

FAMILY LAW - FINAL EXAM

Fall 2015

On-Line and 6:00 Monday – Atty. Condurelli

Directions: Please write your student exam identification 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 2 hours) 75% - (Limit: one double-spaced blue book)

Yesterday, your secretary booked an appointment for you. You were told that Mr. Claus St. Nicholas wished to see you about a domestic matter.

You met with Claus St. Nicholas in your office. Claus married his wife, Clara, at a seaside wedding in a religious ceremony at Beautiful Harbor in the state of Frost in the year 2000. Claus is 40 years of age and Clara is 41. Clara has been a stay-at-home mom since the birth of their first child. She is college educated and has a Master's degree in special education. Claus is the manager of the computer programming department of a large company in the state of Frost. He has a Master's degree in computer engineering. He earns \$155,000.00 per year. Clara is the heiress to a family fortune. She receives trust income of \$3,800.00 per month. She inherited stock to her family's business worth 5 million dollars. The couple jointly owns a home in the state of Blizzard, where they built a new home eleven (11) months ago. The home is worth \$470,000.00, with an outstanding mortgage of \$200,000.00. The down payment of \$270,000.00 was derived from a \$70,000.00 gift from Clara's family, as well as the proceeds of the sale of the couple's last home in the state of Frost (which they sold, in order to move to Blizzard). They own two cars in each of their names, a BMW worth \$30,000.00 and a Range Rover, worth \$28,000.00.

Two days prior to their wedding, Claus and Clara executed a prenuptial agreement, at Clara's family's insistence. The agreement provided that Clara would be the sole custodian of any children born of the marriage. Under the agreement, Claus waived any right to alimony in the event of divorce. The agreement also required him to waive any and all interest in Clara's trust property, trust income, and stock. Clara's attorney prepared the agreement. Clara paid for Claus's attorney. Clara's attorney provided Claus with her tax returns for the prior 3 years in advance of the execution of the proposed agreement. Claus's attorney never requested further financial information.

Mr. St. Nicholas states that his marriage has reached crisis proportions. He recounts to you that Clara has been visiting his neighbors over the last three months, telling them all falsehoods about

him and his conduct. The result has been an extremely uncomfortable existence for Claus St. Nicholas in his neighborhood. He learned the details of these visits from his friend, Rudolph Donner, who lives next door. According to Rudolph, Clara has been going to Rudolph's house with empty vodka bottles, claiming that she found them among Claus's things. She told the Donners and others that life with Claus has been a living hell. He drinks, goes out with other women, then comes home and belittles her in front of the children. She complained of his vicious temper and his harsh manner of physically disciplining the children. Mrs. St. Nicholas told the neighbors that she worries about her safety and that of the children every day that she lives with her husband.

Armed with this information, last week, Claus St. Nicholas confronted his wife. She began to scream obscenities at him, flinging pots and pans, carrying on wildly for all of the neighbors to hear, accusing him of having an affair and of being a drunk. All of this took place in front of the children. Claus was struck by a two-quart saucepan in the forehead. You can see the bruise, but Mr. St. Nicholas did not seek medical attention for the injury at the time of the occurrence because he felt embarrassed.

Following this incident, Clara St. Nicholas has been placing phone calls to Claus throughout the day at work. She will not speak to him but will instead leave messages for him via Claus's secretary and boss. Such messages will, for example, warn him not to come home from work drunk. She will threaten to call the police if he hurts her again. Mrs. St. Nicholas has also questioned the secretary about what her husband was doing at lunch, whether he was also drinking at work, and whether she knew the "bimbo" who was wrecking her life. Claus claims that his wife is deliberately calling him at work to set him up. The result, of course, is that Mr. St. Nicholas is humiliated and afraid that he will lose his job.

Even more concerning to him is that his son, Blitzen, age 9, has begun using profane language when he is angry and he has taken to thumb sucking, which he has never done before. When Claus arrives home from work, Blitzen is clingy and whiny. He never leaves his dad's side until bedtime. The child insists that his dad put him to bed each night and he clutches Claus's hand until he falls asleep.

Clarisse, the thirteen year-old, told Claus that her mother yells at her and Blitzen all day long. She hits them for little or no reason. Clarisse deals with this by staying outside of the home for as long and as often as possible. Little or no affection is displayed between mother and daughter. Clarisse would like to run away and has recently confided this to her English teacher.

Clarisse attends private school and is in the eighth grade. She anticipated attending an exclusive private high school next year. Blitzen attends Blizzard public schools and is in the fourth grade. He has a hearing disability and Clara has been instrumental in obtaining for him, the educational services he requires to make satisfactory educational progress.

Claus is concerned about a number of issues. He believes that his relationship with Clara needs to end and he thinks that she should not be caring for their children. What will you tell him about his rights, options and exposures?

Problem 2 (Short Answers- Approx. 30 min.) 25%

Directions: Please read the text below then refer to the instructions following the text.

Huxley & Wednesday 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: **Gabbie**, age three. Both parties work and they paid a live-in nanny to care for **Gabbie**. Three months ago Huxley discovered that Wednesday had an ongoing affair with another man. Unbeknownst to Huxley, this man was Wednesday's former husband, **Ricardo** from whom she obtained a divorce in the Dominican Republic. The divorce was obtained after both Ricardo (Husband #1) and Wednesday signed divorce papers in State A before a notary public. The papers were in Spanish, a language Wednesday does not speak. Neither H#1 (Ricardo), nor Wednesday ever went to the Dominican Republic. They hired an attorney in the DR to present their executed papers to a tribunal in their absence. After discovering that Wednesday had been unfaithful throughout their four-year marriage, Huxley asked Wednesday to leave the marital home. She did so, taking **Gabbie** with her to live in State B where Wednesday has family. Wednesday declined to take Nanny with her to State B to live. Nanny misses **Gabbie** and wants to continue to spend time with her.

After three months of separation, Huxley has lost all hope for reconciliation. He wishes to legally sever his relationship with Wednesday.

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

1. Annulment:

2. Fraud:

3. Doctrine of Comity:

4. Desertion:

5. Removal:

6. Domicile:

7. De Facto Parent:

8. Subject Matter Jurisdiction:

9. Personal Jurisdiction :

10. Uniform Child Custody Jurisdiction Act:

Have a happy holiday!

FAMILY LAW - FINAL EXAM
Fall 2014
On-Line and 6:30 Monday - 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, within the limitations specified below.

Please write legibly and double space your writing.

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

Vixen Noel married Prancer Snow in State A in 1999. The parties have two minor children, a daughter, Cupid (age 4) and a son, Dasher (Age 10). Prancer Snow comes from a wealthy background and he has a master's level degree in management. He is 55 years of age. In 1999, he inherited stock in a family business, named Yuletide, Inc., which is now worth 5.5 million dollars. He also inherited a family mansion, worth 3.5 million dollars, which is located in State A. This is where Vixen and Prancer have been living. The parties also own a ski condo in State B, which was acquired three years ago. The title to this property is in both their names. Prancer's income, as president of Yuletide, Inc., is 650 thousand dollars per year. This is his second marriage. One child, now eighteen years of age, was born of his prior marriage. By contrast, this was Vixen's first marriage. She is thirty-one years of age, and has never finished college. At the time of the marriage, Vixen was employed as a retail sales clerk at Macy's. Vixen quit working when Dasher was born and has not returned to the work force nor has she attempted to finish her college education because Cupid is not yet enrolled in school full-time. Vixen has been devoting all of her attention to keeping the home and to caring for the children.

Three days prior to Vixen and Prancer's marriage, Prancer presented Vixen with a prenuptial agreement which essentially provided that in the event of divorce, Vixen would be awarded custody of any minor children born of the marriage. It also provided that in the event of divorce, she would receive four thousand dollars annually for spousal and child support and in return, she would waive all of her right, title and interest in Yuletide, Inc. The agreement also required that in the event of divorce, Prancer would receive the mansion. Prancer told Vixen he wouldn't marry her unless she signed the agreement. Vixen signed the agreement without the assistance of counsel and after reviewing a list of assets the day before signing the agreement. The value of the stock in Yuletide, Inc. was listed as "undetermined."

The marriage had been happy until about five years ago, when Vixen felt neglected and ignored by Prancer's intense focus on his job. She had a brief affair at that time, which she ended about eight months prior to Cupid's birth. However, for the past three years, Prancer has been drinking heavily. On occasions when he is intoxicated and alone with Vixen, Prancer is aggressive and demanding. Additionally, he is demeaning and insulting to her in the company of others, including the children. On December 1st, Dasher went to school and reported to the school nurse that he felt ill. When asked what was wrong, Dasher stated that his stomach was upset because on the previous evening he had heard his mother screaming in her bedroom. He said he heard several loud bangs in there and he heard his father slam the bedroom door, exclaiming, "You good-for-nothing piece of trash...", as he (Prancer) exited the bedroom. A half hour later, Vixen emerged with a reddened and swollen cheekbone and eye socket. Dasher told the nurse that he just knew his father was hitting his mother. He stated that he was sick and afraid for his mother. He asked if he could be dismissed from school early to go home to his mother and his little sister, to protect them.

Vixen called your office this week for an appointment. When she comes to your office, she explains that she would like to move to State B to reside in the ski condo with the children as she can no longer tolerate living with Prancer. She tells you that she has resumed contact with Rudolph, her paramour of five years ago, through Facebook and she feels as if there is something still between them. She is also wondering if the pre-nuptial agreement she signed is binding, because she believes that she cannot live in the manner in which she has become accustomed if it is.

Discuss your advice to her concerning 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 Icicle for 15 years. They had one child of the marriage, Holly, age 8. During the marriage, **Wife** was frequently terrorized by **Husband**. At one point he punched her so hard that she lost consciousness and required hospital treatment. On January 3, 2014, **W** came home from work to find a note from **H** informing her that he was going abroad for work. However, he never called her, wrote to her, or sent any money to her. She had no idea where he went. When **H** left home, **W** allowed 8 year-old Holly to move in with her brother, Nicholas, so that **W** could work and support herself. **Wife** formalized this arrangement by assenting to Nicholas's legal guardianship of Holly. **W** visited with Holly regularly and gave money to Nicholas for Holly's care. In August of 2014, **W** commenced divorce proceedings against **H** in the State of Icicle. Subsequently, in October of 2014, while **W's** divorce was still pending, but not finalized in Icicle, **H** obtained a divorce from **W** in the nation of Avalanche. **W** became aware of this when she received some papers from Avalanche

informing her of the existence of divorce proceedings along with a letter from **H** requesting her consent thereto. She signed the necessary papers.

Last month **H** died. There are benefits to be provided to **H**'s surviving spouse. **W** wants to obtain those benefits and she wants to take Holly back to live with her. Nicholas objects to this and feels this would not be in Holly's best interests. **W** will file to terminate Nick's guardianship and she will file to become the administrator or personal representative of **H**'s estate as his surviving spouse, on the theory that the Avalanche divorce is invalid.

Define the terms below and explain their application, if any, to the foregoing fact pattern: (Please write your answer in the spaces provided below.)

1. Desertion:

2. Abuse:

3. Doctrine of Comity:

4. Estoppel:

5. Parental Fitness:

6. De Facto Parent:

7. Parental Preference Doctrine:

8. Subject Matter Jurisdiction:

9. Personal Jurisdiction:

10. Domicile:

Happy Holidays

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. 2 ½ 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:

Exam Number: _____

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

Exam Number: _____

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:

2. Abuse:

3. Doctrine of Comity:

4. Estoppel:

5. Condonation:

Exam Number: _____

6. Ex-Parte Divorce:

7. Parental Preference Doctrine:

8. Domicile:

9. De Facto Parent:

10. Jurisdiction:

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 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:

FAMILY LAW - FINAL EXAM

SPRING 2004

4:30 Tuesday/Thursday - 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 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 hit 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!

FAMILY LAW - FINAL EXAM
Fall 2004
On-Line and 1:00 Tuesday/Thursday - 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 ½ hours) 75% (No more than one blue book, double spaced.)

Carolann 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. Carolann 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. Carolann 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. Carolann attends all of Danny's and Jill's school activities and she has been responsible for doctor's visits and teacher's meetings. Carolann and Andrew have shared household chores, but Carolann 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. Carolann 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. Carolann 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.

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 Alfonso 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 _____

Full Faith and Credit _____

Parental Preference Doctrine _____

Ratification _____

Mandated Report of Abuse or Neglect _____

Protection from Abuse Restraining Order

Parental Fitness

Domicile

Subject Matter Jurisdiction

FAMILY LAW - FINAL EXAM

FALL 2003

On-line 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 doctor's 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 Vucson. 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?

FAMILY LAW - FINAL EXAM

SPRING 2002

4:30 Tuesday/Thursday - Condurelli

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 marital 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 further 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 at 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., H. 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.

2001 Final

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 heaving 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. ~~Stephen~~ ^{Kurt} 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~~ ^{Kurt} Palermo as to his possible rights, responsibilities and liabilities after he tells you his story?

Social Security No. _____