

MASSACHUSETTS SCHOOL OF LAW

FAMILY LAW  
PROFESSOR COPANI

DECEMBER 1992  
CLOSED BOOK EXAM

INSTRUCTIONS

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QUESTION I:

Wilma entered into a valid ceremonial marriage with Joe in 1970. Frank was a son born of the marriage named Frank whose date of birth is September 18, 1975.

In 1988, Wilma, being disgusted with Joe's physical abuse, moved from the marital house leaving her son and husband.

One day while attending a seminar on the art of cooking and eating, Wilma met and fell in love with Harry. They were married one month later on July 4, 1989. Harry was 17 years of age at the time but looked considerably older than his age. Harry stated that he was 21 years of age on the marriage license application.

Harry had no knowledge of Wilma's prior marriage nor that Wilma had

a son. Joe died in 1990. Wilma did not attend the funeral.

Harry and Wilma lived together until August 8, 1991 at which time Harry left the marital house upon discovering Wilma was having an affair with the Chef who gave the seminar on cooking and eating quiche. Harry had suspected that Wilma and the Chef had "something cooking" when he first met Wilma at the seminar. To confirm his suspicions, Harry encouraged Wilma to take advanced quiche preparation classes offered by the Chef. Harry also paid for these courses. Harry became suspect because Wilma still couldn't cook a good quiche but her love making skills improved. Often times Wilma would return home very late on the nights she attended cooking classes.

Harry bribed the local truck driver who delivered eggs to the Chef. On August 7, 1991, Harry disguised as the egg delivery driver, hid in the Chef's kitchen. Shortly thereafter, Harry observed the Chef and Wilma walk into the kitchen. The Chef wanted to make love to Wilma, but Wilma refused stating she had to return home because Harry would be mad if she was late. Harry, upon hearing Wilma, immediately called the Chef on his mobile cellular telephone and left a message for Wilma that he wouldn't be home that evening because he had to work overtime.

After receiving the message, Wilma and the Chef made love while rolling in the flour. Harry jumped up from where he was hiding at which time a case of eggs fell upon him. Harry had more than egg on his face--he was furious. He told Wilma that he wanted nothing to do with her.

Wilma followed Harry home that night. Harry, after seeing Wilma covered with flour and Wilma, after seeing Harry covered with egg, decided to make a little quiche of their own and made mad, passionate love.

The next morning Wilma asked Harry if he wanted eggs for breakfast. After declining, Harry went to work. While on his way to work, he stopped at a local bar. He was still upset over Wilma's affair with the Chef.

While at the bar, Harry met and fell in love with Sarah. A month later, Harry and Sarah were married. Unknown to Harry, Sarah was really Wilma's son Frank who had recently undergone a sex change operation after the death of her father.

- A. What course or courses of action, if any, are available to Harry?
- B. What course or courses of action, if any, are available to Wilma?
- C. What course or courses of action, if any, are available to Sarah?

QUESTION II:

Prior to the time of their marriage in 1975, Harry falsely informed Wilma that his first wife, Bertha, had died in 1972. In fact, Bertha was alive and still validly married to Harry. Approximately one hour before the wedding ceremony, Harry presented to Wilma an antenuptial agreement which had been drafted by Harry's attorney. They have one child of the marriage, a son named Zappa, who is 8 years of age. The agreement provided as follows:

A. In the event Wilma were to file for divorce, she will be entitled to no alimony or property division from him.

B. In the event Harry were to file for divorce, he will be entitled to no alimony or property division from her.

C. In the event Zappa should desire to attend college and Harry and Wilma were no longer married, neither party shall be obligated to pay for any of Zappa's college-related expenses.

D. In the event of termination of the marital relationship, Harry and Wilma will share physical and legal custody of Zappa.

Wilma signed the agreement only after Harry informed her that the wedding would be cancelled if she refused. At the time she signed the agreement, Wilma was aware that Harry's net worth was \$800,000, consisting primarily of real estate he had inherited from his father.

In 1985, Harry's first wife, Bertha, died. In 1986, Wilma inherited \$50,000 from her grandmother, which she placed in a joint bank account with Harry.

In 1987, Harry's friend, Dr. Trump, convinced Harry to invest \$50,000 in Dr. Trump's new enterprise, the production of rock and wrestling videos. Without Wilma's knowledge, Harry withdrew \$50,000 from their joint bank account (which at that time contained a total of \$60,000) and purchased 100 shares of stock in Dr. Trump's corporation.

In 1988, Wilma began to lose interest in her marriage because of Harry's fanatical interest in rock music and wrestling and she engaged in a number of adulterous affairs. She subsequently moved out of the marital home in 1989. In 1990, Harry sold his 100 shares in Dr. Trump's corporation for the spectacular price of two million dollars.

In April of 1990, Wilma filed for divorce on the ground of cruelty and requested equitable distribution of property.

You represent Wilma.

Assume that the parties reside in an "equitable distribution" state.

WHAT ARGUMENTS WILL YOU MAKE ON BEHALF OF YOUR CLIENT? WHAT ARGUMENTS DO YOU ANTICIPATE WILL BE MADE BY HARRY? WHAT ARE THE LIKELY RESULTS?

QUESTION III:

Harry and Wilma obtained a valid divorce in August of 1987 from the Essex County Probate Court. At that time, Wilma was awarded sole physical custody of the three minor children of the parties, with shared legal custody to the parents. The names and present ages of the children are as follows: John is 4 years of age; Mary is 8 years of age and Frank is 12 years of age.

Wilma, since she was a child, always felt trapped inside a woman's body. As a result, in January of 1989, she had a sex change operation performed by a surgeon in New Orleans. Wilma, after the operation, was now physically and emotionally a "male." She immediately changed her name to "Max." Max's children were told about the details of the operation. Max now has long sideburns, tattoos on each arm and rides a "Hog" Harley on the weekends.

One day while at a motorcycle rally, Max met and fell in love with Martha, who unknown to Max also had a sex change operation. Martha was originally a male whose name was Michael. Max and Martha began living together. In public, Max would refer to Martha as his "Mama" and Martha would refer to Max as her better half. When on "Hog" rallies, they would check into motels as "Mr. and Mrs." Max and Martha never discussed the issue of having children with each other. Martha was like a mother to Max's children from his marriage to Harry.

Max and Martha now want to move out of the state and take Max's children with them. Harry opposes this move and wants to petition the court to modify its custody order and award sole physical and legal custody to him.

a) You represent Harry, discuss the relevant issues in regards to his petition for custody and his arguments against removal of the children from the state.

b) You represent Max, discuss the issues in regards to his petition for removal and his arguments to retain physical custody.

c) Discuss all other issues raised by this fact pattern in regards to Max and Martha.

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## QUESTION I

Harry, at the age of eighteen, joined the U.S. AIRFORCE and enrolled in the pilot training program. During a conflict overseas, Harry and his friend and co-pilot, Joe, flew many secret reconnaissance flights over Libya. On one particular sortie in August of 1984, their plane was shot down and crash landed in a remote section of that country. Joe was seriously injured and "near death." Harry survived the crash relatively unscathed except for minor cuts and abrasions.

Fearful that he would be captured, Harry left Joe behind to die. Harry's plan was successful, in that, he managed to make it to the border where he was rescued. In order to avoid an international crisis, the U.S. Government has never acknowledged the incident.

When Harry returned to the States in August of 1985, he related to Wilma the circumstances that occurred and stated that Joe, "didn't have a chance." He told Wilma he was sorry but had no alternative and had to leave Joe behind.

Wilma, upon hearing the news, became so emotionally upset that she was institutionalized in a mental health facility. While visiting Wilma daily, Harry fell in love with her. Although Wilma was released from the hospital in June of 1986, she often experienced delusions.

Harry proposed to Wilma and they were married in August of 1986. Unknown to either Harry or Wilma, Joe and Harry were brothers. They had never known each other because they were placed in separate foster homes when they were very young as a result of abusive parents. Harry is infected with the HIV virus, but has never told Wilma.

After the marriage, Wilma was unable to have sex with Harry. Emotionally she could not "connect" with another man because of her memories of Joe. Wilma's doctor has indicated that Wilma could work through this problem with extensive therapy. Harry has become frustrated with Wilma and has been having an affair with Martha, who is Joe's daughter from a prior marriage. Apparently, Joe has never told Wilma he was married before or that he had a child. Joe paid a retainer to an attorney to handle his divorce prior to joining the air force. One day, Wilma, after discovering Harry's affair, slapped Harry across the face and threw dishes at him.

That night Harry and Wilma went to bed as usual. Harry, not to be denied, had sexual intercourse with Wilma. At first Wilma resisted and screamed at Harry. She then started kissing Harry passionately. Moments later she screamed, "How can you do this to me?" That night while Harry was sleeping, she took a knife and went into the bedroom to cut off his penis. In the excitement,

Wilma became sexually aroused and awakened Harry to make love to him.

The next morning, on August 15, 1993, Wilma received a letter from Joe who was alive and well as a prisoner of war. He told her he was being released and looked forward to being with her soon.

While being flown to the States, Joe's plane was shot down by a splinter group of terrorists who did not want Joe released. To date there has been no trace of Joe's whereabouts. Meanwhile, Harry has moved out of the house and is now living with Martha. Joe and Martha are very happy together. At the many parties they attend, he introduces Martha as his "old lady."

Discuss all issues raised by this fact pattern, including but not limited to: the validity of all marriages, grounds for divorce and defenses for all parties.

#### QUESTION II

Harold Brown and Wanda Green began to cohabit with each other in 1986. In 1987, their only child was born, and they named her Violet Green-Brown. In 1988, Harold gave up his work as an insurance salesman and enrolled in law school. While Harold attended law school, Wanda supported the family by working as a waitress. The couple used Wanda's earnings and their savings to pay for Harold's tuition. On the day following Harold's graduation from law school in June of 1991, Harold and Wanda married each other. After her marriage, Wanda retained the name of Wanda Green. Harold was admitted to the bar in November of 1991.

After the marriage of Harold and Wanda, Harold's parents gave Harold \$50,000, which he used to buy a condominium. Title was taken in Harold's name alone, and the parties have used the condominium as their residence. In December of 1991, Harold commenced work as a salaried employee of a prestigious law firm, and his beginning salary was \$60,000 per year.

In August of 1992, Wanda was arrested for possession of marijuana. Soon after the arrest, Harold moved out of the marital home. Harold informed Wanda that he was leaving because he felt that being married to a woman who was a waitress and who had been arrested for possession of marijuana would be detrimental to his ability to achieve his career goal of being appointed to the United States Supreme Court.

In each of the past five years, Wanda's salary was approximately \$15,000 per year. At the time Harold left Wanda, the value of the condominium had appreciated to \$80,000. Since Harold left his wife, Violet has remained with Wanda in the condominium, and Harold has visited the child infrequently. Harold has contributed no funds to Violet's support since he moved out.



In September of 1992, Wanda enrolled Violet in the first grade of public school under the name of Violet Green, and informed Violet that henceforth she would be known as Violet Green. In October of 1992, Wanda won a \$50,000 cash prize in the state lottery.

In December of 1992, Harold commenced a divorce action against Wanda. Wanda has filed a counterclaim for divorce.

Wanda intends to move to California because of better job opportunities. She has concerns over Violet's future and wants her to attend college and wants Harold to pay for Violet's education.

Discuss all issues raised by this fact pattern, including but not limited to: grounds for divorce, division of assets, alimony, custody, child support, and visitation and all other relief available to the parties.

### QUESTION III

A) Wilma and Harry were married in 1984. Both of the parties had been married before, their respective spouses having died a few years earlier. Wilma married Harry solely because Harry was wealthy and she wanted financial security for herself; although she openly professed her love for him.

One hour before the marriage, Harry presented Wilma with an antenuptial agreement which his lawyer had drafted. The agreement provided that in the event of a divorce, Wilma would receive \$10,000 from Harry in lieu of all claims for alimony and property distribution. Harry also agreed not to make any claims for alimony or property distribution against Wilma. At the time he presented the agreement to her, Harry informed Wilma that the agreement was beneficial to both of them since it preserved their respective estates for their children from their first marriages. In any case, Harry told Wilma not to worry since he would "always take care of" her. Wilma thereupon signed the agreement. At the time of the marriage Wilma was aware that Harry had a financial worth in excess of \$2,000,000 and Harry was aware of Wilma's financial worth, which was under \$5,000.

One year after their marriage, Wilma became ill and is now confined to a nursing home and is incompetent.

Harry has just learned that Wilma never loved him and married him only for financial security.

a. Assume that Harry has asked you to take whatever steps are necessary to terminate his relationship with Wilma.

WHAT ACTION WILL YOU TAKE ON HIS BEHALF? WHY? WHAT ARE THE



LIKELY RESULTS? WHAT OTHER ISSUES ARE RAISED BY THIS FACT PATTERN?  
DISCUSS.

B) Prior to their marriage in 1987, Harry and Wilma signed an antenuptial agreement which provided that in the event of divorce, they would share legal and physical custody of any children born of their marriage. They had one child, Amy, born in 1988. At all relevant times, Wilma has served as the primary caretaker of Amy. In 1993, Harry left Wilma in order to live with his homosexual lover, Bruce, who intends to marry.

Wilma has commenced a divorce action against Harry, and has requested legal and physical custody of Amy. She has asked that in the event Harry is granted visitation, the court should require that he exercise visitation outside the presence of Bruce or any other male or female companion.

Harry has asked the court to enforce the antenuptial agreement by awarding shared legal and physical custody of Amy. Harry had also argued that in the event Wilma is granted physical custody, the court should impose no limitations on the exercise of his visitation rights.

Assume that Harry and Wilma live within one block of each other and that Amy would have the same group of friends and attend the same school whether she lived with Harry or Wilma.

HOW SHOULD THE COURT RULE AND WHY? WHAT OTHER ISSUES ARE RAISED BY THIS FACT PATTERN. DISCUSS.

FLFEX93.TC

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