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QUEST

(1) of 4

Subject Family law

Date 5/12/04

Number 371

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(#1)

The first issue is whether or not the prenup is valid. The facts do not give a location so it is difficult to know the exact law of the state where the prenup was signed. Generally it must be signed/acknowledged not ~~coerced~~ ^{reasonable} and mutual assent is deemed ok (consideration is the marriage). Courts tend to enforce prenup agreements due to the freedom of contract. Here, they did not consult a lawyer and Jessica did not even read the agreement. It may be considered coerced because she was pregnant at the time and might have felt that the only way to have a

stable for a for a of is to see

e p It also may not be considered

reasonable since she signed for a less

time and it goes to for times its

initial value (which she was unaware of)

and of the marriage most states also

require full disclosure when signing

re up that would invalidate it

of some of the just a way not have

agreed it a way we negotiated) if

she knew no business was worth

re It is also a little suspect

that he file for divorce 42 years late

(6 months before the p. up would over

Five limits have not been validated pre-ups
and are being upheld

If the setup is invalid which it is most likely because of the nondisclosure, their property would be divided equally if they live in a community property state. She would get $\frac{1}{2}$ of the value of the business (\$2\frac{1}{2} million) ^{what of the value of} and $\frac{1}{2}$ the value of the house (\$150,000), ^{what of} since any property acquired during the marriage of both Henry would argue that \$ million of the company was ^{or} before marriage ^{on her} so she is only entitled to \$2 or

If ~~th~~ of live i a separate property state then there would be a equitable division of the property she would most likely get less than 2 because he supported her and she did not equally ~~con~~tribute to the success of the business she would most likely be entitled to about 3 or 4 of the assets expte

She would also be entitled to rehabilitative alimony she may have a college degree (facts dont say) and therefore it would not be too difficult ~~to~~ for her to find a job she might

need a little supp of since she as
be through some rough times and
will need to get back on her feet
The alimony can be last until she
gets a job & if she remains or rather
party does issues of cohabitation & if
will be discussed in the next question

The ~~first~~^{next} issue which is probably the
first issue is whether or not they
are grounds for divorce. If they live in
a no fault state they just have to
allege compatibility. If they live in a
no fault plus state (like Michigan) they
have to allege compatibility plus one

the fact that facts & merely adultery of
contribution of a crime etc) Tr would be
hard for her to allege since she
is committing the adultery and being
absent she has a much better shot
filing for divorce than he does the

same state if there is a NY
fault state because they must allege
specific grounds like the ones mentioned
above fault based state can affect
property division since the need to plead
all reasons) - there are also defenses
like Recalcitrance, insanity, condonation
to Carriage. As stated before she would

have better grounds for duress if it
appears that he has been abused (either
through or by physically on one occasion or)
and using an affair is not likely
to be not have ground for duress because
he sees or does not appear to be
acted in a way so outrageous beyond the
bounds of decency

A main issue is whether she can
use her for a trust courts do not have
to get involved in her lives for of
marriage however spousal immunity
is essentially been abolished (except for
UPC & marital rape) since there is no

spousal tort immunity for assault,
she could ~~bring~~ an action against him
for her dental work

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Subject family law

Date 5/12/04

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1-BB-8
16 PAGE

Bill's lawyer

Since Bill has joint legal custody he is entitled to make ^{joint} decisions regarding residence recreation, education, health care and religion.

he objected to Melba moving to La Cruces would sue ^{her} ~~to~~ to file an action

prevent her from doing so. This may not have worked since Melba is joint primary care taker and there is a presumption for

the parent if the mother was in good faith she would have been allowed to go

the move was to prevent visitation (had faith then B's right are given primary

physical custody if Melba was adamant

about money /

Next I would ~~advise~~ ^{advise} B as his
rights regarding the money. Generally the money
is good for the specific time period indicated
(three years) or until death or remarriage.
Since there is no time limit on the
all money and whether she has died
the issue remains age Melba has not
been advised but she has seen I am going with
another man for about a few years
whether or not she needs to continue
the money is dependant upon the relationship
between Sam & Melba. If they would
reconcile but is married and if she

financially support each other then there is a substantial change in circumstances and Bill ~~will~~^{may} no longer need to pay alimony. If they have an agreement that they are financially independent and do not support each other then they do not have a marriage-like relationship and alimony would continue.

B may not be required to pay child support since Nelba has cut off visitation. Visitation & support are not generally linked and the payer is hiding the child from the payor. I would advise B₁ to file an action alleging

withholding of visitation to get child
supp it stopped not he is able to
visit his child he might be able to get
change in physical custody due to
substantial change in circumstances he
can argue that abduction is normal
therefore his son ^{should} ~~would~~ not be in that
situation. This argument, although successful
in Illinois v 979 probably will not
succeed in NM in 2004. Cot status
is not equal in NM (as it was in IL) and
even though NM does not recognize
common law marriage there have been
instances where the court found a

age the extent ship e t e a the
out of marriage (for loss of
a - class - t - k B's best
arguments re for change of circumstances
for alimony s e e being supported by
someone else and withholding of assets
so no child support

Mabel's Lawyer

First I would advise her that she
probably cannot get support from both
But I'd let her know relationship with
same was marriage like the alimony from
she would cease however she can probably
get support from her There are several

facts to consider whether or not she
should, whether or not Sam has the
ability to pay if she made sacrifices to
help Sam advance his career her education
level and the ability to work Given
Sam the best years of her life is not
a reason for support or moving to
his career since the move was voluntary
~~she should not prevent B from~~

~~visiting with her~~ If a woman
friend has a romantic interest this right
must not be used against Sam for support
if she and her friend are just good friends
there is no effect however if they are

Subject Family law
Date 5/12/04

CON.
QUESTION #14
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overs and intend to support one other
in a marriage like relationship as a
domestic partnership then she would
probably not get support from Sam the
relationship & the woman would depend
on time longevity & clarity financial & moral
balance one each other - relying themselves
but in the community as a married
couple ^{and} dependence on each other for daily
life these factors also apply to her
relationship with Sam in dealing with
alimony from B.

Finally I would advise to stop
preventing litigation between Joseph &

and B ✓ If she prevents visitation she is not entitled to child support, since a custodial parent cannot hide the child then demand payment. If B did not visit Joseph for other reasons he would still be required to pay ch support she might argue that the move created

a substantial change in circumstances and child support should be increased because Bill does not come for Wednesday visits This argument is likely to fail because the move was voluntary and the change in dates doesn't significantly change time sharing

↓
why
the
change

Sam's lawyer

I would advise Sam to argue against paying support to Melba. First she receives alimony from Bill if it is compensatory or rehabilitative support then cohabitation shouldn't matter she is being compensated for her sacrifices. If she is getting alimony from B Sam has a strong case because she can't get support from both. I would encourage Sam to argue that they did not support each other that they never intended to be married and did not hold themselves out as married.

Why
Couples

It is argued that any behavior by
the fact that she too in the end as
well although there is no evidence that
she participated just because I see
no information about - labels for
however I would encourage her to
agree that she is employable and that
Joseph is severe and severe so there
is no more need for child care perhaps
before and after school programs I see
move to a class was elementary
the she knew by now to live with
another way at the other way
could she be capable of something

herself four years is not a significant amount of time no children were born into the relationship, and she did not sacrifice a lot to further his career I think Sam's obligation to pay Mabel support is minimal

20

(#4) a.

I do ~~not~~ think that the law provides ^{a relatively} ~~an~~ adequate definition of family ^{but needs} x
The best case for an adequate definition is the Kent Control case in which the court holds that family is not limited to blood or adoption. The court looked at many factors (longevity, exclusivity, financial, emotional support, view of community, and dependence ^{each other in} of daily life) and decided that a homosexual man's partner was his family member. This was a state case however, so not all states are required to abide by this precedent.

The court gets it wrong, however in

the Sharon H case in which a half brother and sister were deemed family, even though they were adopted and raised separately and did not have knowledge of their blood ties until after they were married. While the yuck factor played a significant role here * didn't in In Re Mays Estate where an uncle's marriage to his niece was held valid. Their family ties were presumably stronger than the couple in Sharon H, yet the marriage was okay.

Another place where ^{the} family definition should be stronger is the grandparent visitation act. adopted grandparents can

due for isitation but step grandparents cannot. A grandparent cannot adopt a grandchild (as a grandparent, not as a parent, therefore the step grandparent may be just as important to the child as a natural grandparent or adoptive grandparent (mine is!))

Family should not be limited to adoption or blood (the B case -> can't remember the name] get it right) The courts generally get it right with regard to same sex couples who aren't married (see discussion of this in next question) by allowing for support however they get it very wrong in regards to isitation

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1-BB-8
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The law is not only be just as important
to kids and is just as much a family
member as the biological. The courts need
look at the interests of the children
involved and look at the total relationship
of the people, not just the legal relationship

18^{§4}

b →

you had another one I graduated it

b The main example of bad public policy is the ban on same sex marriages I think the court in Goodridge got it exactly right and it will be interesting to see how that decision affects these policies

The states arguments seem very weak to me and I am surprised they have been upheld for so long The first reason for a policy against same sex marriage is that no procreation can result No one gets a fertility test upon applying for a marriage license (a blood test still even required in NM) and people

all of civic bearing age are allowed
to get married In a moral
argument (the court should decide
clearly for all not debate its own
moral code (Lawrence) and should not
be allowed

The second argument is that the
state saves money on benefits by
allowing fewer people to wed. This
appears to be a gross Equal Protection
violation but the court just says there is
no nexus between the rationale and
application because there is no evidence
that homosexual couples are more or less ready

Also, it is not the state
anything

I think the strongest argument is based
on Zachlock where the court found a
fundamental right to marry. How can

a state have a public policy that is
contrary to a fundamental right if

nonsexists were banned from voting
there would be outrage maybe not by
some because voting a fundamental
right. Public policy would be about
protection of rights, public safety not
about discrimination and stripping
people of ~~the~~ fundamental rights.

Subject Family law

Date 5/12/04

Number 371

QUESTION 5

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of
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#3

The first issue is whether or not just
 & Fatima's marriage was valid if it wasn't,
 then she is not entitled to property
 division or alimony, but would still be able
 to file for custody & child support. Under
 Saudi law the marriage is valid if
 the man is a Muslim and a domicile of
 Saudi Arabia. Jim converted and therefore
 would be considered a Muslim and his
 only address is that of his army base, so
 would be considered domiciled in Saudi
 Arabia. ~~He~~ has an argument that he was
 not domiciled, since he was only there
 with the military and did not have an

does this
 make his
 domicile
 immovable
 in the

intent to stay she would argue that
onverted was here for two years and a day
moved back to the U.S. because of military
rotation the facts say they were married
according to Saudi Arabian law therefore
the marriage is most likely valid where
it was performed / The rule for valid
marriages is that if it is valid where it
is performed it is valid anywhere else
unless the marriage is contrary to
states strong public policy It does not
appear that Mass. has a strong public
policy against America's marrying
Saudi Arabians (a law like this would

certainly come under strict scrutiny for interfering with the fundamental right now as defined in *McGwire*. Therefore if no first marriage would be valid that being said it is up to Fatima to prove there was no dissolution of divorce. Once she has proved this (which should be fairly easy since the marriage was valid and there is no evidence of dissolution divorce in either Maine or New Mexico), the burden would shift to Melba to show there was a dissolution of divorce or that she had a good faith belief that her marriage was valid. She will

have a hard time proving dissolution unless there is a law stating that no longer being Moslem invalidates a marriage performed in accordance with Saudi law. There is no such evidence of this law, so Melba would have to prove a good faith belief in her marriage. Jim was honest and acknowledged his first marriage and it appears that Jim explained the circumstances to the clerk in front of Melba. The facts state that the clerk expressed doubts which should have been a warning sign to Melba that more information was needed or that his marriage

was it really over however the clerk believe Jim and signed the license, Melba could easily have relied on a acceptance of Jim's story and felt in good faith, that the marriage was valid if this involved ERISA and Jim's death both Fatima and Melba would get 2 if the court believes Melba had a good faith belief in her marriage.) There is a presumption in favor of the second marriage, but this is rebuttable. as described above Melba should have done more investigation into the validity of Jim's first marriage. there is no detail regarding Jim's explanation to the clerk,

therefore her good faith belief is questionable and her marriage is most likely invalid. ~~Q~~

~~Q~~ The next issue is whether Fatima is entitled to $\frac{1}{2}$ interest in Jim's business.

If Maine is a community property state, then she is entitled to $\frac{1}{2}$ because Jim started the business after they were married and property acquired during the marriage is considered community property. If, however Maine is not a community property state then Jim's business is separate property and Fatima would be entitled to an equitable division, depending on what she contributed

to sacrificed for the business. None of
the can be decided by the NJ court
however because ~~they~~ ^{it has} have no personal
jurisdiction over Jim. Since Fatima
has been there longer than six months
and presumably has an intent to stay
she can file for divorce using In Rem
Civil Status for jurisdiction. It only has
jurisdiction over ~~it~~ ~~it~~ on ~~not~~
over property & others, since Jim has
no property in NJ nor is there evidence
that he has any min or contacts/
connection with NJ.

NJ can grant the divorce based on

adultery however NM is a no fault state, so there are no property repercussions for alleging fault NM prefers reconciliation or incompatibility as grounds for divorce and tends to stay away from fault grounds. The petition for divorce is valid and can be granted under NM law, however Fatima's interest in Jim's business must be determined by Maine law.

The next issue is whether or not NM has jurisdiction to deal with child custody and child support. These issues are covered under UIFSA, the UCCJA, and PKPA.

Under UIFSA, the court looks at the child's

QUESTION
(cont.)

6
of
6

Subject Family Law

Date 5/12/04

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of one state to determine jurisdiction a child's home state where the child has resided with a parent for at least six months Melinda has lived in NM for 10 years much longer than the 6 month requirement Therefore New Mexico has jurisdiction and can determine the amount of support NJ will retain jurisdiction as long as one of the parties lives there and the support order can be rationally registered to ensure payment and prevent the payor from moving around and trying to alter support according to laws of other states Since NJ had jurisdiction under UIFSA,

the support order will be valid and registered

Jim's argument about his "stolen child

as merit only if Fatima prevented

Jim from seeing Melinda There is no

link between visitation and support and

an inability to visit a child is not a defense

to support unless the child was withheld

from the payor There is no evidence

that Jim attempted to locate Melinda or

that ~~he~~ he tried to seek visitation with

her after she & Fatima moved He seemed

perfectly happy to ignore his first family,

declaring his first marriage valid, and

marry another The fact that Fatima took

all data is that held by
the are over an issue of the settlement
for custody and support would we been
filed immediately upon arriving in NJ
since 6 years we resided and J is
has not made an attempt to locate us
daughter the fact that she was stolen
is not

held custody can also be later amended
by NJ since the child was born there
for years under the UCCJTA uses the
state's interests as a basis for a decision
the 0 of the state that is of a full
an record maintain a record for us

Linda only lived there for 2 years
She has lived in NM for 10. The other
ways to get jurisdiction under the UCCJA
are if the child has been abandoned

It is an emergency (i.e. the child is
being abused) or if no other state
has jurisdiction (Barnes) 1 or 2
These apply however the domicile for
months or more does apply therefore
JM has jurisdiction to deal with
custody

The PRPA is stronger than the CCJA
in that it keeps exclusively continuing
if used it or until all parties are gone from

the state (The UCCJA holds for jurs as long as the child is there) This is to prevent parents from kidnapping their children, which really doesn't apply here since she has lived in NM for 10 years

The final issue is whether Fatima is entitled to alimony. Using the same jurisdictional issues as property division, appears that NM does not have jurisdiction over Jim no personal jurisdiction and therefore cannot decide alimony issues. Fatima could file in Maine and she might be awarded alimony based on need, rehabilitation or compensation.

She is entitled to the basic maintenance level of support which may be affected by her continued cohabitation w/ Dr Chammees. Ne s^r if they have a mutual agreement to support each other then alimony would probably not be awarded. If Fat^r is remarried then she would definitely not be entitled to alimony.

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8³

Family Law

Semester II, 2004

UNM School of Law
Final Examination
Three Credits

Professor Sedillo Lopez
May 7, 2004
May 12, 2004
9:00 a.m. – 12:00 p.m.

INSTRUCTIONS

YOU MAY TAKE A CALCULATOR INTO THE EXAM ROOM. YOU MAY NOT TAKE ANY OTHER MATERIAL WITH YOU INTO THE EXAM ROOM AND YOU MAY NOT CONSULT ANYTHING ELSE DURING THE EXAMINATION.

Answer each question fully. Use relevant statutes, case law and policy considerations to analyze each problem thoroughly. Do not simply express your opinion.

The time suggested for each question roughly reflects its weight in grading. Note that the time suggested adds up to three hours exactly.

Clearly identify your answers in your bluebooks. Please write neatly, in ink, and on only one side of each blue book page. Clarity of expression will improve your score.

GOOD LUCK!!!

END OF INSTRUCTIONS

[Exam begins on next page]

Question One (45 Minutes)

10:45

where?

Henry and Jessica met in 1998, when he was 27 and she was 23. At the time, he was a successful young businessman who had already built up a business worth 1 million dollars. However, Jessica was unaware of the worth of the business. Jessica had just started to work in a public relations firm. After they had been seeing each other for a year, Jessica discovered that she was pregnant. They decided to marry, but Henry had reservations and insisted that they enter into a pre-nuptial agreement under which Jessica would receive no more than \$100,000 in the event of a divorce occurring (within five) years of the marriage. If the marriage lasted more than 5 years, regular principles of New Mexico community property law would apply. Jessica told him that she was not marrying him for the money and signed the agreement without reading it.

After the wedding, Jessica suffered a miscarriage. She became very depressed and began to drink heavily. She was fired from her job for being drunk and abusive to clients. Henry paid for alcohol and substance abuse counseling and she gradually recovered. However she still suffers from bouts of depression. She found it difficult to obtain a new job and spent a few months working for Henry. However, she did not enjoy the work and gave it up, although she did entertain Henry's business friends at home from time to time. She started to do voluntary work for a local children's charity. Henry belittled her and constantly told her that all she has is "a pretty face". He was very disappointed that she had decided not to become pregnant again until her mental health improved. On one occasion, when he was drinking, he slapped her so hard that two of her teeth were loosened and she required expensive dental care. *abusive*

4 1/2 yrs

Two years after their marriage, Henry had an affair with his secretary, Georgina, a single mother with two children under 5, who lives in a rented apartment near their home. After 2 1/2 years of the affair, he has decided that his relationship with Jessica has no future and wants a divorce so he can marry Georgina. His business is now worth over 5 million dollars. Their home was purchased for 200,000 dollars shortly after the marriage and is now worth 300,000 dollars.

What are the issues raised by the foregoing and how are they likely to be resolved?

Question Two (45 minutes)

11:30

Bill and Mabel were divorced in Bernalillo County, Albuquerque, New Mexico, 2000. Under the terms of their separation agreement, which was incorporated into the divorce decree, Mabel was to have primary physical custody of their three-year old child Joseph. They were to have joint legal custody. Bill was entitled to visitation each Wednesday night and every other weekend. Under the agreement Mabel was to keep Joseph in "the Albuquerque geographical area" and would not move more than 20 miles without Bill's prior permission. Bill agreed to pay child support in the amount of \$350 a month and alimony in the amount of \$750 a month.

(15) If you were Bill's lawyer, how would you advise him of his rights and options in this matter?

(15) If you were Mabel's lawyer how would you advise her of her rights and options in this matter?

(15) If you were Sam's lawyer, how would you advise him of his rights and options in this matter?

Question Three (60 minutes) 10.00

In 1990 Jim enlisted in the United States Army and after basic training he was ordered to report to his unit in Saudi Arabia. After he entered the army Jim had no permanent address other than his current army base. While Jim was stationed in Saudi Arabia he met Fatima, a resident of that country. He converted from the Methodist faith to Islam and married Fatima in a Moslem ceremony which was conducted according to Saudi Arabian law. Under Saudi law a Moslem man can have up to four wives and must be a domiciliary of Saudi Arabia in order to marry in Saudi Arabia.

valid
- 2nd
- support
- custody
- property

$\frac{12}{4} = 3$
 $\frac{8}{96} = \frac{1}{12}$

Jim continued to operate a profitable wholesale lobster business in Maine. He also reconverted to Methodism. He met a Methodist woman named Melba Snow in Portland and in early 1995 married her according to Maine law. In the application for a marriage license he stated that he had previously been involved in a void marriage but was now free to marry. The clerk expressed some doubts, but after questioning Jim the marriage license was issued.

note

Jim was recently served by certified mail with a complaint and summons for divorce in an action filed by Fatima. She seeks a divorce on grounds that Jim committed adultery with Melba. She also seeks alimony, child custody, child support and a property division judgment awarding her a one-half interest in Jim's business.

reimbursement

The complaint alleged that the parties were married under Saudi Arabian law while the wife was a domiciliary and citizen of that country and alleged that Jim committed adultery with Melba. Fatima seeks a one-half interest in Jim's business, or its dollar value. Fatima had earlier begun an action for child support in New Mexico court in which the court ordered Jim to pay \$200 a week for the support of Melina Salem. Jim received notice by mail of the child support order but never paid any amount, believing it was unfair of Fatima to expect him to pay support for a child she had "stolen" from him without even telling him she was leaving. A child support enforcement lawyer now has served Jim with a complaint seeking to register the New Mexico child support judgment in Maine and to hold Jim in contempt for failure to pay the child support arrearage.

When Jim explained all this to Melba, she said, "what kind of nut have I married?" Melba has now left Jim and filed an annulment action in the Maine court alleging that Jim is a bigamist. Jim has been personally served with the complaint and summons.

What are the issues raised by the foregoing?

Policy Question (30 minutes)

12:00

Sharon H.
parent
DonA.

Please choose one:

(Goodridge)

1. Using examples from cases and statutes, discuss whether the law provides an adequate definition of 'family' to protect individuals' relationships and their consequences.
2. Using the material we studied this semester, select one or two family law principles that you believe are examples of bad public policy. Describe the principles and explain, in detail, your concerns.

cr

(15)

ALIMONY