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**533 Family Law
Spring Semester 2000**

**UNM School of Law
Final Examination
Three Credits**

**Professor Sheryl Wolf
Monday, May 8, 2000
9:00 am to Noon**

INSTRUCTIONS: READ CAREFULLY!

1. Please be certain that your exam consists of thirteen (13) pages, plus this cover sheet. Remember to put your exam number on this page and all Blue Books or attached pages.
2. This exam consists of 10 multiple choice questions and 8 short essay questions. You must answer all of the multiple choice questions and any 7 of the 8 short essay questions. The multiple choice questions will count 3 points each and the essay questions will count 10 points each. You must circle the letter preceding the most correct answer to each multiple choice question on the exam itself. You may briefly explain or qualify your answers to these questions directly below that question, but points will be deducted for wrong reasoning given for correct answers. You may eliminate any one short essay question. Please indicate at the top of this cover sheet which question you have chosen not to answer. Please write your essays in blue books or type.
3. This is a limited open book exam: you may use your casebook, N.M. statutes, class handouts, and your own work product, such as class notes and outlines that you prepared individually or as an active member of a study group. You may not use hornbooks, treatises, commercial outlines or the like.
4. You may use calculators.
5. **RELEVANT LAW.** Unless the facts of a question indicate otherwise, assume the following:
 - A. All relevant events and transactions take place in New Mexico, and all property is located in New Mexico, unless the facts indicate certain events took place in The State of Bliss. The time is the present.
 - B. The State of Bliss is a typical common law property, equitable distribution state, not a community property state. It recognizes common law marriages contracted within the state.

Good Luck!

PART II

Short essay questions: Please answer any 7 of the following 8 questions, indicating on the front of your exam which one question you have eliminated. Write in Blue Books or type. Each answer will count 10 points.

1. Hector and Winona were divorced in Albuquerque four years ago after a long-term marriage. The divorce court ordered Hector to pay Winona \$800 a month periodic alimony, to terminate on the death of either of them or on Winona's remarriage. Winona moved to the State of Bliss last year, and Hector has just learned that Winona has become involved with another woman in an intimate, marital type relationship. Hector is outraged, and has consulted you, wanting to terminate his alimony payments. He also wants to know if he needs to travel to the State of Bliss to do anything about the situation. Please advise Hector.

2. The State of New Mexico has recently enacted legislation requiring all persons applying for a marriage license to take an HIV test to determine whether they are likely to develop AIDS. If the test results are positive, no marriage license will be issued. Please discuss the constitutionality of this legislation.

3. Herb and Wisteria are divorcing. They are attempting to be fair and reasonable to make things easier for their three children, ages 8, 6, and 3, and have agreed to joint legal custody. Wisteria will have primary physical custody of the children, and Herb will have the children on alternate weekends, from Friday night until Sunday night, and one evening a week for an overnight visit. Herb has his own art gallery business, which has been increasingly successful and caters to a wealthy clientele. Last year it grossed \$300,000. He paid his employees \$100,000 and paid \$24,000 for leasing the gallery space. He spent \$30,000 on advertising, \$20,000 on customer entertainment, including tennis club dues at an exclusive club. He spent \$15,000 on personal clothing and buys a new luxury vehicle every three years, which he uses for both business and personal purposes. Herb has a private health insurance policy for the entire family, which costs a total of \$300 a month. Wisteria has not worked outside the home during marriage, but she is currently taking a few classes, working toward a degree in art history. She hires a sitter for the children while she is in class, at a cost of \$60 a week. Herb and Wisteria thought it would be easy calculating the amount of child support that Herb should pay under the New Mexico Child Support Guidelines, since they thought they could just fill in the blanks. As it turns out, they are having a lot of trouble coming to an agreement over the appropriate amount, and Herb has sought your advise. Please advise Herb how the child support should be determined. You need not make any calculations or determine an amount, but discuss the specific issues that need to be resolved.

4. Emmanuel Gilbert, one of your former classmates, didn't take a family law course while he was in law school, because he said all you need to know to practice divorce law is how to fill out forms and find the courthouse. Gilbert, now in his second year of general practice has just called you in a panic. He's representing Wife in a "simple divorce" and she has just asked him about QDROs and COBRA. He's never heard of either and needs to give his client a quick answer. Despite his flaws, you've always liked Gilbert, and besides, he may send some work your way, so you've decided to help him out. Please explain QDROs and COBRA to him and give him some general advice what to do about them.

5. A few months ago, you represented Wanda in her divorce from her husband Howie. Howie and Wanda were married for ten years and have two children. Howie had a good position as a sales representative for a pharmaceutical firm; Wanda has a college degree in education but has not worked since the birth of their first child. All their assets were community property and their debts were all community debts. In their written marital settlement agreement [MSA], the parties agreed that they would have joint legal custody of the children but Wanda would have primary physical custody. Howie agreed to pay the guideline amount of child support, \$800 a month. Wanda received the family home, worth \$120,000, but subject to a \$90,000 mortgage. Howie agreed to pay the mortgage payments of \$1000 a month. He also agreed to pay Wanda an additional \$2000 a month for the next three years to equalize their property division, which would help pay her expenses while she took courses to renew her teaching certificate. Howie further agreed to pay their Visa bill of \$5000, your attorney fees for representing Wanda in the divorce, and the fees of the child psychologist who facilitated the custody agreement and parenting plan. Their divorce decree incorporated the terms of the MSA. Shortly after their divorce, Howie was injured in an accident and was off work without pay for several weeks. He has made none of the payments specified in their MSA. Wanda has just found out that Howie has filed a Chapter 7 bankruptcy action and has called you for advice because she is very worried about the bankruptcy implications to her. Please advise Wanda.

6. A bill to adopt equitable distribution principles in New Mexico has been proposed to the New Mexico legislature. You are a legislative aid to State Senator Lena Liberal. Senator Liberal, who is not a lawyer, has asked you to explain to her how this bill would affect the rights of New Mexico spouses during marriage, at death, and on divorce. Please explain the effect of the bill and recommend whether Senator Liberal should vote for or against it.

7. Henry and Wilda lived in New Mexico with their two small children. Henry and Wilda had not been getting along well for the past few years. Wilda took the children to visit her parents in the State of Bliss over the New Year holiday. Several days after arriving in Bliss, Wilda called Henry and told him that she was going to remain in Bliss for awhile with the children to think things over. After five months, Henry realizes Wilda isn't planning to return. He believes she is getting ready to file for divorce and petition for sole custody of the children. Henry has always been a good father and would like to obtain custody of them himself. He's flown them out to visit him several times during the past months, but he doesn't feel that he can afford to continue doing so on regular basis. Furthermore, he doesn't want to have to litigate custody in Bliss. Answer both questions A and B.

A. Addressing only the initial custody jurisdiction issues, please advise Henry.

B. Henry thinks he may be transferred out of the state in a few years, and he wants to know how that might affect any possible future modifications of custody. Addressing only the custody modification jurisdiction issues, please advise him.

8. Homer and Windella married shortly before Windella entered medical school. After she obtained her medical degree, she completed her residency in orthopedic surgery. Windella joined an orthopedic surgery practice with three other surgeons in Albuquerque. The practice has done well over the past few years, and Windella earns considerably more than the average orthopedic surgeon in Albuquerque. Windella and the other surgeons recently established a professional corporation; the four of them hold equal shares of the corporation's stock. A clause in their shareholders' agreement stipulates: "If any shareholder withdraws from this orthopedic practice, retires, or dies, that shareholder or her estate will be entitled to payment of fifty dollars (\$50) only for the value of her professional goodwill." No shareholder has yet withdrawn from the practice, retired, or died. Homer and Windella are divorcing. Homer, who has worked as an assistant manager at Furr's Supermarket during their entire marriage, wants to know what rights he has in Windella's medical degree, license, and professional assets. Please advise Homer.

End of Exam.

Have a great summer!