

Family Law Midterm Exam Spring 2010

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 STUDENT ID NUMBER (LAST 6 DIGITS OF YOUR SOCIAL SECURITY NUMBER PLUS 59) ON THE BLUE BOOK TO PRESERVE ANONYMITY OF GRADING.

Rosalie and Joseph were married in 1990. He was 19 years old and she was 15 years old. Rosalie was pregnant with Joseph's baby. Needless to say, Rosalie's Father was very angry. They went to a neighboring state to marry before a minister who provided a celebration of marriage certificate. But, in their haste, no marriage license had previously been obtained and there is some question regarding whether the minister had been properly ordained by his denomination. After the couple realized the questions regarding their marriage, they continued to live together and two children were born of the marriage.

Later, their marriage deteriorated. Joseph fled to an island country for a day and obtained a divorce with the assistance of a local attorney. Rosalie did not accompany him but did sign a power of attorney. Rosalie and Joseph signed an agreement filed with the island court granting Rosalie custody of the children and requiring Joseph to provide child support.

Shortly thereafter, Joseph met a young waitress named Tanya at a local pub. Tanya was a recent high school graduate. They began dating. She soon learned she was pregnant. She informed him of her pregnancy. He told her that he would not marry her unless she signed an ante-nuptial agreement. His attorney prepared an agreement and gave it to her. She consulted with an attorney of her own who advised her not to sign it. Three days before the wedding, Tanya and Joseph met with his attorney to discuss the agreement. She was crying at the time and stated initially that she did not wish to sign the agreement. Later in the day, the couple executed the agreement that included exhibit pages listing their assets. His assets were worth

\$986,000.00. She had no assets other than a car that was worth \$1800.00. They both signed the agreement before a notary public. Joseph later acknowledged that there were no negotiations concerning the terms of the agreement. The terms of the agreement provided that the individual property of each party as well as appreciation therein would remain the party's sole and exclusive property and that neither party would have a claim to alimony from the other. The agreement also calls for shared legal and physical custody of the children, alternating homes from week to week with neither party paying child support.

Ten years and two children later, Tanya has told Joseph that she intends to file for divorce and to seek to invalidate the ante-nuptial agreement. Joseph is a successful local businessman now worth \$1,962,000.00. Tanya has been a stay at home mother. She and their children have enjoyed an upper middle class lifestyle. Her assets are worth \$105,000.00., resulting from jointly held assets. The marital home was brought into the marriage by Joseph and remains in his name alone and is valued at \$600,000.00. Joseph continues to live in the house.

The parties' ante-nuptial agreement calls for the parties to have joint legal and shared physical custody of the children. The children alternate homes from week to week. Joseph voluntarily pays \$150.00 weekly in child support. Tanya is presently living with her parents. She is working part-time at a local restaurant. She has been diagnosed with Bi-Polar/manic depressive disorder. She frequently stays in bed for most of the day.

Joseph arrives at your office. How will you advise him of his rights, responsibilities and options?

Family Law Midterm Evaluation Spring 2009

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Problem:

Catherine and Ryan were married in the State of Shannonway in June 2000, when Catherine was 40 and Ryan was 38 years of age. The two met at a divorce support group in their local church. Catherine now resides in the State of Dublinville and has for the past six months. Ryan still lives in Shannonway. Ryan is the beneficiary to a family trust upon his Father's death. The trust is estimated to be worth approximately \$500,000.00.

Both Catherine and Ryan were previously married. Catherine was married to Ryan's Brother Sam for 12 years. They had two children together. Ryan was married to Cynthia for 11 years and they had two children together. Soon after Ryan and Catherine married, Ryan adopted her two children from her previous marriage. The ages of the four children range from 15 to 25 years of age. The 15 year old now lives with Ryan and the 20 year old lives with Catherine and is attending college part time. The other children are living on their own.

Catherine had prior to her marriage to Ryan, and several times since, been hospitalized for several different mental health issues. She had been molested by a family member as a child. The atmosphere in the home of Ryan and Catherine was often very tense because of her state of mind. The children were often present during her tirades, despite Ryan's attempts to shield them from these episodes. Ryan bore the brunt of many physical attacks by Catherine when she was "out of control". As a result, the children have developed a close relationship with Ryan.

Prior to the marriage, and on advice from his attorney, Ryan insisted that Catherine sign a Pre-Nuptial Agreement. The Pre-Nuptial Agreement had been prepared by Ryan's attorney who had represented Ryan over several years in matters both personal and related to his business. Ryan made it clear that the Pre-Nuptial Agreement was necessary. The attorney suggested that she consult with her own attorney. It is not certain that she did. By all accounts Catherine is a very intelligent person. She had worked for several years as a technical writer in a Boston investment firm. She signed the Pre-Nuptial Agreement the night before the wedding.

Wedding preparations had taken months to prepare. Catherine and Ryan were married at St. Patrick's Cathedral in the state of Shammrock and their reception was held at the Grand Chinese Tea Room on the River. The event was catered and 250 people attended including many out of towners. Everything was planned with meticulous detail and Catherine carried out all of the plans single handedly.

The Pre-Nuptial Agreement provided that whatever property each party brought into the marriage remains as the sole property of the owner at time of the divorce and that any property acquired subsequent to the marriage in either party's name alone would be exempt from any interest or claim to property (real or personal) in the name of the other, except property held jointly. The Pre-Nuptial Agreement indicated that if divorce occurred it would only be on no fault grounds. The Agreement also called for Catherine to have sole legal and physical custody of the Children. Ryan agreed to waive any right to visit with the children in exchange for Catherine waiving any claim to child support or any other financial assistance (health care costs, unmet college costs). Catherine also waived any claim to alimony should the parties marriage be dissolved within the first ten years. Thereafter, Ryan was to pay \$5,000 monthly until death or Catherine's remarriage. Ryan has agreed to sign the marital home over to Catherine if she does not challenge the Pre-Nuptial Agreement.

The parties purchased a home together when they first married. Ryan currently lives in the home with his son while Catherine has moved out and lives with her daughter.

Ryan noticed several years ago that his Wife had become unbearable and that he was tired of the constant illnesses from which she suffered. Catherine left their home after she found out that Ryan was seeing someone else and had taken his new girlfriend on a week long getaway to the Fiji Islands. She couldn't bear to look at him.

Ryan arrives at your office, with his girlfriend Ingrid. How will you advise him of his rights, responsibilities and options?