Ford (F) for four months. After three months, she filed for divorce in Ford.

Andrew learns of the pending divorce in Ford, and he also learns that Toni had been unfaithful to him at the time of the marriage. Andrew is desirous of breaking off all ties with Toni with a minimum of responsibility because he believes that he was a victim of Toni’s fraud. He does not want to go to Ford to defend himself in Toni’s divorce action.

Define the following terms and explain their application, if any, to the fact pattern above:
Domicile:

Presumption of Paternity:

Ex Parte Divorce:

Estoppel:

Personal Jurisdiction:

Annulment:

Subject Matter Jurisdiction:
Laches:

Ratification:

Alimony:

Have a great holiday break!
FAMILY LAW - FINAL EXAM
Fall 2009
On-Line and 6:30 Mondays - Condurelli

**Directions:** Write your exam number on your blue book and on your exam. Then, read the following problem carefully. Take the time to organize your answer. Finally, respond in essay form, using only one (1) blue book.

Please write legibly and double space your writing.

**Problem 1 (Approx. 2 ½ hours) 75%** -(limit: one double-spaced blue book)

Jason is married to Sarah. They were married in the State of Steele five years ago. However, they have been residing in the State of Rodriguez since January of 2009.

Jason is a physician with a lucrative medical practice. Sarah is a nurse’s aid. The parties jointly own the marital residence in Rodriguez, which is worth approximately 800K, acquired mainly from the sale of the parties’ former, jointly-owned home in Steele. That former home, in Steele, was purchased in 2005 primarily with savings funded by Jason’s income. The parties also enjoy a lakefront cottage in Rodriguez which Jason inherited from his grandfather prior to the parties’ marriage. Title to this home is in Jason’s sole name.

Prior to the parties’ marriage, Jason and Sarah signed a prenuptial agreement which provided that in the event the parties were to divorce, Jason would be entitled to the lakefront home and the marital home. Sarah would be given 75K and custody of any children born of the marriage. Prior to signing the agreement, both parties consulted with counsel and they exchanged tax returns from the prior year.

In February of 2009, Jason and Sarah welcomed a baby daughter, Amy.

Jason fathered a son during a non-marital affair a few years before the marriage. From the beginning of the marriage, Jason continued to see the woman with whom he had the affair, much to Sarah’s dismay. Her name is Lola. On Tuesdays, Jason has dinner with Lola. They usually go to Morton’s Restaurant. Some nights Jason returns from his dinners with Lola very late at night. Sarah has asked Jason to stop seeing Lola, but Jason has refused. He has told Sarah that Lola is his child’s mother and he and Lola need to discuss the child’s progress and well-being.

Of late, Sarah has been having more difficulty coping with Jason’s continuing relationship with Lola. She has been taking Vicodin and Oxycodone. In the last four months, Sarah’s drug use has cost an average of $250.00 per month. Sarah also has
missed 25 days of work since August 2009 because she could not get up and out to work or bring baby Amy to day care.

About 2 months ago, Jason informed Sarah that he rented an apartment in the big city, so that he could attend a greater number of educational conferences and social networking events more easily and without a lengthy commute. Since then, Jason has been regularly leaving for work on Friday morning and not returning to the marital home until Monday evening after work. Sarah objected to this, but Jason said he had no plans to terminate the rental. Sarah was now excluded from all of Jason’s professional and social activities and connections. Moreover, while Jason was at home, he prepared his own food at suppertime without regard for Sarah or what she had already prepared. One night, while Sarah was slicing potatoes, she cut her finger, partially severing it. She asked Jason for a ride to the hospital, because she was feeling faint from the bleeding. He refused and instead announced that he was taking Amy to visit her brother, James, at Lola’s house. Jason has continued to pay all household bills and has assisted with Amy’s care when at home.

Sarah has now recovered from the finger incident and her doctor has referred her for counseling and drug treatment. Today she arrives at your office for a consultation. Advise Sarah as to her rights, options and responsibilities.

**Problem 2 (Short Answers- Approx. 30 min.) 25%**
**Directions:** Please read the problem below then refer to the instructions following the text.

Husband & Wife were married in and resided in the State of Vaz for 13 years. One child was born of the marriage: Christa, age 8. During the marriage, Wife was frequently terrorized by Husband. On one occasion, he punched her and broke her cheekbone. On May 3, 2009, H left W note indicating that he had joined the military. When H left home, W allowed 8 year-old Christa to move in with W’s brother, Dan, so that W could work and support herself. W formalized this arrangement by assenting to Dan’s legal guardianship of Christa. Wife visited with Christa and gave money to Dan for Christa’s care. In August of 2009, W commenced divorce proceedings against H in the State of Vaz. Meanwhile, in September of 2009, while W’s divorce was still pending in Vaz, H obtained a divorce from W in Afghanistan. W was aware of H’s attempts to obtain a divorce abroad and signed papers to indicate her consent thereto. Last month H died. Benefits are due to Husband’s surviving spouse. Wife wants to obtain those benefits and she wants to take Christa back to live with her. Dan feels that a return of Christa to W would not be in Christa’s best interests. W files to terminate Dan’s guardianship and W files with the military to obtain benefits. While W recently learned that H took another wife in Afghanistan, she will argue that the Afghan divorce is invalid and that since the divorce in Paz was never finalized, she is H’s true surviving spouse.

Define the following terms and explain their application, if any, to the fact pattern above:
Exam Number: ____________________________

(Please write your answers in the spaces provided on the next pages.)

1. Desertion:

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2. Abuse:

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3. Doctrine of Comity:

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4. Estoppel:

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5. Condonation:

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Exam Number:__________________________

6. Ex-Parte Divorce:

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7. Parental Preference Doctrine:

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8. Domicile:

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9. De Facto Parent:

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10. Jurisdiction:

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Have a happy holiday!